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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

ORIGINAL

JERARD SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)	
)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
vs.)	No. 07-GS-10-4286 et al
)	
Jerrard A. Smith,)	
)	
Defendant.)	

TRANSCRIPT OF HEARING

The within Hearing was held on December 5th, 2008, before The Honorable R. Markley Dennis, Jr., in Courtroom 4D of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Bruce Durant, Assistant Solicitor
9TH CIRCUIT SOLICITORS OFFICE
100 Broad Street, 4th Floor
Charleston, South Carolina 29401
Appearing for State of South Carolina

Peter Brown, Esq.
Charleston, SC 29402
Appearing for Defendant Jerrard A. Smith

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org

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(DEFENDANT PRESENT)

(OFF RECORD BENCH CONFERENCE)

THE COURT: What we will do rather than to have everybody standing -- I don't care what order that you'all want to agree to but rather than everybody standing up together speaking, I will take them one at a time if you want me to ---

MR. DURANT: That's at the end part.

THE COURT: Right, that's at the end part, not during the victim's presentation and not during the plea qualification. Do we have some Indictments?

CLERK: Yes, sir.

MR. DURANT: I have something that has all the indictment numbers on it -- (tenders).

THE COURT: Thank you.

MR. DURANT: Where is Rashard Rivers?

MR. DUPREE: Here, Your Honor.

THE COURT: Mr. Durant, you represent him?

MR. DUPREE: I do, Your Honor.

THE COURT: Why don't we do this? I am going to call out the defendant and the attorney representing each defendant. I think

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1 that I have it down but for the court reporter's
2 benefit and the Court's benefit, please give
3 your name.

4 DEFENDANT RASHARD RIVERS: Rashard
5 Rivers.

6 THE COURT: No, sir. Your lawyer's
7 first.

8 MR. DUPREE: Mike Dupree, Your Honor.
9 I represent Rashard Rivers.

10 THE COURT: Thank you. Where is
11 Jerry Jerome Smith?

12 DEFENDANT JERRY SMITH: That's me.

13 THE COURT: Who is your lawyer?

14 MR. KNOBELOCH: I represent him,
15 Your Honor. John Knobeloch.

16 THE COURT: All right, Mr. Knobeloch.
17 Thank you. Where is Jerrard Smith?

18 MR. BROWN: Right here, Your Honor.
19 Peter Brown representing Jerrard Smith.

20 THE COURT: Thank you, sir. Tocara
21 Smith? (No response). Ms. Mulvaney, do you
22 represent Miss Smith?

23 MS. MULVANEY: Yes. I am Mary
24 Beth Mulvaney and I represent Tocara Smith.

25 THE COURT: Thank you. Gwenetta

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1 Duckett?

2 MR. BOWLER: Right here, Your Honor.
3 John Bowler, I represent Miss Duckett.

4 THE COURT: Thank you. Let me have
5 all of your attention, please. We will do this,
6 part of this, as a group.

7 Each of you is standing with your
8 attorney who has now stated their representation
9 of you for the record.

10 I have been presented with three
11 indictments that charge you with various crimes.
12 Each of you have also submitted to me, and I now
13 have for each indictment a sentencing sheet.
14 That sentencing sheet bears the signature of the
15 Solicitor, Mr. Durant, your signature and your
16 attorney's signature. By signing this sheet,
17 you are stating to the court that it is your
18 desire to enter a plea to the indictment that it
19 references.

20 When you state that, you are indicating
21 to me that you've had a sufficient opportunity
22 to have this matter investigated by your lawyer,
23 you've had a chance to review that investigation
24 that he has conducted or the results of that
25 investigation that he has conducted for you --

6

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1 he or she; -- that based on your conversations
2 with your lawyer and the review of the
3 information that has been provided to you, you
4 have made a conscious decision for yourself to
5 enter a plea to that particular indictment and
6 that particular charge.

7 You also state that you have had an
8 opportunity to discuss with your lawyer what
9 that means; in other words, what your plea
10 signifies and the possible consequences and
11 results of your plea and that your lawyer has
12 explained to you the possible sentence that
13 could be imposed in each particular case.

14 Mr. Rashard Rivers, is all of that
15 correct, sir, concerning you -- as to Mr.
16 DuPree's representation?

17 DEFENDANT RASHARD RIVERS: Yes, sir.

18 THE COURT: Mr. Jerrard Smith, is all
19 of that true in connection with Mr. Brown's
20 representation?

21 DEFENDANT JERRARD SMITH: Yes, Your
22 Honor.

23 THE COURT: Mr. Jerry Jerome Smith,
24 is all of that correct as to you with respect
25 to Mr. Knobloch's representation?

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1 DEFENDANT JERRY SMITH: Yes, sir,
2 Your Honor.

3 THE COURT: Miss Gwenetta Duckett, is
4 all of that correct as to you with respect to
5 Mr. Bowler's representation?

6 DEFENDANT GWENETTA DUCKETT: Yes, sir.

7 THE COURT: And Miss Tocara Smith,
8 is all of that correct as to you with respect
9 to Ms. Mulvaney's representation?

10 DEFENDANT TOCARA SMITH: Yes, sir,
11 it is.

12 THE COURT: Mr. Rivers, the three
13 indictments that have been presented to me for
14 you, concerning you, are Indictments 07-4249,
15 07-4250 and 07-4251. Indictment 07-4259 is an
16 Indictment which charges you with murder. Do
17 you understand that?

18 DEFENDANT RASHARD RIVERS: Yes, sir.

19 THE COURT: According to the
20 sentencing sheet you've indicated a desire to
21 plead to the lesser-included offense of
22 involuntary manslaughter; is that correct?

23 DEFENDANT RASHARD RIVERS: Yes, sir.

24 THE COURT: Your lawyer has explained
25 to you the nature of that crime, the elements of

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1 that offense?

2 DEFENDANT RASHARD RIVERS: Yes, sir.

3 THE COURT: Has he explained to you
4 the possible punishment for that offense?

5 DEFENDANT RASHARD RIVERS: Yes, sir.

6 THE COURT: What has he indicated to
7 you is the potential sentence, the maximum?

8 DEFENDANT RASHARD RIVERS: On
9 involuntary?

10 THE COURT: Yes.

11 DEFENDANT RASHARD RIVERS: Life.

12 THE COURT: Understanding the nature
13 of the offense and the possible punishment, what
14 is your plea?

15 DEFENDANT RASHARD RIVERS: Guilty.

16 THE COURT: Indictment 07-4250
17 charges you with the offense of grand larceny;
18 do you understand that?

19 DEFENDANT RASHARD RIVERS: Yes, sir.

20 THE COURT: Based on the amount
21 alleged, it is greater than a thousand but less
22 than five; do you understand that?

23 DEFENDANT RASHARD RIVERS: Yes, sir.

24 THE COURT: Has your lawyer explained
25 to you the nature of that offense?

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1 DEFENDANT RASHARD RIVERS: Yes, sir.

2 THE COURT: And he has explained to
3 you the possible punishment?

4 DEFENDANT RASHARD RIVERS: He has.

5 THE COURT: And what has he indicated
6 to you is the maximum?

7 DEFENDANT RASHARD RIVERS: Five years.

8 THE COURT: Indictment 07-4251 is an
9 indictment charging you with Burglary 1st; do
10 you understand that?

11 DEFENDANT RASHARD RIVERS: Yes, sir.

12 THE COURT: Your lawyer has explained
13 to you the nature of that offense and the
14 possible punishment?

15 DEFENDANT RASHARD RIVERS: Yes.

16 THE COURT: What has he explained to
17 you is the maximum punishment?

18 DEFENDANT RASHARD RIVERS: Life.

19 THE COURT: And what is the minimum
20 punishment?

21 DEFENDANT RASHARD RIVERS: Fifteen.

22 THE COURT: Understanding, Mr.
23 Rivers, the nature of each of the offenses, how
24 do you plea as to that offense?

25 DEFENDANT RASHARD RIVERS: Guilty.

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1 THE COURT: And how do you plead as
2 to the grand larceny?

3 DEFENDANT RASHARD RIVERS: Guilty.

4 THE COURT: Are you satisfied with
5 your lawyer?

6 DEFENDANT RASHARD RIVERS: Yes, I am.

7 THE COURT: Any complaints about the
8 way that he has handled your case?

9 DEFENDANT RASHARD RIVERS: None at
10 all.

11 THE COURT: Solicitor, other than
12 permitting him to plead to the lesser-included
13 offense in the murder indictment, are there any
14 other agreements with the State?

15 MR. DURANT: No, sir.

16 THE COURT: Is that your understand-
17 ing, Mr. Rivers?

18 DEFENDANT RASHARD RIVERS: Yes, sir.

19 THE COURT: And do you concur with
20 that statement, Mr. Dupree, as it pertains to
21 Mr. Rivers?

22 MR. DUPREE: I do, Your Honor.

23 THE COURT: Okay. Mr. Jerrard Smith,
24 you just heard me talk with Mr. Rivers. You,
25 too, have had a conversation with your lawyer?

1 DEFENDANT JERRARD SMITH: Yes, Your
2 Honor.

3 THE COURT: And he has explained to
4 you that Indictment 07-4289 charges you with
5 Burglary 1st?

6 DEFENDANT JERRARD SMITH: Yes, Your
7 Honor.

8 THE COURT: He has explained to you
9 the nature of that offense?

10 DEFENDANT JERRARD SMITH: Yes, sir.

11 THE COURT: And the possible
12 punishment?

13 DEFENDANT JERRARD SMITH: Yes, sir.

14 THE COURT: What do you understand to
15 be the maximum, sir?

16 DEFENDANT JERRARD SMITH: Life.

17 THE COURT: And what do you
18 understand to be the minimum?

19 DEFENDANT JERRARD SMITH: Fifteen
20 years.

21 THE COURT: Understanding the nature
22 of the offense and the possible punishment, how
23 do you plead?

24 DEFENDANT JERRARD SMITH: Guilty.

25 THE COURT: Indictment 07-4288

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1 charges you with murder; do you understand that?

2 DEFENDANT JERRARD SMITH: Yes, sir.

3 THE COURT: Your lawyer has explained
4 that charge to you?

5 DEFENDANT JERRARD SMITH: Yes, sir.

6 THE COURT: Has he explained to you
7 the lesser-included offense of involuntary
8 manslaughter?

9 DEFENDANT JERRARD SMITH: Yes, he
10 has.

11 THE COURT: And he has explained to
12 you the elements of that offense?

13 DEFENDANT JERRARD SMITH: Yes, sir.

14 THE COURT: Has he explained to you
15 the maximum punishment possible?

16 DEFENDANT JERRARD SMITH: Yes, sir.

17 THE COURT: And what is that?

18 DEFENDANT JERRARD SMITH: Five years.

19 THE COURT: Understanding the nature
20 of the offense and understanding the possible
21 punishment, how do you plead?

22 DEFENDANT JERRARD SMITH: Guilty.

23 THE COURT: Indictment 07-4286 is
24 an indictment that charges you with the crime
25 of grand larceny, do you understand that?

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1 DEFENDANT JERRARD SMITH: Yes, Your
2 Honor.

3 THE COURT: Your lawyer has explained
4 that charge to you?

5 DEFENDANT JERRARD SMITH: Yes, sir.

6 THE COURT: And he has explained to
7 you the possible punishment for the offense of
8 grand larceny of more than a thousand but less
9 than five?

10 DEFENDANT JERRARD SMITH: Yes, sir.

11 THE COURT: What do you understand
12 the maximum to be?

13 DEFENDANT JERRARD SMITH: Five years,
14 Your Honor.

15 THE COURT: Understanding the nature
16 of that offense and the possible punishment, how
17 do you plead?

18 DEFENDANT: Guilty, Your Honor.

19 THE COURT: And are you satisfied
20 with your lawyer?

21 DEFENDANT JERRARD SMITH: Yes, Your
22 Honor.

23 THE COURT: Do you have any
24 complaints at all about how he has handled your
25 case?

14

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1 DEFENDANT JERRARD SMITH: No, sir.

2 THE COURT: Solicitor, again it
3 appears on the sentencing sheet with respect to
4 Mr. Smith that the only agreement is permitting
5 him to plead to the lesser-included offense of
6 involuntary manslaughter?

7 MR. DURANT: That's correct, Your
8 Honor.

9 THE COURT: Is that your understand-
10 ing, Mr. Smith?

11 DEFENDANT JERRARD SMITH: Yes, sir.

12 THE COURT: Mr. Brown, do you concur
13 with that statement by the Solicitor?

14 MR. BROWN: Yes, Your Honor.

15 THE COURT: Jerry Jerome Smith,
16 you've heard the previous but I need to ask you,
17 as well. Indictment 07-4266 charges you with
18 the offense of grand larceny. Mr. Knobloch has
19 explained that to you?

20 DEFENDANT JERRY SMITH: Yes, Your
21 Honor.

22 THE COURT: He's explained the
23 possible punishment for that crime when the
24 amount was greater than a thousand but less than
25 five?

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1 DEFENDANT JERRY SMITH: Yes, Your
2 Honor.

3 THE COURT: And what do you
4 understand the maximum sentence to be?

5 DEFENDANT JERRY SMITH: Five years.

6 THE COURT: Understanding the nature
7 of that crime and the possible punishment, how
8 do you plead?

9 DEFENDANT JERRY SMITH: Guilty.

10 THE COURT: Indictment 07-4267
11 charges you with the offense of Burglary 1st,
12 do you understand that?

13 DEFENDANT JERRY SMITH: Yes, Your
14 Honor.

15 THE COURT: Your lawyer has explained
16 that offense to you?

17 DEFENDANT JERRY SMITH: Yes, Your
18 Honor.

19 THE COURT: Has he explained to you
20 the possible punishment?

21 DEFENDANT: Yes, sir.

22 THE COURT: What do you understand
23 the maximum sentence to be?

24 DEFENDANT JERRY SMITH: Life, Your
25 Honor.

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15

1 THE COURT: And the minimum sentence?

2 DEFENDANT JERRY SMITH: Fifteen
3 years, Your Honor.

4 THE COURT: Understanding, sir, the
5 nature of that offense and the possible
6 punishment, how do you plea?

7 DEFENDANT JERRY SMITH: Guilty,
8 Your Honor.

9 THE COURT: Indictment 07-4268 is an
10 indictment that charges you with murder; do you
11 understand that?

12 DEFENDANT JERRY SMITH: Yes, Your
13 Honor.

14 THE COURT: Your lawyer has explained
15 that offense to you?

16 DEFENDANT JERRY SMITH: Yes, Your
17 Honor.

18 THE COURT: And he has explained
19 the lesser-included offense of involuntary
20 manslaughter?

21 DEFENDANT JERRY SMITH: Yes, Your
22 Honor.

23 THE COURT: Has he explained to you
24 the maximum sentence for involuntary
25 manslaughter?

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1 DEFENDANT JERRY SMITH: Yes, Your
2 Honor.

3 THE COURT: And what do you under-
4 stand that to be?

5 DEFENDANT JERRY SMITH: Five years,
6 Your Honor.

7 THE COURT: Understanding the nature
8 of the offense and the possible sentence, what
9 is your plea?

10 DEFENDANT JERRY SMITH: Guilty,
11 Your Honor.

12 THE COURT: Are you, Mr. Smith,
13 satisfied with your lawyer?

14 DEFENDANT JERRY SMITH: Yes, sir,
15 Your Honor.

16 THE COURT: Do you have any
17 complaints at all about the way that he has
18 handled your case?

19 DEFENDANT JERRY SMITH: No, Your
20 Honor.

21 THE COURT: Mr. Durant, as to Mr.
22 Smith, the same applies?

23 MR. DURANT: That's correct, Your
24 Honor, no negotiations.

25 THE COURT: No negotiations other

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1 than allowing him to plead to the involuntary?

2 MR. DURANT: That's correct.

3 THE COURT: Is that your under-
4 standing of the plea agreement, Mr. Smith?

5 DEFENDANT JERRY SMITH: Yes, Your
6 Honor.

7 THE COURT: Mr. Knobeloch, do you
8 concur with that decision?

9 MR. KNOBELOCH: Yes, sir, Your
10 Honor.

11 THE COURT: Gwenetta Duckett. Miss
12 Duckett, Mr. Bowler has explained these charges
13 to you, as you have already indicated?

14 DEFENDANT GWENETTA DUCKETT: Yes,
15 sir.

16 THE COURT: He has explained
17 indictment 07-4257 which charges you with
18 Burglary 1st; is that correct?

19 DEFENDANT GWENETTA DUCKETT: Yes,
20 sir.

21 THE COURT: Has he explained to you
22 the possible punishment for that offense?

23 DEFENDANT GWENETTA DUCKETT: Yes,
24 sir.

25 THE COURT: And what do you

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18

1 understand the maximum sentence to be?

2 DEFENDANT GWENETTA DUCKETT: Life.

3 THE COURT: And what do you under-
4 stand the minimum sentence to be?

5 DEFENDANT GWENETTA DUCKETT:

6 Fifteen years.

7 THE COURT: Understanding the nature
8 of the offense and the possible punishment, how
9 do you plead to Indictment 07-4257?

10 DEFENDANT GWENETTA DUCKETT: Guilty.

11 THE COURT: Indictment 07-4263
12 charges you with the offense of grand larceny;
13 do you understand that?

14 DEFENDANT GWENETTA DUCKETT: Yes,
15 sir.

16 THE COURT: Your lawyer has explained
17 that charge?

18 DEFENDANT GWENETTA DUCKETT: Yes,
19 sir.

20 THE COURT: Has he explained the
21 possible punishment for when the amount is
22 greater than a thousand but less than five?

23 DEFENDANT GWENETTA DUCKETT: Yes,
24 sir.

25 THE COURT: And what do you under-

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19

1 stand the maximum potential sentence to be?

2 DEFENDANT GWENETTA DUCKETT: Five
3 years.

4 THE COURT: Understanding the nature
5 of that offense and the possible punishment, how
6 do you plead?

7 DEFENDANT GWENETTA DUCKETT:
8 Guilty.

9 THE COURT: Indictment 07-4261 is an
10 indictment that charges you with the offense of
11 murder; do you understand that?

12 DEFENDANT GWENETTA DUCKETT: Yes, sir.

13 THE COURT: Your lawyer has explained
14 that charge to you?

15 DEFENDANT GWENETTA DUCKETT: Yes,
16 sir.

17 THE COURT: And has explained the
18 lesser-included offense of involuntary
19 manslaughter?

20 DEFENDANT GWENETTA DUCKETT: Yes,
21 sir.

22 THE COURT: What do you understand
23 the maximum penalty to be for involuntary
24 manslaughter?

25 DEFENDANT GWENETTA DUCKETT: Five

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20

1 years.

2 THE COURT: Understanding the nature
3 of the offense and the possible punishment for
4 that offense, what is your plea?

5 DEFENDANT GWENETTA DUCKETT:
6 Guilty.

7 THE COURT: Are you satisfied with
8 your lawyer?

9 DEFENDANT GWENETTA DUCKETT: Yes,
10 sir.

11 THE COURT: Any complaints about the
12 way that he has handled your case?

13 DEFENDANT GWENETTA DUCKETT: No,
14 sir..

15 THE COURT: I want to be sure, I
16 think I asked you but -- Mr. Jerry Smith, you're
17 totally satisfied with your lawyer, as well?

18 DEFENDANT JERRY SMITH: Yes, sir.

19 THE COURT: And no complaints about
20 the way that he has handled your case?

21 DEFENDANT JERRY SMITH: No, sir.

22 THE COURT: And Mr. Durant, as to
23 Miss Duckett, the same agreement applies of
24 allowing her to plead to the lesser-included
25 offense of involuntary manslaughter, but no

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1 other agreements?

2 MR. DURANT: That's correct, Your
3 Honor.

4 THE COURT: Is that your understand-
5 ing of the plea agreement, Miss Duckett?

6 DEFENDANT GWENETTA DUCKETT: Yes,
7 sir.

8 THE COURT: Mr. Bowler, do you agree
9 with that?

10 MR. BOWLER: I do, Your Honor.

11 THE COURT: Tocara Smith, you've also
12 indicated that you have discussed the matter
13 fully with your lawyer?

14 DEFENDANT TOCARA SMITH: Yes,
15 sir.

16 THE COURT: Indictment 07-5324
17 charges you with the offense of Burglary 1st.
18 Your lawyer has explained that charge to you?

19 DEFENDANT TOCARA SMITH: Yes, sir.

20 THE COURT: And the possible
21 punishment?

22 DEFENDANT TOCARA SMITH: Yes, sir.

23 THE COURT: What do you understand
24 the maximum sentence to be?

25 DEFENDANT TOCARA SMITH: Zero to

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22

1 five.

2 THE COURT: For Burglary 1st?

3 DEFENDANT TOCARA SMITH: Life.

4 THE COURT: Ma'am?

5 DEFENDANT TOCARA SMITH: Life.

6 THE COURT: Life?

7 DEFENDANT TOCARA SMITH: (Affirma-
8 tive nod).

9 THE COURT: Okay.

10 DEFENDANT TOCARA SMITH: And for
11 Burglary 1st, what do you understand the minimum
12 sentence to be?

13 DEFENDANT TOCARA SMITH: Fifteen.

14 THE COURT: Understanding the nature
15 of the offense of Burglary 1st and the possible
16 punishment for Burglary 1st, what is your plea?

17 DEFENDANT TOCARA SMITH: Guilty.

18 THE COURT: I'm sorry?

19 DEFENDANT TOCARA SMITH: Guilty.

20 THE COURT: All right. Indictment
21 07-4264 is an indictment that charges you with
22 murder; do you understand that?

23 DEFENDANT TOCARA SMITH: Yes, sir.

24 THE COURT: According to the
25 sentencing sheet you want to plead to the

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1 lesser-included offense of involuntary
2 manslaughter?

3 DEFENDANT TOCARA SMITH: Yes, sir.

4 THE COURT: Has Ms. Mulvaney
5 explained to you both of those charges?

6 DEFENDANT TOCARA SMITH: Yes, sir.

7 THE COURT: The nature of both of the
8 charges?

9 DEFENDANT TOCARA SMITH: Yes, sir.

10 THE COURT: She has explained to you
11 the possible punishment for involuntary
12 manslaughter?

13 DEFENDANT TOCARA SMITH: Yes, sir.

14 THE COURT: What do you understand
15 the maximum sentence to be?

16 DEFENDANT TOCARA SMITH: Five.

17 THE COURT: Understanding the nature
18 of that offense and the possible punishment,
19 what is your plea?

20 DEFENDANT TOCARA SMITH: Guilty.

21 THE COURT: Indictment 07-4265 is an
22 indictment which charges you with the offense of
23 grand larceny, do you understand that?

24 DEFENDANT TOCARA SMITH: Yes, sir.

25 THE COURT: Your lawyer has explained

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24

1 that charge to you?

2 DEFENDANT TOCARA SMITH: Yes, sir.

3 THE COURT: And she has explained to
4 you the possible punishment when the amount is
5 greater than a thousand but less than five; is
6 that correct?

7 DEFENDANT TOCARA SMITH: Yes, sir.

8 THE COURT: What do you understand
9 the maximum sentence to be?

10 DEFENDANT TOCARA SMITH: Five years.

11 THE COURT: Understanding the nature
12 of that offense and the possible punishment,
13 what is your plea?

14 DEFENDANT TOCARA SMITH: Guilty.

15 THE COURT: Are you satisfied with
16 your lawyer?

17 DEFENDANT TOCARA SMITH: Yes.

18 THE COURT: Any complaints about the
19 way that she has handled your case?

20 DEFENDANT TOCARA SMITH: No, sir.

21 THE COURT: Solicitor, as it pertains
22 to Miss Smith, from the sentencing sheet it
23 appears that the only agreement is permit her to
24 plead to the lesser-included offense of murder,
25 being involuntary manslaughter? Is that

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1 correct?

2 MR. DURANT: Yes, sir.

3 THE COURT: Is that your under-
4 standing, Miss Smith?

5 DEFENDANT TOCARA SMITH: Yes, sir.

6 THE COURT: Ms. Mulvaney, do you
7 concur with the Solicitor's statement?

8 MS. MULVANEY: Yes, Your Honor.

9 THE COURT: Mr. Dupree, you have as
10 your client has indicated investigated this
11 matter on Mr. River's behalf; is that correct?

12 MR. DUPREE: That's correct, Your
13 Honor.

14 THE COURT: And you have had a
15 chance to discuss with him the results of the
16 investigation, answered his questions and, as
17 he has indicated, he at some point indicated a
18 desire to plead to the various indictments?

19 MR. DUPREE: Yes, Your Honor.

20 THE COURT: Did you fully advise him
21 of the rights that he would be relinquishing and
22 the consequences of his decision?

23 MR. DUPREE: I have gone over that
24 with him in great detail.

25 THE COURT: And in your opinion does

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1 he fully understands those rights?

2 MR. DUPREE: He does, Your Honor.

3 THE COURT: Is there anything that
4 has occurred prior to today or occurred this
5 morning that would suggest to you that Mr.
6 Rivers does not fully appreciate what he is
7 doing here today?

8 MR. DUPREE: No, Your Honor.

9 THE COURT: Based on your investiga-
10 tion, do you concur with the decision to enter a
11 plea?

12 MR. DUPREE: I do, Your Honor.

13 THE COURT: Mr. Rivers, is all of
14 that correct, sir?

15 DEFENDANT RASHARD RIVERS: Yes, sir.

16 THE COURT: Mr. Rivers, are you
17 today, sir, under the influence of any alcohol,
18 any medication of any kind?

19 DEFENDANT RASHARD RIVERS: No, sir.

20 THE COURT: Have you, sir, been
21 treated for any emotional illness, any mental
22 illness in the past?

23 DEFENDANT RASHARD RIVERS: No, sir.

24 THE COURT: Mr. Peter Brown, you
25 have, as your client has indicated, discussed

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1 this matter fully with Mr. Smith?

2 MR. BROWN: Yes, sir. I have, Your
3 Honor.

4 THE COURT: You have investigated it
5 on his behalf?

6 MR. BROWN: Absolutely.

7 THE COURT: And after sharing the
8 results of your investigation, in fully
9 consulting with you, he has indicated to you his
10 desire to plead to the indictment, as already
11 stated on the record?

12 MR. BROWN: Yes, sir, he has.

13 THE COURT: Did you -- have you
14 advised him prior to today of the rights that he
15 would be relinquishing and the consequences of
16 his decision?

17 MR. BROWN: Yes, I have, Your Honor.

18 THE COURT: And he understands those
19 fully?

20 MR. BROWN: He does, Your Honor.

21 THE COURT: Today, or prior to today,
22 do you have anything that would suggest that
23 your client is functioning, has any disability
24 or any problem understanding and fully
25 appreciating what he is doing?

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1 MR. BROWN: No, sir, Your Honor.

2 THE COURT: Based on your investiga-
3 tion, do you agree with his decision to enter
4 the pleas?

5 MR. BROWN: Yes, sir, I do, Your
6 Honor.

7 THE COURT: Mr. Smith, is all of that
8 correct, sir?

9 DEFENDANT JERRY SMITH: Yes, sir,
10 Your Honor.

11 THE COURT: Are you today under the
12 influence of any alcohol, any medication of any
13 kind?

14 DEFENDANT JERRY SMITH: No, Your
15 Honor.

16 THE COURT: Have you in the past ever
17 been treated for any emotional problems, any
18 mental illness?

19 DEFENDANT JERRY SMITH: No, Your
20 Honor.

21 THE COURT: Mr. Knobeloch, as your
22 client has indicated, you have discussed the
23 matter fully with him?

24 MR. KNOBELOCH: I have.

25 THE COURT: You have investigated it

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1 on his behalf?

2 MR. KNOBELOCH: That's correct.

3 THE COURT: After sharing the results
4 of your investigation, sir, in answering his
5 questions he has indicated a desire to enter the
6 pleas to each of these indictments; is that
7 correct?

8 MR. KNOBELOCH: It is.

9 THE COURT: Did you, sir, advise him
10 fully of the rights that he would be
11 relinquishing as well as the consequences of his
12 decision?

13 MR. KNOBELOCH: I have.

14 THE COURT: Based on your investiga-
15 tion, do you agree with the decision to enter
16 the plea?

17 MR. KNOBELOCH: I do.

18 THE COURT: And have you, sir, had
19 anything to indicate to you or suggest to you
20 that Mr. Smith's decision is anything other than
21 one that he makes knowingly, intelligently,
22 freely and voluntarily?

23 MR. KNOBELOCH: No, Your Honor.

24 THE COURT: Mr. Smith, is all of that
25 correct?

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1 DEFENDANT JERRY SMITH: Yes, Your Honor.

2 THE COURT: Are you today, sir, under
3 the influence of any alcohol or any medication?

4 DEFENDANT JERRY SMITH: No, sir.

5 THE COURT: Have you in the past been
6 treated for any emotional problems, any mental
7 illness?

8 DEFENDANT JERRY SMITH: No, sir.

9 THE COURT: Thank you, sir. Mr.
10 Bowler, you also, as your client has indicated
11 have investigated this matter fully on her
12 behalf?

13 MR. BOWLER: I have, yes, sir.

14 THE COURT: And after fully
15 consultation with you and in the discussions of
16 your investigation, she has indicated a desire
17 prior to today to plead guilty to these
18 indictments?

19 MR. BOWLER: Yes, Your Honor.

20 THE COURT: You have advised her
21 fully of the rights that she would be
22 relinquishing, as well as the consequences of
23 her decision?

24 MR. BOWLER: Yes, Your Honor.

25 THE COURT: In your opinion, does

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1 she fully appreciate and understand those?

2 MR. BOWLER: Yes, Your Honor.

3 THE COURT: Based on your
4 investigation, do you agree with the decision
5 that she has indicated; that is, pleading guilty
6 to these charges?

7 MR. BOWLER: Yes, sir.

8 THE COURT: And has she at any time
9 indicated or suggested to you or shown anything
10 other than the fact that she knows exactly what
11 she is doing here today?

12 MR. BOWLER: No, sir.

13 THE COURT: Okay. Miss Duckett, is
14 that correct?

15 DEFENDANT GWENETTA DUCKETT: Yes,
16 sir.

17 THE COURT: Are you today under the
18 influence of any medication, any type of drugs
19 or any alcohol?

20 DEFENDANT GWENETTA DUCKETT: No,
21 sir.

22 THE COURT: Have you been treated at
23 any point in the past for any type of emotional
24 problems, any mental illness or the like?

25 DEFENDANT GWENETTA DUCKETT: No,

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1 sir.

2 THE COURT: Ms. Mulvaney, as your
3 client has already indicated in the record, you
4 have discussed this matter fully with her?

5 MS. MULVANEY: Yes, Your Honor, I
6 have.

7 THE COURT: And you have investigated
8 the matter fully on her behalf?

9 MS. MULVANEY: Yes, Your Honor, I
10 have.

11 THE COURT: After fully consulting
12 with you, reviewing the results of your
13 investigation, she has indicated a desire to
14 plead to the indictment as indicated on the
15 record?

16 MS. MULVANEY: Yes, Your Honor.

17 THE COURT: Have you had the
18 opportunity to fully advise her of the rights
19 that she would be relinquishing and the
20 consequences of her decision?

21 MS. MULVANEY: Yes, sir.

22 THE COURT: And in your opinion she
23 fully understands and appreciates both?

24 MS. MULVANEY: Yes, sir.

25 THE COURT: Based on your investiga-

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1 tion as to your client, do you agree with her
2 decision to enter the pleas?

3 MS. MULVANEY: I do, Your Honor.

4 THE COURT: And has at any point she
5 indicated to you or suggested to you, by actions
6 or otherwise, that she does not fully understand
7 and appreciate what she is doing and that this
8 is anything other than a decision that she has
9 made freely and voluntarily?

10 MS. MULVANEY: No, Your Honor. She
11 has indicated that she knows exactly what she is
12 doing.

13 THE COURT: Okay. Miss Smith, is
14 that correct?

15 DEFENDANT TOCARA SMITH: Yes, sir.

16 THE COURT: Are you today under the
17 influence of any alcohol, any medication?

18 DEFENDANT TOCARA SMITH: No, sir.

19 THE COURT: Have you in the past been
20 treated for any emotional problems or any mental
21 illness?

22 DEFENDANT TOCARA SMITH: No, sir.

23 THE COURT: Okay. All right. Let me
24 ask each of you to raise your right hand as far
25 as you can -- (defendants comply) -- do each of

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1 you solemnly swear or affirm that your responses
2 to my questions will be the truth and nothing
3 but the truth, so help you, God?

4 DEFENDANT TOCARA SMITH: Yes, sir.

5 DEFENDANT RASHARD RIVERS: I do.

6 DEFENDANT JERRARD SMITH: I do.

7 DEFENDANT GWENETTA DUCKETT: Yes,

8 Your Honor.

9 DEFENDANT JERRY SMITH: I do.

10 THE COURT: Okay. This I will ask
11 you as a group and then I will go down the line
12 with each of you responding. Do each of you
13 fully understand that if I accept your pleas
14 that you will give up your right to have a jury
15 trial, that you will give up your right to
16 require the State to prove your guilt in each
17 case because you're admitting you're guilty here
18 today?

19 That you are giving up your right to
20 remain silent because in answering my questions
21 thus far you have admitted your guilt, and the
22 court will be relying on that admission in
23 finding you guilty. That is what this process
24 is all about.

25 Is that your complete and full under-

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1 standing, Mr. Rivers?

2 DEFENDANT RASHARD RIVERS: Yes, sir.

3 THE COURT: And is that what you want
4 to do, Mr. Rivers?

5 DEFENDANT RASHARD RIVERS: Yes, sir.

6 THE COURT: Is that your complete and
7 full understanding, Mr. Smith?

8 DEFENDANT JERRARD SMITH: Yes, sir.

9 THE COURT: And is that what you wish
10 to do?

11 DEFENDANT JERRARD SMITH: Yes, sir.

12 THE COURT: Is that your understand-
13 ing, Mr. Jerry Smith?

14 DEFENDANT JERRY SMITH: Yes, sir.

15 THE COURT: And is that what you want
16 to do?

17 DEFENDANT JERRY SMITH: Yes, Your
18 Honor.

19 THE COURT: Is that your understand-
20 ing, Miss Duckett?

21 DEFENDANT GWENETTA DUCKETT: Yes,
22 sir.

23 THE COURT: And is that what you wish
24 to do?

25 DEFENDANT GWENETTA DUCKETT: Yes,

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1 sir.

2 THE COURT: Is that your understand-
3 ing, Miss Smith?

4 DEFENDANT TOCARA SMITH: Yes, sir.

5 THE COURT: And is that what you wish
6 to do?

7 DEFENDANT TOCARA SMITH: Yes, sir.

8 THE COURT: Are each of you making
9 this decision because you are guilty and not
10 because someone has threatened you in some way
11 or promised you something to get you to plead
12 guilty? Is that correct as to you, Mr. Rivers?

13 DEFENDANT RASHARD RIVERS: Yes, sir.

14 THE COURT: Is that correct as to
15 you, Mr. Jerrard Smith?

16 DEFENDANT JERRARD SMITH: Yes, sir.

17 THE COURT: Is that correct as to
18 you, Mr. Jerry Smith?

19 DEFENDANT JERRY SMITH: Yes, sir.

20 THE COURT: Is that correct as to
21 you, Miss Duckett?

22 DEFENDANT GWENETTA DUCKETT: Yes,
23 sir.

24 THE COURT: Is that correct as to
25 you, Miss Smith?

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1 DEFENDANT TOCARA SMITH: Yes, sir.

2 THE COURT: Solicitor, if you would,
3 please tell me the facts?

4 MR. DURANT: Yes, sir, Your Honor.
5 On August 24th of 2006, the victim in this case,
6 Mr. Danny Johnson, was found dead in his home
7 over west of the Ashley by his home healthcare
8 aide, who worked for the Veteran's Administra-
9 tion.

10 Mr. Johnson, the victim, was a
11 quadriplegic. He required assistance to eat, to
12 maintain his hygiene, to take his medication(s),
13 to basically perform the functions of living.
14 His nurse came over every day, spent the day
15 with him and then would come back at night to
16 put him in bed.

17 When she arrived that morning, she
18 noted when she went in -- when she opened the
19 door she noticed that the home had been
20 ransacked and that all of Mr. Johnson's
21 electronic equipment -- stereos, the TV, VCR,
22 computers, printers, all of that was missing.

23 She located Mr. Johnson, the victim,
24 in the bathroom on his back in his wheelchair,
25 which had been overturned, and he was deceased.

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1 Also his credit cards were missing and
2 some other things were missing out of the house.

3 There was no sign of forced entry. She
4 ran outside, talked to the cab driver who called
5 the police. The City police responded and
6 undertook an investigation led by Detective
7 Goldstein, who is present in the courtroom.

8 During the course of their investiga-
9 tion, the detectives learned that the last
10 person that the victim was known to have been
11 with the previous night was the Defendant Tocara
12 Smith. She was located by the police -- I
13 believe that she was working at the time as a
14 detention officer at the jail. She was located
15 by the police and questioned. She originally
16 gave the police a statement to the effect that,
17 yes, she knew the victim, that she had been at
18 his home that night, that she'd been over there
19 and they had been burning CD's, that she had
20 gone out briefly to her car and that when she
21 returned that there were two unknown black males
22 in the apartment that had come in while she was
23 gone, who proceeded to rape her at gunpoint,
24 abduct her, drove her up into the area of
25 College Park Road and abandoned her and her car.

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1 The police were suspicious from the
2 beginning. The description of the unknown black
3 males was very vague, she refused to get a rape
4 kit done. So they continued with their
5 investigation.

6 They got a break a couple of days later
7 when a witness came forward that had had a
8 conversation with Miss Tocara Smith and had
9 gotten a completely different version of what
10 had gone on that night. According to this
11 witness, Miss Smith had told her that, yeah, she
12 knew the victim, that she had been with the
13 victim the day before, that they had been at a
14 grocery store over west of the Ashley, that
15 while they were over there that they encountered
16 the victim's daughter and some sort of
17 altercation or argument ensued between Tocara
18 Smith and the daughter. That after she left
19 there she was angry because she thought that the
20 daughter had disrespected her, and she contacted
21 her brothers and she cooked up this scheme to
22 rob Danny Johnson, the victim, to get even.

23 They did in fact conspire to do that.
24 They went over there. She went in the home
25 first, she left the door open to them, they came

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1 in and the victim was pushed into the bathroom.
2 His stuff was taken, put in the car, then
3 subsequently they went to Wal-Mart where the
4 brothers went in and bought some stuff using the
5 victim's credit cards.

6 After getting this information, they
7 followed up on that and basically confirmed
8 everything that this lady had told them. They
9 had the surveillance videos showing the brother
10 using the victim's credit card at Wal-Mart.

11 So they went back, got warrants and
12 picked up Tocara Smith again. They questioned
13 her again and at this point she gave them a
14 confession, which was pretty much what they had
15 told the other person. She told them that she
16 had been with Mr. Johnson earlier in the day at
17 the Bi-Lo grocery store over west of the Ashley,
18 that they had run into the victim's daughter and
19 she and the daughter had gotten into an
20 argument, that she was angry. That she met up
21 with her brothers after the fact, told them what
22 happened and they agreed that they were going to
23 rob the victim that night.

24 That night, she went to the victim's
25 home with her codefendants -- Jerry Smith,

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1 Jerrard Smith, Rashard Rivers and Gwenetta
2 Duckett. She went into the apartment first.
3 While she was in there, she was called by her
4 brothers. She went and opened the door and left
5 it ajar. At that point her brothers came in,
6 uh, the four of them came in -- the four
7 codefendants.

8 The victim, I believe, was coming out
9 of a back room and saw them and they pushed him
10 into a hallway bathroom to get him out of the
11 way or to keep him from seeing them, whatever.
12 During -- when they were putting him in the
13 bathroom, his wheelchair overturned and he was
14 on his back and one of them either put a towel
15 or a piece of cloth over his head to prevent him
16 from seeing anything.

17 At that point they went through his
18 apartment, stole everything and loaded it into
19 cars and left.

20 Subsequent to her confession, the four
21 codefendants were all picked up and they all
22 confessed, as well; they all gave pretty similar
23 accounts of what went on that night.

24 There was some -- some of them did
25 state that during the course of the robbery that

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1 the victim was struck or kicked but the medical
2 -- by virtue of the medical examiner, it is
3 clear that the cause of death in this case was
4 positional asphyxia.

5 THE COURT: Okay.

6 MR. DURANT: Apparently the victim had
7 a backpack on the back of his wheelchair and
8 when it was pushed over on its back his legs and
9 torso was elevated up above the level of his
10 head and he essentially strangled. He couldn't
11 breathe.

12 They all stated that the victim was
13 alive when they left, and they all stated that
14 the -- that they didn't intend to hurt the
15 victim or to kill the victim. The State
16 believes that and that is why they are allowing
17 them to enter the plea to the lesser included
18 charge.

19 I don't know if you want me to go into
20 their records now or ---

21 THE COURT: Let me -- let's do that
22 in stages if we could.

23 MR. DURANT: Very well.

24 THE COURT: Thank you very much.

25 Rashard Rivers, you've heard the Solicitor tell

1 me the factual recitation. Are those facts
2 correct as to you?

3 DEFENDANT RASHARD RIVERS: Yes, sir.

4 THE COURT: Mr. Jerrard Smith, you've
5 heard the solicitor tell me the facts. Are
6 those facts correct as to you?

7 DEFENDANT JERRARD SMITH: Yes, sir.

8 THE COURT: Mr. Jerry Smith, you've
9 heard the solicitor tell me the facts. Are
10 those facts correct as to you?

11 DEFENDANT JERRY SMITH: Yes, Your
12 Honor.

13 THE COURT: Miss Gwenetta Duckett,
14 you've heard the solicitor tell me the facts.
15 Are those facts correct as to you?

16 DEFENDANT GWENETTA DUCKETT: Yes,
17 sir.

18 THE COURT: Miss Tocara Smith, you've
19 heard the Solicitor tell me the facts. Are
20 those facts correct as to you?

21 MS. MULVANEY: Judge, if I could
22 make just one minor -- the only thing is that
23 my client worked as a nurse, not as a detention
24 officer.

25 THE COURT: Okay.

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1 MS. MULVANEY: Other than that, all
2 of those facts are correct.

3 DEFENDANT TOCARA SMITH: Yes, sir.

4 THE COURT: All right. I would like
5 to hear records now, please.

6 MR. DURANT: Miss Tocara Smith has no
7 record.

8 THE COURT: Okay.

9 MR. DURANT: Mr. Jerry Smith only has
10 a minor violation for interfering with the
11 operation of a school bus in 2001.

12 THE COURT: Okay.

13 MR. DURANT: Miss Gwenetta Duckett has
14 no record.

15 THE COURT: Okay.

16 MR. DURANT: Jerrard Smith has no
17 record. Rashard Rivers has a disorderly conduct
18 conviction in 2003.

19 THE COURT: All right. Rashard had
20 the disorderly?

21 MR. DURANT: Yes, sir.

22 THE COURT: Is that correct as to
23 you, Mr. Rivers?

24 DEFENDANT RASHARD RIVERS: Yes, sir.

25 THE COURT: Jerrard Smith, you have

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1 no record; is that correct?

2 DEFENDANT JERRARD SMITH: Right.

3 THE COURT: Mr. Jerry Smith, you have
4 the interference with a school bus?

5 DEFENDANT JERRY SMITH: Yes, Your
6 Honor.

7 THE COURT: Miss Gwenetta Duckett,
8 you have no record?

9 DEFENDANT GWENETTA DUCKETT: No,
10 sir.

11 THE COURT: And Miss Tocara Smith,
12 you have no record?

13 DEFENDANT TOCARA SMITH: No, sir.

14 THE COURT: Okay. Solicitor, at this
15 point I will allow the defendants to be seated
16 if they wish. I will hear from the victims or
17 anyone who wishes to speak.

18 MR. DURANT: Thank you, Your Honor. I
19 do want to tell the court that there are a
20 number of people in the victim's family that are
21 here today; consisting of his wife, Tracy
22 Johnson, his daughters Danielle and Brittany
23 Johnson, a sister Beverly Varns, a sister
24 Jacquelyn Heyward, a brother-in-law Herman
25 Heyward, a nephew Mark Varns, a cousin April

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1 Mack and there may be one or two others. I do
2 know that four of them would like to address the
3 court, Your Honor, and I would ask that they be
4 allowed to do so.

5 THE COURT: I will be delighted to
6 hear from them. I would just simply ask that
7 they give me their full names, for the court
8 reporter's benefit.

9 MR. DURANT: Thank you.

10 THE COURT: Yes, sir.

11 BRITTANY JOHNSON: My name is
12 Brittany Johnson -- can you hear me?

13 THE COURT: Yes, ma'am.

14 BRITTANY JOHNSON: I am the
15 daughter of Danny Johnson -- (emotional).
16 I really don't know what to say. I mean, this
17 was something that I was kind of hoping, you
18 know, it's been two years and it's just like,
19 you know, 'it's over, just forget about it.'
20 But obviously I'm here.

21 So basically -- I mean, this is our
22 dad and to sit here and see these five people.
23 These five people -- sir, my father was in a
24 wheelchair and -- I'm twenty-three years old.
25 That was my only parent. My mother was killed

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1 when I was four, so this is the second parent
2 that I've had that was taken from me at the hand
3 of other people and this is something that I am
4 going to have to fight with my whole life.

5 These people can be in jail for fifteen
6 years, twenty years, it doesn't matter. They
7 can come out and have a life. I am going to
8 have to struggle with this -- my father was my
9 best friend. I'm not just one of those people
10 saying that. Me and my father, we argued like
11 friends, I called him at 8:00 in the morning
12 when I was walking to class.

13 My father was killed one week before my
14 birthday my senior year in college. The day of
15 his funeral was my first day of classes. I've
16 graduated on time and everything. I'm in
17 graduate school right now but that -- these are
18 the hard things that I am going to have to go
19 through. Every milestone that I'd had, my
20 father had been there for me. When it looked
21 like I wasn't even going to be able to stay in
22 school because of grades and finances, my father
23 was there. My father was my alarm clock. He
24 was the person fussing me out because I was at
25 the clubs instead of at the library, that type

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1 of thing. My senior year I had to face all of
2 that by myself. My graduation, I had to do that
3 by myself.

4 I went through a period that was almost
5 like, okay, now what? My father, because of his
6 lifestyle, he was always there when I called. I
7 could call him at 3:00 in the morning and he was
8 there. I could call him at 8:00 o'clock. It
9 doesn't matter, he was there. I spoke with him
10 about everything. I don't have that anymore. I
11 don't have that ear where I could just express
12 myself and not have to worry about bringing
13 somebody down. Because as long as I was happy,
14 my father was happy. When I was upset, my
15 father was upset. I don't have that anymore.

16 They have kids and -- probably. I
17 don't know, but if they do, their kids can write
18 them, their kids can go to the jail and see
19 them. I don't have that, and I never will have
20 that again. I don't have either one of my
21 parents. But I do have kids and -- my kids
22 don't even have grandparents. My father spoiled
23 me and spoiled -- I mean, you know, even though
24 we were friends, I was spoiled. But all of that
25 is gone.

1 I graduated -- will graduate from
2 graduate school in May. When I pledged a
3 sorority -- I used to talk about that ever since
4 high school. My father didn't even know from
5 Adam and Eve what a sorority was, but because I
6 was happy about it he was happy about it. When
7 I finally got the chance to do it, the first
8 person that I would usually call, my friend, to
9 share my excitement my father, I couldn't ever
10 do that.

11 I don't know what else to say. All I
12 can say is -- not to be spiteful because I try
13 over and over in my head, you know, no matter
14 what they get, it will not bring my father back.
15 I will not have what I had before.

16 My father is buried. I haven't been to
17 his graveside yet because I cannot get used to
18 the fact that he is in the ground, that he is
19 not in South Carolina. I cannot call 843-342-
20 9189 and hear his voice. I can't call just to
21 hear his voice, he's in the ground, he's not
22 really here.

23 It's a struggle. And I want to say,
24 not to be spiteful but I want their lives to
25 begin when my father's ended. My father was

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1 forty-six years old. Their lives should begin
2 when his ended. They need to see what could
3 have been or, you know, what is missing.

4 Me and my sister, we are not thugs, we
5 are not -- we're actually successful people in
6 everything that we do, and my father is not here
7 to experience the success that we have. I got a
8 scholarship to go to Ohio (phonetic) University,
9 graduated with a Master's degree in one year. I
10 am going to get my Ph.D. and my father is not
11 here to witness that.

12 THE COURT: Thank you, ma'am.

13 DANIELLE JOHNSON: My name is
14 Danielle Johnson. I am also -- I am the second
15 daughter of Danny Johnson. I know that nothing
16 we can do will bring him back or bring closure
17 to us but -- I mean, all he wanted was for us to
18 be happy and successful -- (emotional). I mean,
19 he wanted each of us to go to college and we
20 wanted to do that not only for a better life but
21 to also make him happy.

22 He never did nothing wrong. My father
23 never did nothing wrong. He never taught us to
24 be wrong people. All the bad things that they
25 say about him, all I can remember is my Dad

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1 saying that he -- he did not believe in abortion
2 and he did not believe in killing people either.

3 My grand -- I mean, my daughter is not
4 going to be able to see her grandfather, which
5 would have definitely, definitely have been
6 exciting for him.

7 Also, I am graduating in May and he is
8 not going to be able to see that.

9 Even though I did not see my father a
10 lot because we lived in two different states,
11 even when I want to call him or speak to him now
12 -- now I can't do so, because he's gone.

13 I mean, -- (pause) -- just the thought
14 of a shopping spree at Wal-Mart? That's just
15 like -- (negative gesture). To kill somebody
16 for that is not right, it's just not fair.

17 THE COURT: I understand. Thank you,
18 ma'am.

19 BEVERLY BARNES: Good morning,
20 everyone. Good morning, Judge.

21 THE COURT: Good morning. My name is
22 Beverly Barnes and Danny Johnson was my brother.
23 I won't say much because his daughters have
24 already said some of what I wanted to say and I
25 want his wife to have a chance to talk.

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1 THE COURT: Yes, ma'am.

2 BEVERLY BARNES: But the point I want
3 to get across is that I want you to take into
4 consideration when you decide the sentence is
5 that my brother had a heart of gold. He was
6 paralyzed from his neck down, he couldn't do
7 much of anything. The sad part of this all is
8 that all they would have had to do was to ask
9 him for it. He would have gave it to them.
10 Just like that, he would have given them the
11 shirt off his back. This is all so sad that
12 they have to do time for a tragedy that they
13 committed and have to put the pressure on their
14 family, not to mention the pressure it has put
15 on our family. If they'd have just asked him,
16 he would have gave it to them. Thank you.

17 THE COURT: Thank you, ma'am.

18 TRACY JOHNSON: Good morning. My
19 name is Tracy Johnson and I am the widow of
20 Danny Johnson.

21 THE COURT: Good morning, Ms.
22 Johnson.

23 TRACY JOHNSON: We were separated.
24 When he first came down here, we were separated.
25 We separated at least three times. I worked, I

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1 worked as law enforcement officer and I tried at
2 least three times to get a transfer to
3 Charleston, South Carolina so that we could --
4 we were considering getting back together. Even
5 though it never went through, he always begged
6 me to come home and I always told him 'no'
7 because I thought he would always be safe in
8 this part of South Carolina.

9 As my sister-in-law stated, for them to
10 rob him, it makes no sense. If you'd asked him
11 for anything, he would have gave it to you even
12 though he was paralyzed. My daughters and I
13 never suffered for anything, anything.

14 Even though he was a quadriplegic he
15 had been married, had children, a twenty-three
16 year relationship. When I was pregnant with my
17 daughter -- I was one month pregnant and he had
18 been in the hospital, and when he came home it
19 was like I was taking care of two babies and he
20 could do nothing. He could not feed himself, he
21 could not take care of himself. Nothing. He
22 had grew to the point to where he had had -- to
23 know -- for Tocara, to know that she is a nurse,
24 why would she even think of doing anything like
25 that? And out of five people no one had the

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1 brain to say, 'Hey, this is wrong. This doesn't
2 make any sense'?

3 I know that they have family that are
4 hurting, they have kids. I've talked to
5 Gwenetta's attorney, I feel for her, for the
6 pain of her child. But you all did something
7 that was senseless and you all need to pay for
8 that. It's not going to bring him back but if
9 we continue to let people get away with things
10 that they do, that's why the country is in the
11 state that it is in. I ask you as the judge --
12 I don't anything about penalties or anything but
13 I ask that they serve the time for, you know,
14 what they have done. It was senseless.

15 I want you all to know that you took a
16 man from this earth that wouldn't have did any
17 harm to none of you. You could have been a
18 complete stranger and he would have fed you, he
19 would have done anything that you wanted him to.
20 I am not saying that because he was my husband,
21 I am not saying that because he was the father
22 of my child. If you look up his obituary,
23 you'll see in his obituary that he had a heart
24 of gold and he would give you the shirt off his
25 back. That is the last I have to say.

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1 THE COURT: Thank you, ma'am.

2 MR. DURANT: I believe that is all
3 from the victim's family, Your Honor.

4 THE COURT: Thank you very much,
5 Solicitor. All right. They can all remain
6 seated during this next line of questioning.

7 I need to know if each of you now do
8 two things, affirm and restate your desire to
9 enter pleas to each of these indictments and
10 confirm that each -- that you have each fully
11 understood my questions of you this morning and
12 that you've given a complete and truthful answer
13 to each of those questions.

14 Is that correct as to you, Mr. Rivers?

15 DEFENDANT RASHARD RIVERS: Yes, sir.

16 THE COURT: Is that correct as to
17 you, Mr. Jerrard Smith?

18 DEFENDANT JERRARD SMITH: Yes, sir.

19 THE COURT: Is that correct as to
20 you, Mr. Jerry Smith?

21 DEFENDANT JERRY SMITH: Yes, Your
22 Honor.

23 THE COURT: Is that correct as to
24 you, Miss Duckett?

25 DEFENDANT GWENETTA DUCKETT: Yes,

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1 sir.

2 THE COURT: And is that correct as to
3 you, Miss Tocara Smith?

4 DEFENDANT TOCARA SMITH: Yes, sir.

5 THE COURT: Very well. I find that
6 there is a sufficient factual basis to support
7 the pleas in each case. I further find that
8 each of the defendants have been represented by
9 very competent counsel in this case. They have
10 demonstrated by their responses and through
11 their attorneys that they fully understand and
12 appreciate what they are doing, they fully are
13 satisfied with their representation. I find
14 therefore that there is a sufficient factual
15 basis in each case to support the pleas to each
16 offense. I will therefore accept the pleas.

17 Mr. Dupree, I will be delighted to hear
18 from you and Mr. Rivers at this time, and anyone
19 else that you wish to have speak.

20 MR. DUPREE: Your Honor, I think that
21 Ms. Mulvaney wanted to speak first.

22 THE COURT: That's fine.

23 THE COURT: Whatever order that
24 you'all want to go in is fine. Ms. Mulvaney,
25 I will be happy to hear from you and Miss Tocara

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1 Smith.

2 MS. MULVANEY: Thank you, Your
3 Honor. May it please the court, I would like to
4 tell you a little bit about my client, Tocara
5 Smith. She is a twenty-two year old girl. She
6 graduated from high school in Colleton County
7 and after high school she went to Beta Tech for
8 one year where she got a certified medical
9 assistant's degree. She is a single mother, she
10 has a five-year-old son.

11 She actually lived with Miss Duckett
12 and Miss Duckett's child at the time.

13 Miss Smith worked at the jail as a CMA.
14 She started that job in May of 2005, and she
15 worked with detox inmates: changing diapers,
16 dialysis, emptying bedpans, administering to the
17 needs of sick inmates.

18 I am just going to go into a little bit
19 of the relationship between Miss Smith and Mr.
20 Johnson, just to give Your Honor a frame of the
21 state of mind that led to this event, the day of
22 this terrible tragedy.

23 Miss Smith met Mr. Johnson in the jail
24 while he was an inmate in the jail. I believe
25 that he was there for approximately five months

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1 and Miss Smith took care of him, bathed him and
2 they developed a close relationship.

3 When Mr. Johnson was released, he
4 contacted Miss Smith. Even when he was in the
5 jail, while Miss Smith was taking care of him
6 he had, uh, he was trying to pursue a sexual
7 relationship with my client, Miss Smith. She,
8 of course, declined.

9 Then when he got out of the jail he
10 contacted her again and said he wanted to be
11 friends, struck up a friendship and, again, he
12 wanted a sexual relationship. My client
13 declined but then eventually acquiesced and they
14 became involved in a sexual and very exploitive
15 relationship.

16 What happened -- essentially it was
17 almost a relationship based on sex for gas
18 money. My client, he would give her money to
19 fill up her tank and -- on the day that this
20 happened, they had met at the Food Lion, after
21 they had been together the night before. She
22 had filled up her gas tank and they were going
23 to meet at the Food Lion and she was going to
24 give him back his card. At the Food Lion was
25 Miss Duckett, her son, my client, and I believe

1 Mr. Johnson's fifteen-year-old nephew and also
2 one of Mr. Johnson's daughter. I don't believe
3 that she was there the whole time but she came
4 later.

5 Essentially what happened is that Mr.
6 Johnson had offered Miss Smith his fifteen-year-
7 old nephew and had implied that the relationship
8 that he shared with Miss Smith could also be
9 shared with his fifteen-year-old nephew.

10 I believe that Mr. Johnson's daughter
11 also was very angry and felt like Miss Smith,
12 you know, was exploiting Mr. Johnson; because
13 they were similar in age and she felt like Miss
14 Smith was actually exploiting him.

15 So there was a big argument, a huge
16 argument that ensued. Tocara felt betrayed, she
17 felt cheap, she felt like she had lost her
18 dignity, she felt like this, uh, you know, she
19 -- it just made her feel terrible about herself.
20 I think that Miss Duckett was there to witness
21 this. There were high emotions and they felt
22 that because she had been hurt so deeply by Mr.
23 Johnson that she was going to try to hurt him
24 deeply. She never meant to physically hurt but
25 she wanted to take away his TV set, his

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1 computer, his -- to show him that she was
2 hurting and that he had overstepped his bounds.

3 I realize, Your Honor, that she should
4 never have done that. Emotions were high. She
5 turned to people that cared about her the most,
6 her brother and her close family friends, in her
7 view to step up for her dignity. I think at
8 several points they actually planned on doing
9 it, then planned on calling it off, then planned
10 on doing it, and this all happened within a
11 twenty-four hour period.

12 Miss Smith was over at his house that
13 night, they went -- it was whether they were
14 going to do it or not do it, and at one point
15 they were going to call it off and Mr. Smith
16 came around the corner -- excuse me. Mr.
17 Johnson came around the corner in his wheelchair
18 and I think things obviously got out of control.

19 Tocara never ever meant to hurt him.
20 It was a stupid plan and she is incredibly
21 remorseful. When I go to the jail to visit her,
22 all the officers at the jail ask about her, tell
23 me how much they like her, what a great worker
24 that she is, what a great person she was as a
25 medical assistant and also as an inmate and

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1 their hearts go out to her and they inquire
2 about her.

3 During the time that she has been in
4 jail, they have suffered. Tocara's mother who
5 is here, her father, the one sibling that they
6 have that is not incarcerated, her grandmother
7 and aunts are all here to show support for the
8 family. But during the time she has been
9 incarcerated, her mother has battled with breast
10 cancer and her father has gone through open
11 heart surgery. She has not been able to be
12 there for her mother or to show support in any
13 other way except than to send letters and phone
14 calls.

15 Every time that I've talked with Tocara
16 she is remorseful and feels terrible about what
17 she did. She never meant for this to happen.

18 She has never been in trouble before,
19 Your Honor, and I am going to ask you to please
20 impose the minimum sentence of fifteen years. I
21 think that a very severe punishment. As it is,
22 she will never really get to raise her son or be
23 with her son. I can assure you that Your Honor
24 will never see Tocara again in a courtroom. I
25 know that she apologizes to the family and I

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1 would ask Your Honor to please consider the
2 minimum sentence here.

3 THE COURT: Thank you, Ms. Mulvaney.
4 Does Miss Smith wish to speak at all at this
5 point?

6 MS. MULVANEY: Tocara, do you ---

7 DEFENDANT TOCARA SMITH: I just want
8 to -- (emotional).

9 THE COURT: Ma'am, please stand up.

10 DEFENDANT TOCARA SMITH: I just want
11 to apologize to the victim's family. I'm so
12 sorry. I don't know what else to say --
13 (emotional/crying).

14 THE COURT: Okay. Thank you, Ms.
15 Mulvaney. Which one wishes to go next?

16 MR. KNOBELOCH: Your Honor, I
17 represent Jerry Smith in this case. He has
18 spent his entire life in the Charleston area
19 except one brief year in Walterboro, but still
20 in the lowcountry.

21 He has an eight-year-old daughter. He
22 was living with his daughter and the mother at
23 the time, supporting the family. He also has a
24 two-year-old son, Jerry Smith III, that was born
25 while he was incarcerated and whom he has never

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1 met.

2 He was supporting his family, he had
3 a good job, he worked for about two years as a
4 bridge inspector for the Department of
5 Transportation. At the time of his arrest he
6 was in the National Guard and was about to be
7 called up on active duty. In fact, he was only
8 a week away from being deployed to Iraq at the
9 time that he was arrested.

10 One of the things that he had asked me
11 to do while he was incarcerated was to contact
12 his Captain and initiate an other-than-honorable
13 discharge. Even though he realized that this --
14 this was probably a year ago, but he realized at
15 the time that he was probably going to serve a
16 fair amount of time in jail. He was concerned
17 that if there was any way that the case could
18 turn out -- and this is probably not the right
19 word but -- "beneficial" to him, he wanted to
20 be able to re-enlist and serve in the military
21 again. I did do that for him.

22 THE COURT: Sure.

23 MR. KNOBELOCH: In addition to being
24 in the military and supporting his family, he
25 was also active in the St. Mary's AME Church in

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1 Green Pond. Again, like I said, there was some
2 connection with the family to the Walterboro
3 area. He was the first vice-president of the
4 Beaufort District in attending the church
5 conference and was active in other ways with the
6 church.

7 I believe that Ms. Mulvaney has already
8 pointed out that he has a father and mother who
9 are in poor health and that with the exception
10 of one sibling the entire immediately family is
11 before you today for sentencing.

12 He is remorseful. This was obviously
13 a tragedy, obviously something that should have
14 never happened.

15 As far as the sentence rehabilitating
16 the defendant, I feel that if he was released
17 today that he would contribute to his family and
18 would contribute to society. I don't believe
19 that you would see him in the courtroom again
20 for any criminal matter.

21 THE COURT: Thank you, sir. Mr.
22 Smith, is there anything that you want to say?

23 DEFENDANT JERRY SMITH: Your Honor,
24 first I want to tell the family that I
25 apologize. It's been hard, it's been real hard

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1 on everyone, everyone in all the families. I
2 ask that the court have mercy on me and my
3 family.

4 THE COURT: Thank you, sir. Mr.
5 Dupree?

6 MR. DUPREE: Thank you, Your Honor,
7 may it please the court?

8 THE COURT: Yes, sir.

9 MR. DUPREE: Your Honor, Rashard is
10 the only person involved in this case who is not
11 related to the other individuals. Rashard was
12 there at the apartment with the other two
13 codefendants when they received the phone call
14 and went over there with them, but he never
15 intended for anybody to be harmed; which I think
16 is indicative by the offer by the State.

17 Your Honor, he is a graduate of Baptist
18 Hill High School out in Hollywood.

19 He has a minor disorderly conduct,
20 which was in '03 where he had to do, you know,
21 some community service.

22 He was gainfully employed at two jobs.
23 He worked for the Charleston County School
24 District part-time and he worked at the Nike
25 outlet. He was a productive member of society.

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1 He was a member of the St. John's
2 Baptist Church. He has attended Bible study
3 while he has been in the County jail. His
4 preacher is here today, the Rev. Charles Linen,
5 who has counseled him throughout the time while
6 he has been incarcerated.

7 Your Honor, Rashard is -- you know, he
8 is a good person. This is a tragic event. I
9 don't think anyone ever intended for any harm to
10 come to the victim in this case.

11 I think, like Mr. Knobeloch said, that
12 should he be released today that he would be a
13 productive member of society. He was before he
14 was incarcerated and he -- he is very
15 remorseful, Your Honor.

16 I would ask, as I am certain all the
17 attorneys will ask, -- fifteen years is an
18 appropriate sentence. It is very long. None
19 of these individuals have any record. It is a
20 very long for a tragic mistake.

21 I think that Mr. Rivers wanted to
22 address the court also.

23 THE COURT: Thank you. Mr. Rivers,
24 yes, sir, I will be happy to hear from you, sir.

25 DEFENDANT RASHAD RIVERS: I would

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1 like to say that I apologize to the victim's
2 family. I've been incarcerated since 2006.
3 It's been hard, it's been hard on my family and
4 I understand the pain that you are going
5 through. Two years might not seem like a long
6 time but it's a long time to be away from your
7 family. I understand what you'all are going
8 through and I ask -- from my heart, I really
9 apologize from the bottom of my heart. I ask
10 the Lord Jesus Christ to forgive me and I ask
11 that you'all forgive me also. As to my family
12 and friends that are here for me today, you have
13 my heart. Nobody intended for this to happen
14 and I appreciate you all being here. I'd like
15 to apologize to the court and to everyone here
16 for being here.

17 THE COURT: Thank you, sir. Mr.
18 Brown?

19 MR. BROWN: Your Honor, Peter Brown
20 on behalf of Jerrard Smith.

21 THE COURT: Yes, sir.

22 MR. BROWN: Jerrard has also been in
23 jail this entire time, eight hundred (800) days.

24 THE COURT: Okay.

25 MR. BROWN: He is the youngest of the

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1 family members. He was twenty at the time and
2 he is now twenty-two. He graduated high school
3 in 2004 and played a little football for them
4 his junior year and a little basketball.

5 His fiancée, Rudy Mills (phonetic),
6 works for the South Carolina Highway Patrol.
7 She has a child of her own and they share twins
8 together; the twins that she carried before he
9 was arrested, the twins that he has never held
10 since they've been and they'll be two years old
11 in a couple of months.

12 He had a good work record working with
13 a heating-and-air company for over a half a
14 year, had worked at a furniture store for two
15 years, had worked at the Nike outlet store for a
16 period of time and he'd worked as a stocker at
17 Wal-Mart for over a year. Again, no criminal
18 record. He held a job.

19 I have to say, Your Honor, that in my
20 twenty-one years of practicing law this is truly
21 an absolute tragedy, and a tragic loss of life
22 not only for the victim's family but for the
23 Smith family and Miss Duckett's family and Mr.
24 River's family.

25 There was never any intent for this to

1 happen. We appreciate the fact that Mr. Durant
2 has acknowledge that. They investigated it
3 thoroughly and they have not gone forward with
4 the murder charge, and we appreciate that.

5 I think that this is something was that
6 was obviously intended to be financially hurtful
7 to Mr. Johnson, and that it went tragically
8 wrong because of his fragile physical situation
9 and tragically resulted in his death.

10 I saw, as I am sure Your Honor did
11 also, that during the presentation by the
12 Johnson family the tears by the defendants and
13 the defendants' family were sincere tears.

14 Again, when they left they did not
15 realize the precarious nature of Mr. Johnson's
16 condition. He was alive, he was breathing.
17 If they had any idea that this would have led to
18 his death, they would never have left him on his
19 back.

20 My client is truly remorseful and he is
21 here today to accept responsibility for what
22 happened. Your Honor, and of course I am an
23 advocate for Jarrod but I would like to point
24 out that it is not often that we have people
25 with no criminal record who are before the court

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1 on murder charges, or for involuntary
2 manslaughter charges, or for Burglary 1st
3 charges.

4 I am asking that you be as lenient as
5 you can for Jerrard because his family does need
6 his help. His mom's cancer and his father had
7 heart surgery. If he has to do fifteen years,
8 they might not be around and he might very well
9 be in the same position that the Johnson
10 daughters are in, living without their parents.

11 I think the Smith parents raised
12 hardworking, close-knit, law abiding children.
13 I think -- and I am going to echo what the other
14 attorneys have said -- they would return to that
15 position if given that opportunity. If they
16 were able to walk out of court today with a
17 stiff sentence with probation over their heads,
18 I feel you would not see them in court again.
19 I know that is not going to happen. That being
20 said, fifteen years will resolve in more than a
21 decade from where we are today. They would have
22 to re-enter society at a time when their
23 children would unfortunately be grown and --
24 these are the formative years for the children
25 and I think fifteen years is a staggering amount

1 of time.

2 THE COURT: Thank you. Does Mr.
3 Smith wish to say anything?

4 DEFENDANT JERRARD SMITH: Yes, Your
5 Honor. I would like to say I am so sorry to the
6 family, I do apologize. Me and my family didn't
7 mean to hurt anybody. I know that my saying I
8 am sorry isn't enough and I ask that God will
9 forgive me and I ask that all of you will
10 forgive me. I also apologize to my family.

11 I am guilty of the acts done but we
12 didn't mean to hurt anyone.

13 THE COURT: All right. Mr. Bowler?

14 MR. BOWLER: May it please the court?

15 THE COURT: Yes, sir.

16 MR. BOWLER: Your Honor, I guess I
17 have been doing this perhaps longer than any
18 of these attorneys -- and it doesn't get any
19 easier, and this is probably the hardest case
20 that I've ever handled. It's hard because of
21 the loss of a life and it's hard because of the
22 destruction of five other lives.

23 Miss Duckett has -- these are four
24 children, four children who essentially will be
25 "orphaned" -- she has a six-year-old son.

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1 I know that everybody has come up here
2 and told you that if these folks were not in
3 jail that they would be pretty good citizens.
4 My client has had one advantage in that she
5 appeared before you in this case early on and
6 you were thoughtful enough to consider giving
7 her an opportunity to bond out of jail, so that
8 she could organize her affairs and prepare for
9 her children's care. She spent eight months in
10 prison -- in jail before that. She did get out,
11 she went right to work. She was working before
12 this happened, she worked after getting out on
13 bond. In fact, she worked right up until
14 yesterday. She has been taking care of her son.
15 She's lived the kind of life that she did before
16 this horrendous thing occurred.

17 One thing I would ask you to consider,
18 she has not had a particularly easy life. I am
19 not trying to excuse her conduct in this case
20 but I think that Your Honor needs to be aware
21 that her mother had to raise her and her two
22 siblings pretty much without the help of a
23 father, and it was very hard on them all.
24 She ended up basically dropping out of school
25 at the age of sixteen, and of course drugs were

1 behind that.

2 THE COURT: Sure.

3 MR. BOWLER: The day that this
4 happened she had been drinking and smoking
5 marijuana and taking a drug called Ecstasy and
6 while her judgment of knowing right from wrong
7 was still present, she obviously was impaired
8 in terms of making smart choices and the right
9 choice. She made the wrong choice.

10 Her involvement was the most minimal
11 of all. Basically she never even saw the
12 victim. She came in the house and removed the
13 TV. Your Honor, in court with her today is her
14 mother, Yvonne Jackson, her sister Natasha Smith
15 and she's got a couple of her friends here with
16 her, Tanya Horry (phonetic) and Sheena Brown
17 (phonetic). Of course, this has been hard on
18 the family.

19 We certainly acknowledge the pain of
20 the Johnson family and she regrets this deeply.
21 I can tell you, based on what she has done since
22 she has been out that I think she will continue
23 to do well; whenever you believe that it is fair
24 for her to have that opportunity to do so again.
25 She has never been before a court before. By

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1 her conduct, she had demonstrated the kind of
2 person that she is and she -- she is profoundly
3 remorseful. I've talked with her many times and
4 I know that it hurts her to the depths of her
5 heart that this man died and the feelings that
6 she has for the family is profound, deep sorrow.

7 I would ask you to consider, please,
8 fifteen years sufficient punishment for my
9 client. I would ask that you please consider
10 that.

11 THE COURT: Thank you, Mr. Bowler.
12 Does your client wish to say anything?

13 MR. BOWLER: Would you like to say
14 something to the jail?

15 DEFENDANT GWENETTA DUCKETT: I just
16 want to say that I am deeply, deeply sorry to
17 the family. And I want you all to know that we
18 never had any intent of hurting anybody and I
19 hope that one day that you'all will be able to
20 forgive us. My family, I love you'all. I'm
21 sorry to put you all through this.

22 THE COURT: Thank you. All right,
23 let me inquire of each defendant at this point
24 -- and they may remain seated. I failed to
25 discuss it and frankly it has been recited in

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1 the statements made on behalf of each of them,
2 and I don't disagree with anything and that is
3 probably why I didn't address it because I don't
4 think really that it is going to make a
5 difference what I am about to say to these folks
6 when they finish serving the sentence that is
7 going to be imposed. But do each of you
8 understand that each of the offenses, certainly
9 burglary is the main one, that Burglary 1st is
10 a Violent offense, a Most Serious offense, and
11 that it is a nonparoleable offense? Do you
12 understand that, Mr. Rivers?

13 DEFENDANT RASHAD RIVERS: Yes, sir.

14 THE COURT: Do you understand that,
15 Mr. Jerry Smith?

16 DEFENDANT JERRY SMITH: Yes, sir.

17 THE COURT: Mr. Jerrard Smith?

18 DEFENDANT JERRARD SMITH: Yes, Your
19 Honor.

20 THE COURT: Miss Duckett?

21 DEFENDANT GWENETTA DUCKETT: Yes,
22 sir.

23 THE COURT: Miss Tocara Smith?

24 DEFENDANT TOCARA SMITH: Yes, sir.

25 THE COURT: Anything else, Solicitor?

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1 MR. DURANT: No, sir.

2 THE COURT: Very well. I agree --
3 yes, sir?

4 MR. BOWLER: I believe that the mother
5 and father may want to say something.

6 THE COURT: I will be happy to hear
7 from them. I ---

8 MR. BOWLER: And perhaps other members
9 of the family.

10 THE COURT: I will be happy to hear
11 from them, briefly.

12 MR. BOWLER: Very briefly, Your Honor.

13 THE COURT: I don't -- I am sure they
14 -- what is the most disturbing thing for all the
15 persons here, as has already been referenced in
16 each of their statements, this is not what these
17 folks were taught. It's not what they learned
18 in their community, and it's not what their
19 support staff wanted them to ever do; it departs
20 from that, and I understand how just totally --
21 probably aggravating to some extent, but just
22 sad that is and tragic that it is. It truly is
23 but it -- as Mr. Bowler just said, there is
24 tragedy on both sides of the room here today.
25 Yes, sir? I will be glad to hear from you.

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1 Please give me your name.

2 JERRY JEROME SMITH, SR.: I am Jerry
3 Jerome Smith, Senior. I would like to express
4 my apology to the Johnson Family, and my family
5 too and everybody here in the courtroom. It is
6 -- (emotional) -- I'm praying for everybody.
7 It's tragic it happened. Just tragic.

8 THE COURT: Thank you, Mr. Smith.

9 SARA SMITH: My name is Sara Smith,
10 the mother. I would like to say to the family
11 that my heart is just torn, very torn. I hurt
12 for you'all and also for our family, my children
13 here and for Rashad Rivers, who could be a son
14 of mine also. I am asking that you please have
15 mercy and find it somewhere in your hearts to
16 forgive my children, because this is a tragedy
17 but I don't think that they realized -- they had
18 no intention of a life being lost. I am so very
19 sorry, but -- I ask that you please, one day if
20 you can find it in your hearts to forgive them.

21 MR. DUPREE: Your Honor, I believe
22 that Rashad's mother would like to speak on his
23 behalf, as well as Rev. Linen.

24 THE COURT: All right, sir.

25 BARBARA WASHINGTON: My name is

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1 Barbara ---

2 THE COURT: I'm sorry but you're
3 going to have to speak up, ma'am.

4 BARBARA WASHINGTON: My name is
5 Barbara Washington, I am Rashad's mother.
6 First of all, I give you my apology to the
7 family, to you all, the Johnson family. My son,
8 he's the only son that I have. He'd never been
9 in no trouble before. This is the first time
10 he's ever been in a situation like this. And
11 I ask the Lord each and every day to please
12 forgive him, and I ask the Lord to forgive all
13 of them for this tragedy that took place. I
14 ask the Johnson family from the bottom of my
15 heart to forgive my son for what he has done.
16 My son ain't never been in no trouble before,
17 he's been no trouble, he go to school, he go to
18 work, he's always been in the church and he was
19 a good kid, ain't never give me no problem. I
20 ask that you find it in your hearts one day to
21 just forgive him. Thank you.

22 THE COURT: Thank you, ma'am.

23 MR. BOWLER: Your Honor, very briefly,
24 Miss Duckett's mother, Ms. Jackson.

25 THE COURT: All right.

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1 MR. BOWLER: Very briefly.

2 YVONNE JACKSON: My name is Yvonne
3 Jackson. I am Gwenetta Duckett's mother. I do
4 what to say that I am sorry for what she has
5 done. I can understand what you'all are going
6 through because I lost my parents --
7 (emotional). Like you said your father was your
8 best friend, that's (indicating Rashard) my best
9 friend. I can understand what you're going
10 through because I've been through it this whole
11 time. I ask that you find it in your hearts to
12 forgive her so that we can all get through it, I
13 ask that you do. Thank you.

14 THE COURT: Thank you, ma'am.

15 REV. CHARLES LINEN: Good morning,
16 Your Honor.

17 THE COURT: Good morning, sir.

18 REV. CHARLES LINEN: My name is
19 Charles Linen, I am Rashad's pastor. My heart
20 is overwhelmed listening to the Johnson Family
21 and all the tragedy that they have been through.
22 In counseling with Rashard and in spending time
23 with him during this year he has been in the
24 jailhouse, he has repented and God has already
25 forgiven him.

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1 THE COURT: Absolutely.

2 REV. CHARLES LINEN: Listening to
3 the family, and I heard the daughter today that
4 their lives should begin where her father's
5 ended. I like that. We realize that the
6 negative that these three (sic) young people
7 have contributed to this city, we can't erase
8 it. But one of the things that we can look at,
9 wouldn't it be great if five individuals --
10 five individuals -- were given a second chance
11 over the death of one Brother Daniel Johnson?

12 BRITTANY JOHNSON: Danny Johnson.

13 REV. CHARLES LINEN: Danny Johnson.
14 We realize that we can't erase it and life must
15 go on. I believe that they are sorry and that
16 it was a tragedy, but we pray that they would
17 learn, and not just them but that other young
18 folks would learn, from what has happened here
19 this morning.

20 Rashad is a good kid, but then at the
21 same time that particular day had poor judgment.
22 Your Honor, I pray that you would grant mercy
23 not just on him but all of these young people.

24 THE COURT: Thank you, sir.

25 REV. ROBERT K. WHITE: Your Honor?

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1 THE COURT: Yes, sir?

2 REV. ROBERT K. WHITE: I am Robert K.
3 White, I'm the pastor of the Smith Family. I
4 would just like to say to the Johnson Family
5 that we are going to continue to pray for you.
6 We have and will continue to pray for you.

7 I have been in counsel with the Smith
8 Family ever since their incarceration and I will
9 continue to do so. The Smith children, they
10 were raised very well. At the church at St.
11 Mary's, they were well-active and very
12 progressive, loving young people and we all just
13 were disappointed and hurt by it.

14 As far as Jerry is concerned, he had
15 just received his license as a local minister in
16 the A.M.E. Church and we were so proud of him.

17 This has devastated all of us. We know
18 that bad things do happen and we would ask this
19 court to have mercy on them. We are going to
20 continue to pray and pray that God will bless
21 this family, the Johnson Family, to carry on.
22 Thank you very much.

23 THE COURT: Thank you, sir.

24 SHELIA BROWN: Good morning, my
25 name is Shelia Brown. I would first like to

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1 say to the family that I do apologize, I do
2 sincerely offer my sympathy. These young
3 people, they are all sorry. Unfortunately, it
4 was a very tragic accident that never should
5 have happened. If everybody could turn back the
6 hands of time, they would. She is very loyal,
7 she was dedicated, I've known her since 2003.
8 She would do anything, anything for you and I
9 just wish that you could find it in your heart
10 to forgive her and may God have mercy on every-
11 body's soul.

12 THE COURT: Thank you.

13 CARL WHITE: Good morning. My name
14 is Carl White and this is my grandson here and
15 I want to apologize to the Johnson Family for
16 whatever it is that he has done and ---

17 THE COURT: Let me stop you, sir.
18 I want to say something here. It's nice to
19 apologize to these folks but you'all don't have
20 to be in this courtroom to apologize to these
21 folks. You can do that outside and that's what
22 community is all about. I don't need to hear
23 any more apologies, they don't need to hear any
24 more apologies.

25 BRITTANY JOHNSON: Thank you.

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1 THE COURT: They know you're sorry.
2 We all are sorry. That doesn't do anything,
3 that doesn't help anything. It is nice to be
4 sorry. I mean, I'm glad that everybody is not
5 here saying 'we're glad that happened.' Of
6 course you're sorry. I understand that. You
7 all are supportive, and I understand that. We
8 could sit here all day and you'all can tell what
9 fine people that they are but that doesn't have
10 a thing to do with what is being done here
11 today.

12 CARL WHITE: Okay.

13 THE COURT: So thank you very much,
14 sir. Appreciate it. I've allowed you an
15 opportunity, folks. It's time for us to move
16 on with this, and let me tell you why. Quite
17 frankly -- and it's what I was taught, it's what
18 I believe, it's part of what I've tried to
19 impart to my children, it's what I've heard you
20 say, each of you say -- not so directly but
21 indirectly. You're taught to make good
22 decisions. Unfortunately -- and the Bible
23 speaks to this, it speaks very clearly. I am
24 paraphrasing it but, "to whom much is given,
25 much is expected." You know what I think that

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1 means? When you are given and you have the
2 support that is in this room that you had the
3 opportunity, the chance that a lot of people
4 have never had, to be raised in the church, to
5 be nurtured by a community. You're held to a
6 higher standard, you're expected to do more.
7 You should be. We all should expect that. Our
8 Lord expects that, no question.

9 So when you do something and you say
10 "I'm sorry", I understand that. When you say
11 "I didn't intend it", I understand that. That
12 is why we are here with involuntary manslaughter
13 instead of murder.

14 But there is no question about one
15 thing. There is no question that each one of
16 you made a conscious decision to do something,
17 and you intended that. You went in that house
18 to steal something from that man. You may have
19 been motivated all by the wrong reasons but that
20 was intended, no ifs, ands or buts about it.
21 The rationale was, 'I wanted to hurt him.'
22 That's pretty bad. Didn't want to kill him, I
23 know that. You didn't want him to die. But you
24 intended to inflict on him emotional hurt. You
25 know what that is? That is vengeance and we

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1 know what the Bible says about that, too.

2 Well, you -- you chose to do something
3 and you're going to suffer the consequences of
4 it.

5 Quite frankly, Mr. Bowler, I was glad
6 to hear you say it. I don't know if I've heard
7 a more difficult case than this case, because
8 these young people are people that absolutely I
9 agree with what everybody has said. They are
10 going to do into the community and I believe
11 that they will do exactly what each one of these
12 good folks have given up their time, their
13 energy. They are going to be the kind of people
14 that they were taught to be, I am confident of
15 that.

16 But I don't believe that I have seen a
17 case that warrants punishment any more than this
18 one, because these people thought about
19 stopping, wrestled with the decision. Not
20 spontaneous. No, heavens no. 'I don't know.'
21 'Yeah, we will', 'No, we won't.' At some point
22 some of this training that you've talked about
23 had to step in and say, 'Wait a minute. This is
24 crazy. We can't do that, that's that man's
25 house, that is his castle.' He is entitled to

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1 the privacy of his home. He may be despicable
2 -- and I am not saying that he was, I am just
3 saying in your minds he may have been
4 despicable, he may "deserve" to hurt but you
5 didn't have the right to bring that to him.
6 That is not your call. That is somebody else's,
7 no question a bigger judge than I am.

8 So what am I faced with? I am faced
9 with an absolute intentional Burglary 1st. No
10 if, and or but about it.

11 So now I look at the range, fifteen or
12 life. Well, your records tell me that fifteen
13 is warranted -- lack of record, no question
14 about it. That's a tough sentence and maybe
15 that would be appropriate, but I can't in good
16 conscience bring myself to that do that because
17 something happened during that burglary. Nobody
18 intended for him to die, but he did. He's gone.
19 All of the sorrow and all the wishing ain't
20 going to bring him back, and I cannot in good
21 conscience from the standpoint of fashioning a
22 sentence fashion a sentence of fifteen years.
23 It changes the dynamics of the burglary.

24 So I've used it as a basis and I've
25 decided what I think is appropriate. I think

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1 an appropriate punishment for the Burglary is
2 fifteen years. I think the appropriate
3 punishment for the involuntary manslaughter,
4 which was horrible -- and let me say this, and
5 I am not trying to lay any guilt or blame on
6 any one of you more so than the other but, Miss
7 Smith, as a nurse, I'm sorry, that just -- you
8 had knowledge that the others did not have.
9 That needed -- somebody needed to say, 'Wait a
10 minute. We've got an incapacitated man' -- and
11 you knew him, you knew what his situation was.
12 All of you are part of that. So I think the
13 five years ought to be paid for that, too.

14 The good thing about this, for the
15 purpose of fashioning a sentence, and I know
16 the lawyers are not going to like this, but I
17 believe that fifteen years ought to be served
18 for that and I believe that five years ought to
19 be served for that and I can make the
20 calculations, and I've done it. What this
21 sentence will result in, if you're good, is
22 19.95 years as punishment for the fifteen and
23 the five. So the sentence of the court on each
24 of your Burglary 1st, and I am not going to read
25 all the indictments because the record has those

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1 clearly stated. On all the Burglary 1st, and
2 everybody is treated the same, is twenty-three
3 years. You're given credit for the time that
4 you've served.

5 On each of the other indictments, it is
6 five years on each one and you are -- that is
7 concurrent. You're given credit for the time
8 that you've served on each of those, as well.

9 Good luck to you. You will be out, if
10 you're good, in your forties. Just as was
11 stated, you will start your life at forty.
12 Thank you.

13 (CONCLUDED)

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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the guilty
pleas entered before The Honorable Markley
Dennis, Jr., on December 5, 2008;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.

Deborah Garrison

Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina
February 19, 2009

SAW20060902126

DOCKET NO. 2007GS1004288

FILED

MAR 21 2007

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

MAH

WITNESSES

Barry Goldstein
Charleston City Police Department

AGENCY CASE NUMBER

0617020

ARREST WARRANT NUMBER

H913864

DATE OF ARREST

September 1, 2006

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: *[Signature]*

VERDICT

Foreperson of Petit Jury
Date:

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March 2007 Term

THE STATE

vs.

JERRARD ANTONIO SMITH A/K/A
JERROD SMITH

Indictment for

MURDER

SC Code: 16-03-0010, 0020

JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & P.C.

By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

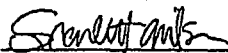
INDICTMENT

At a Court of General Sessions, convened on March 5, 2007 the Grand Jurors of Charleston County present upon their oath:

MURDER

That in Charleston County between August 23, 2006, and August 24, 2006, with malice aforethought and in concert with others, Jerrard Antonio Smith a/k/a Jerrod Smith did kill and murder victim Dannie Johnson by means of turning over the victim's wheelchair while the victim, a paraplegic, was confined to the wheelchair and that Dannie Johnson did die in Charleston County as a proximate result thereof between August 23, 2006, and August 24, 2006; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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


SCARLETT WILSON
CHIEF DEPUTY SOLICITOR

By 
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & E.C.
DEPUTY CLERK

SAW20060902126

DOCKET NO. 2007GS1004289

WITNESSES

Barry Goldstein
Charleston City Police Department

AGENCY CASE NUMBER

0617020

ARREST WARRANT NUMBER

H913865

DATE OF ARREST

September 1, 2006

ACTION OF GRAND JURY

TRUE BILL
Foreperson of Grand Jury
Date: M. J. [Signature]

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March 2007 Term

THE STATE

vs.

JERRARD ANTONIO SMITH A/K/A
JERROD SMITH

Indictment for

BURGLARY - FIRST DEGREE

SC Code: 16-11-0311

FILED

MAR 21 2007

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

MAS

~~APPEAR A TRUE BILL~~
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By: *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on March 5, 2007 the Grand Jurors of Charleston County present upon their oath:

BURGLARY - FIRST DEGREE

That in Charleston County, South Carolina, between August 23, 2006, and August 24, 2006, in concert with others, the Defendant, Jerrard Antonio Smith a/k/a Jerrod Smith, did enter the residence of Dannie Johnson at 4005 Radcliffe Place Drive, Apartment A-3, Charleston, South Carolina, without the consent of the owner and with the intent to commit a crime therein; and did cause physical injury to Dannie Johnson, a non-participant in the crime. This is in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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

Scarlett Wilson
SCARLETT WILSON
CHIEF DEPUTY SOLICITOR

INDICT.DOT

BY *[Signature]*
JULIE J. ARMSTRONG (SEM)
CLERK, C.P., G.S. 44-2
DEPUTY CLERK

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JERRARD A. SMITH,

APPELLANT

INITIAL ANDERS BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

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Stockton v. Leeke, 269 S.C. 459, 237 S.E. 2d 896 (1977).....7

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STATEMENT OF ISSUE ON APPEAL

Did the trial court violate appellant's constitutional rights by sentencing him to a disproportionate sentence?

STATEMENT OF THE CASE

On March 5, 2007, the Charleston County Grand Jury indicted Jerrard Antonio Smith on the charges of murder, burglary first degree, and grand larceny. On December 5, 2008, Smith, along with four co-defendants, appeared before the Honorable R. Markley Dennis, Jr., and entered a guilty plea to the lesser charge of involuntary manslaughter, burglary first degree and grand larceny. He was represented by Peter Brown, Esquire. Judge Dennis sentenced Smith to twenty-three years on the burglary first degree, five years on the involuntary manslaughter, and five years on the grand larceny. All sentences were to run concurrently. Smith's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court violated appellant's constitutional rights by sentencing him to a disproportionate sentence.

Tocara Smith and the decedent, Danny Johnson, were friends. Johnson was a quadriplegic who required assistance to perform all the activities of daily living even including eating. Tr. 37, ll. 1 – 16; Tr. 38, ll. 8 – 19.

On August 23, 2006, Tocara Smith and the decedent went to the grocery store where they encountered the decedent's daughter. An argument occurred between decedent's daughter and Tocara Smith. As a result, the according to the solicitor, Tocara Smith allegedly "cooked up a scheme" with her brothers to get even with the decedent. Tr. 37, ll. 2 – 9; Tr. 39, ll. 6 – 25.

Tocara Smith gave a confession to police in which she said that later, when she returned to the decedent's home, she left the door open for her two brothers, Jerrard Smith and Jerry Smith, and two of their friends, Rashard Rivers and Gwenetta Duckett. The four entered the home. When they encountered the decedent coming down the hall, they pushed him to the bathroom. When they did, his wheelchair overturned and he was lying on his back. They covered his head to prevent him from seeing them. Then they went through his apartment and stole numerous items. When they were picked up, all four gave confessions. Tr. 40, ll. 11 – 25; Tr. 41, ll. 1 – 25.

The solicitor told the court that the decedent had a backpack on the back of his wheelchair. When it landed on its back, his torso and legs were elevated above his head and he could not breathe and strangled. The solicitor said the defendants all said they did not

mean for the victim to die, and that the state believed them. That was the reason they were being allowed to plead guilty to in voluntary manslaughter. Tr. 42, ll. 1 – 18.

At sentencing, the judge told the five defendants that because of their lack of any prior criminal record, fifteen years on the burglary first was "warranted". Tr. 86, ll. 1 – 14.

He later said again:

"I think an appropriate punishment for the burglary is fifteen years".

Tr. 86, ll. 24 – 25; Tr. 87, ll. 1 – 2.

Then the judge stated:

The good thing about this, for the purpose of fashioning a sentence, and I know the lawyers are not going to like this, but I believe that fifteen years ought to be served for that and I believe that five years ought to be served for that and I can make the calculations. So the sentence of the court for the burglary 1st, and I am not going to read all of the indictments because the record has those clearly stated. On all the burglary 1st, and everybody is treated the same, is twenty-three years. You're given credit for the time that you've served. On each of the other indictments, it is five years on each one and that is concurrent.

Tr. 87, ll. 14 – 25; tr. 88, ll. 1 – 12.

The Fourteenth Amendment to the United States Constitution provides that no state shall deprive any person of life, liberty, or property without due process of law. There exists in every court an inherent power to see that a defendant's fundamental rights are protected. State v. Kimbrough, 212 S.C. 348, 46 S.E.2D 273 (1948). Generally, a sentence that falls within the limits fixed by statute is not "cruel and unusual." Id.

However, even if it is not cruel or unusual "in kind," a particular sentence may be so severe in duration that it violates the constitutional prohibitions against cruel and unusual

punishment. Id. construing S.C. Const. art 1, § 19; see also Hart v. Coiner, 483 F. 2d 136 (4th Cir. 1973); Stockton v. Leeke, 269 S.C. 459, 237 S.E. 2d 896 (1977).

In Stockton v. Leeke, Id., the Supreme Court wrote that they had no jurisdiction to disturb a sentence if it were within the limits prescribed by the statute, unless the sentence was the result of partiality, prejudice, oppression or corrupt motive.

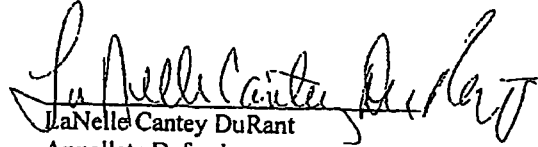
In Smith's case, the judge demonstrated prejudice in that he stated fifteen years was an appropriate sentence for the burglary first. Then he said Smith and the others should serve 19. 95 years after the judge said the manslaughter was "horrible". Tr. 87, ll. 1 – 25. The judge said he did not know if he had heard a more difficult case than this one. Tr. 85, ll. 5 – 15.

The sentence was cruel and unusual punishment for the circumstances in that no one intended for the decedent to be hurt. Smith did not have a prior record. Tr. 44, ll. 16 – 17.

CONCLUSION

Based on the above, the sentence of the circuit court should be reversed and the case remanded for a new sentencing hearing.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of April, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

v.

JERRARD A. SMITH,

APPELLANT

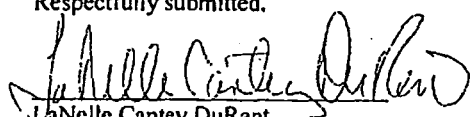
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jerrard A. Smith states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Markley Dennis, Jr., which was held on 12-5-08, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Jerrard A. Smith.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of April, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JERRARD A. SMITH,

APPELLANT

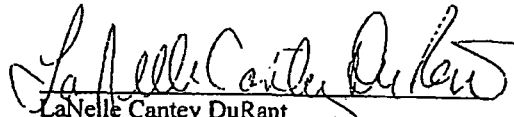
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s)
- (2) Entire Trial Transcript

I certify that this designation contains no matter which is irrelevant to this appeal.

April 28th, 2009


LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Jerrard A. Smith, Appellant.

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-063
Submitted January 4, 2010 – Filed January 28, 2010

APPEAL DISMISSED

Appellate Defender LaNelle DuRant, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
of Columbia, and Solicitor Scarlett Anne Wilson, of
Charleston, for Respondent.

PER CURIAM: Jerrard Smith appeals his twenty-three-year sentence, arguing it violates the constitutional prohibition against cruel and unusual punishment. After a thorough review of the record, and counsel's brief, pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

SHORT, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston)

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

v.)

State of South Carolina)

2011-CP-10-454
IN THE COURT OF COMMON PLEAS

FILED
2011 FEB - 1 PM 12:31
JULIE M. COLLINGS
CLERK OF COURT

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Liebra Correctional Institution P.O. Box 205, Ridgeville S.C; 29472
2. Name and location of Court which imposed sentence Charleston County G.S Court
3. Name(s) of co-defendant(s) (if any) Rashard Rivers, Gwenetta Duckitt, Terrace Smith Terry Smith
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-10-04286

- (b) 2007-65-10-04288
- (c) 2007-65-10-04289

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

- (a) Grand larceny - 5 years / Dec. 5, 2008 concurrent
- (b) Murder / Involuntary Manslaughter - 5 years / Dec 5, 2008 concurrent
- (c) Burglary 1st - 23 years / Dec. 5, 2008 concurrent

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?

yes

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

- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. South Carolina Court of Appeal Affirmed that trial court violate
 - ii. appellants constitutional rights by sentencing him to a disproportionate
 - iii. sentence / Dismissed

- (c) the date of each such result:
 - i. started / April 28, 2009 ~~Dismissed~~ Dismissed January 4, 2010
 - ii. _____
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. ||
 - iii. ||

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

- (a) N/A

(b) N/A

(c) N/A

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

(a) Ineffective Counsel of trial counsel

(b) Constitution violation and Statutory violation / Involuntary Plea

(c) ~~Through counsel~~ N/A

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

(a) My attorney failed to investigate the facts and circumstances surrounding

(b) ~~my conviction~~ my criminal accusation, / (c) By sentencing me in excess of

(c) statutory maximum for Involuntary manslaughter

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

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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

(a) the specific nature thereof:

i. N/A

ii. ||

iii. ||

iv. ||

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

i. N/A

ii. ||

iii. ||

iv. 11

(c) the disposition thereof:

i. N/A

ii. N/A

iii. 11

iv. 11

(d) the date of each such disposition:

i. N/A

ii. 11

iii. 11

iv. 11

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

i. N/A

ii. 11

iii. 11

iv. 11

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?

 N/A

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

(a) which grounds have been presented:

i. N/A

ii. 11

iii. 11

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

i. N/A

ii. 11

iii. 11

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

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Peter D. Brown, Esq. Charleston, S.C. 29402
 - ii. Lanette C. Durant P.O. Box 11589, Columbia, S.C. 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial attorney
 - ii. Appellant attorney
 - iii. _____

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

new trial, vacate of sentence reconsideration of
sentence

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
County of Charleston)

VERIFICATION

I, Jerard Smith, 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.

Jerard Smith

SWORN to and subscribed before me this 13th
day of January, 2011.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

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

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

Quard A. Smith
Applicant

SWORN or affirmed to and subscribed before me this

13th day of January, 2011.

Quidrean Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Jerard Smith, #332154,)
 (aka Jerrod Smith, aka Jerrard Smith))
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-10-754

RETURN

FILED
 2011 MAR 23 AM 11:27
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

The Respondent, making its Return to the application for post-conviction relief (PCR) filed February 1, 2011, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the March 2007 term of the Charleston County Grand Jury for grand larceny (\$1000-\$5000) (2007-GS-10-4286), murder (2007-GS-10-4288), and burglary – 1st degree (2007-GS-10-4289). Peter Brown, Esquire, represented Applicant. On December 5, 2008, the Applicant pled guilty to the lesser-included offense of involuntary manslaughter and as indicted to grand larceny and burglary – 1st degree. The Honorable R. Markley Dennis, Jr. sentenced him to confinement for twenty-three (23) years for burglary – 1st degree, five (5) years for involuntary manslaughter, and five (5) years for grand larceny. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Lanelle Cantey Durant of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals

dismissed Applicant's appeal. State v. Smith, Op. No. 2010-UP-063 (S.C. Ct. App. filed January 28, 2010). The Remittitur was issued on February 16, 2010.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction, the records of the South Carolina Department of Corrections, the Record on Appeal, the Initial Anders Brief, the Court of Appeals' Opinion dismissing the appeal, and the Remittitur dated February 16, 2010.

II.

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

1. Ineffective assistance of plea counsel in that counsel failed to investigate the facts and circumstances surrounding Applicant's criminal accusation.
2. Involuntary guilty plea.
3. Constitutional violation and statutory violation in that Applicant was sentenced in excess of the statutory maximum for involuntary manslaughter.

III.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance 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 the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the 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 the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability

that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntary nature of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 305 S.E.2d 247.

V.

Applicant alleges a constitutional and statutory violation in that Applicant was sentenced in excess of the statutory maximum for involuntary manslaughter. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant raised this issue on appeal. Moreover, Applicant was sentenced within the applicable sentencing

range for involuntary manslaughter. See S.C. Code Ann. § 16-3-60 (2003). Therefore, the Court should summarily dismiss this allegation.

VI.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VII.

WHEREFORE, having made its Return, the State requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

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

March 22, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

JERARD SMITH,)
)
 PLAINTIFF,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 DEFENDANT.)
 _____)

2011-CP-10-754

NOVEMBER 14, 2011

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE KRISTI LEA HARRINGTON, JUDGE

APPEARANCES:

LEE CANNON WEATHERLY, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

MATTHEW J. FRIEDMAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Jerard Smith				
Weatherly	8		17	
Friedman		15		
Peter David Brown				
Weatherly	18			
Friedman		30		
				PAGE
Certificate				35

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 ineffective assistance of counsel.

2 Back in 2008, he pled guilty to the charges of
3 burglary in the first degree, involuntary manslaughter and
4 grand larceny. He was sentenced to twenty-three years for
5 the burglary and five years running concurrently on the
6 other two charges. He is seeking post-conviction relief
7 today on the grounds of ineffective assistance of counsel.
8 He does not believe that his counsel at the plea hearing
9 properly investigated some of the technical issues with his
10 case. He also does not believe that his attorney advised
11 him completely and thoroughly as to the likely sentence he
12 would get. And, also, did not advise him as to the
13 tendencies of the Judge that was presiding at this
14 sentencing hearing.

15 THE COURT: As to the tendencies of the Judge?

16 MR. WEATHERLY: Yes, Your Honor.

17 THE COURT: And what do you mean by that?

18 MR. WEATHERLY: That this Judge would likely give
19 a harsher sentence than he might expect.

20 And, finally, Your Honor, he does not believe that
21 counsel was effective in seeking clarification of what was
22 somewhat of a confusing sentence during the hearing. And
23 so those will be the things we'll be hearing from Mr. Smith
24 from today and we will hear from him about why he believes
25 that his counsel was ineffective. And he would not have

Jerard Smith -vs- State of South Carolina (2011-CP-10-00754)
PCR Hearing

6

1 entered into this plea agreement if counsel had done what
2 they should have done.

3 THE COURT: All right. And Mr. Weatherly, did
4 you explain to your client should I grant his application
5 for post-conviction relief, we go back to, in essence,
6 square one. And I understand that the State offered a
7 lesser included plea for murder. Is that correct?

8 MR. WEATHERLY: Yes, Your Honor.

9 THE COURT: And he received less than the maximum
10 punishment on burglary. Is that correct?

11 MR. WEATHERLY: Yes, Your Honor.

12 THE COURT: And so, in essence, he could be
13 facing two life sentences if I were to grant his request.

14 MR. WEATHERLY: Your Honor, I have explained to
15 Mr. Smith consistently -- I met with him twice in the
16 prison and met with him again today. I've provided him
17 with a written explanation that I have read to him and had
18 him read himself, that should he win today that it is quite
19 possible that he will get a longer sentence and up to two
20 life sentences for murder and burglary.

21 THE COURT: All right.

22 MR. WEATHERLY: And he says that he understands
23 that and he wants to move forward.

24 THE COURT: All right. Mr. Smith, if you'll
25 please stand. I just need to make sure that you understand

1 that if I grant your request for post-conviction relief, it
2 doesn't mean that you walk out today. It just means that
3 you start back prior to what happened before the plea. In
4 essence, there will be no plea offered from the State,
5 meaning you will be facing the possibility of life in
6 prison on the burglary first degree, as well as life in
7 prison on the murder charge. Do you understand that?

8 MR. SMITH: Yes, ma'am.

9 THE COURT: And what was the possible punishment
10 for the grand larceny, Mr. Friedman?

11 MR. FRIEDMAN: I believe it's five years, Your
12 Honor.

13 THE COURT: All right. So he did receive the
14 maximum on that.

15 MR. FRIEDMAN: Yes, Your Honor.

16 THE COURT: Do you understand that, Mr. Smith?

17 MR. SMITH: Yes, ma'am.

18 THE COURT: And knowing that you still wish to go
19 forward here today?

20 MR. SMITH: Yes, ma'am.

21 THE COURT: All right. You may have a seat.
22 Thank you, Mr. Smith.

23 I'll be happy to hear from you, Mr. Weatherly. Call
24 your first witness.

25 MR. WEATHERLY: Yes, Your Honor. We'd like to

1 hear testimony from Mr. Smith, please.

2 THE COURT: All right, Mr. Smith. Mr. Smith, I'm
3 going to have you stay right there and we'll just swear you
4 in right there. We'll move the microphone.

5 THE CLERK: Just raise your right hand the best
6 you can. Do you swear or affirm the testimony you give
7 this Court shall be the truth, the whole truth and nothing
8 but the truth, so help you God?

9 MR. SMITH: Yes, sir.

10 THE CLERK: Okay. Have a seat. Please state
11 your full name and spell your name for the record.

12 MR. SMITH: Jerard Smith.

13 THE COURT: If you could spell your last name,
14 sir?

15 MR. SMITH: S-m-I-t-h.

16 THE COURT: Thank you. Mr. Weatherly.

17 JERARD SMITH,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. WEATHERLY:

21 Q. Mr. Smith, could you tell Your Honor what your history
22 was like before being arrested for these charges. Did you
23 go to school? Did you work, those type things?

24 A. Yes. I worked two jobs, overnight stocking at Wal-Mart
25 and I worked at Big Lots Furniture stocking during the day.

1 I was going to school at that time when I got arrested.

2 Q. Did you graduate from high school?

3 A. No, sir.

4 Q. How far did you go?

5 A. The eleventh.

6 Q. Had you ever had -- had you ever been convicted of any
7 crime before these three charges?

8 A. No, sir.

9 Q. Now, let me ask you, Mr. Smith, as succinctly as
10 possible, briefly as possible, tell us what you believe to
11 be the technical problems with your case before your
12 sentencing hearing? And I don't need you to refer to any
13 documents. Just tell me what the issues were.

14 A. Well, I feel that my indictments as far as my burglary
15 indictment and for the rest of my other indictments, as far
16 as true billing, and as far as that being on the record, I
17 got like documents from the Clerk of Court, my case number,
18 I got incarcerated as far as the procedures that I went
19 through, going through the process of being, I guess,
20 processed, and I looked at the indictments and when I looked
21 them up I never seen like the dates as far as what I got
22 indicted. And the actual date that I was supposed to go in
23 front of a Grand Jury, which I requested for the transcript
24 of the Grand Jury, there was, to be honest, there was no
25 actual date as far as like anything as far as indictments.

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1 Q. All right. Mr. Smith, did your attorney ever, to your
2 knowledge, request your Grand Jury's transcript?

3 A. He never gave me access.

4 Q. To your knowledge, did your attorney ever investigate
5 any of these plea hearing deficiencies that you believe to
6 exist?

7 A. No.

8 Q. Do you believe that they could have found you
9 unlawfully entered a dwelling for burglary had this case
10 gone to trial?

11 A. No.

12 Q. Did your attorney, to your knowledge, ever investigate
13 that issue?

14 A. No.

15 Q. Did your attorney, to your knowledge, ever investigate
16 how those issues may have given you more leverage in a plea
17 hearing?

18 A. Can you repeat that for me?

19 Q. Sure. To your knowledge, did your attorney ever
20 investigate how these irregularities we've talked about
21 could have given you more negotiating power in a plea deal?

22 A. Yeah.

23 Q. He did?

24 A. I mean, he didn't, no. No.

25 Q. Do you believe that these irregularities may have

1 gotten you a better plea deal if they had been investigated?

2 A. No.

3 Q. All right. If you knew that these irregularities had
4 not been investigated, would you have still entered into the
5 plea deal that got you twenty-three years?

6 A. No. I wouldn't have never pleaded.

7 Q. Did your attorney ever discuss with you his experiences
8 with Judge Dennis before your plea date?

9 A. No.

10 Q. Did he tell you that Judge Dennis has been known by
11 some to give harsher sentences maybe than some other Judges?

12 A. (Affirmative nod).

13 Q. He did tell you that?

14 A. (Affirmative nod).

15 Q. Due to your lack of a criminal record, did you ever
16 believe you would get anything other than the minimum
17 sentence for burglary?

18 A. I thought that that would be it.

19 Q. All right. And that was fifteen years. What did your
20 attorney tell you that he thought your sentence would be?

21 A. He said that I shouldn't -- he didn't put a cap on what
22 I would actually get, but he said with the fact of me not
23 really having any prior record as far as any criminal record
24 that I would, I would probably get the minimum. But he
25 didn't say that I would get the maximum.

1 Q. If you had known there was a real possibility you would
2 be given more than fifteen years for burglary, would you
3 have entered into this plea agreement?

4 A. No.

5 Q. Did your lawyer ever inform you that there were issues
6 with your co-defendants that might make your sentencing
7 stronger?

8 A. No.

9 Q. If you had known there were issues with your co-
10 defendant about the refusal, for instance, to maybe take
11 responsibility for this incident that could make your
12 sentence stronger, would you have entered into this plea
13 agreement?

14 A. No, sir.

15 Q. Do you believe that your attorney should have withdrawn
16 your plea during the plea hearing or sought for the
17 verification of your sentence?

18 A. Yes.

19 Q. Now, during your sentence, it's my understanding that
20 Judge Dennis stated that due to your lack of record, fifteen
21 years for burglary was warranted. Do you recall that?

22 A. Yes.

23 Q. And during the sentence hearing, Judge Dennis indicated
24 that, quote, fifteen years ought to be served for burglary?

25 A. Yeah. He said fifteen years ought to be served for

1 that and the other charge that I have carries fifteen years.

2 Q. And he indicated you should also serve five years for
3 involuntary manslaughter, is that right?

4 A. Yes, sir, the max on involuntary manslaughter.

5 Q. That's the maximum sentence for that charge?

6 A. Yeah.

7 Q. At the time of the sentencing, did Judge Dennis then
8 sentence you to fifteen years and then five years
9 concurrent?

10 A. He said that I would serve fifteen years and -- for
11 that charge. And he said that I would serve five years for
12 that charge. But as far as being in the computer at the
13 facility, it's not nineteen, it's not fifteen.

14 Q. Let me back up real quick. He sentenced you to twenty-
15 three years, right?

16 A. Right.

17 Q. Okay. Now, did your attorney ever seek clarification
18 during the sentencing hearing for why you were sentenced to
19 twenty-three years when Judge Dennis had said fifteen years
20 for burglary was what you should be serving?

21 A. No.

22 Q. Do you think he should have sought clarification during
23 your hearing?

24 A. Yes, sir.

25 Q. Do you think he should have withdrawn your plea at some

1 time during the hearing?

2 A. Yes, sir.

3 Q. If you knew that your attorney -- and I'm just going to
4 sum everything up right here for Your Honor. If you knew
5 that your attorney had not investigated the irregularities
6 in your pre-plea hearing procedure, would you have entered
7 into this plea agreement?

8 A. No.

9 Q. If you knew that Judge Dennis has been known by some to
10 give harsher sentences than possibly other judges, would you
11 have entered into this plea agreement?

12 A. No.

13 Q. And do you believe that your attorney should have
14 withdrawn your plea at some point during the plea hearing?

15 A. Yes.

16 Q. And would you like for this Court to overturn your plea
17 agreement due to ineffective assistance of counsel?

18 A. Yes, sir.

19 Q. Do you have anything else for the Court today?

20 A. Yes.

21 Q. Do you have anything else to say?

22 A. (Affirmative nod).

23 Q. Say it for the Court.

24 A. I mean as far as ---

25 Q. Without getting into your documents, is there anything

1 else you need to say.

2 A. As far as what I have did research on, as far as ...

3 Q. Just tell her anything, if you need to tell the Judge
4 anything else?

5 A. Well, I feel that counsel was ineffective for failing
6 to advise me that I was going -- of an indictment that was
7 insufficient and was flawed. The indictment was missing the
8 key elements as far as being unlawfully in a dwelling,
9 meaning that the indictment was insufficient. I feel like
10 it violated my U.S. Constitution.

11 MR. WEATHERLY: I think that's all, Your Honor.

12 THE COURT: All right. Thank you. Mr. Friedman.

13 MR. FRIEDMAN: Thank you, Your Honor.

14 **CROSS-EXAMINATION**

15 **BY MR. FRIEDMAN:**

16 Q. Good morning, Mr. Smith. You plead guilty, is that
17 right?

18 A. Yes, sir.

19 Q. Do you remember telling the Court that you understood
20 the nature of the charges and the possible punishment?

21 A. Yes, sir.

22 Q. Do you remember telling the Court at that time you were
23 satisfied with your attorney?

24 A. Yes, sir.

25 Q. You also agreed with the Court that the only agreement

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16

1 was permitting you to plead to one lesser included offense
2 of involuntary manslaughter. Is that right?

3 A. Yes.

4 Q. That was the only agreement, is that correct?

5 A. It wasn't negotiated. On my sentencing sheet it
6 doesn't say negotiated.

7 Q. Right.

8 THE COURT: All right. One more time, Mr. Smith.

9 A. I said that it wasn't negotiated. I said that on my
10 sentencing sheet it doesn't say negotiated or recommend for

11 ---

12 Q. So it was a straight-up plea. Is that right?

13 A. It was a straight-up plea.

14 Q. And do you remember telling the Court that you
15 understood your Constitutional rights including your right
16 to a jury trial?

17 A. Yeah.

18 Q. You also told the Court you were, in fact, guilty of
19 these offenses. Is that right?

20 A. Yes.

21 Q. You told the Court that no one had threatened you or
22 promised you anything to get you to plead guilty. Is that
23 right?

24 A. Yes.

25 Q. Do you remember when the Solicitor gave their version

1 of the facts on the record. Do you remember that?

2 A. Yes, sir.

3 Q. Do you remember that you told the Court that you agreed
4 with those facts?

5 A. Yes.

6 Q. Do you remember apologizing to the victim's family
7 during the plea hearing?

8 A. (Affirmative nod).

9 MR. FRIEDMAN: I have nothing further.

10 THE COURT: Mr. Weatherly.

11 MR. WEATHERLY: Briefly, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. WEATHERLY:**

14 Q. Mr. Smith, at the time you made these statements, were
15 you aware of the discrepancies and the inconsistencies and
16 the lack of investigation that we talked about today?

17 A. Yeah.

18 Q. You were aware of all the discrepancies and the lack of
19 an investigation?

20 A. I wasn't in knowledge of that until the fact, after I'd
21 been sent for -- I asked for another lawyer. I didn't
22 really have an understanding of that in Court.

23 Q. All right. Thank you.

24 MR. WEATHERLY: That's all, Your Honor.

25 MR. FRIEDMAN: Nothing further.

1 THE COURT: All right. Thank you. Mr. Weatherly,
2 call your next witness.

3 MR. WEATHERLY: We'd like to call Peter David
4 Brown, please?

5 THE COURT: All right. Mr. Brown if you will come
6 to the witness stand and be sworn.

7 THE CLERK: Place your left hand on the bible and
8 raise your right one. Do you swear or affirm the testimony
9 you give this Court, shall be the truth, the whole truth and
10 nothing but the truth, so help you God?

11 MR. BROWN: I do.

12 THE CLERK: Have a seat, please. State your full
13 name and spell your last name.

14 MR. BROWN: Good morning, Your Honor. Peter David
15 Brown, B-r-o-w-n.

16 PETER DAVID BROWN,

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. WEATHERLY:

20 Q. Mr. Brown, were you plead counsel for the plea hearing
21 counsel for Mr. Smith in this case?

22 A. Yes, I was.

23 Q. All right. Could you go with me or guide me through
24 when you first got this case until the plea hearing, what
25 was done on this case, what was investigated and how you

1 represented Mr. Smith in this action?

2 A. How much detail do you want to go in regard to this?

3 Q. As much as you've got?

4 A. I was assigned early on. I was one of several
5 attorneys. A couple of attorneys switched out during the
6 time frame. The ones that remained the same were Mike
7 Dupree for Raschad Rivers, Tocarra was represented by Mary
8 Beth Laney. John Bowen represented Gwynetta Duckett. And I
9 believe there was also -- Jerry was represented, I think
10 ultimately by John Nnobeloch in this. I think he took over
11 for Laura Nnobeloch, his wife. We did a great deal of
12 investigation. I can kind of cut to the chase a little bit
13 in regard to -- well, it depends on how much you want me to
14 cut to the chase, but we investigated the issues. He was
15 charged with murder, which carried life in prison. He was
16 charged with -- potentially. He was charged with burglary
17 first, which potentially carried life in prison also. And
18 then the grand larceny charge. I went out and met with the
19 client, took a paralegal out there with me. Investigated
20 the matter, did the Rule 5 discovery request, everything
21 that you normally do in regard to a matter. Got the photos,
22 the crime scene, printed those out, looked at those where
23 you could see the Defendant's [sic] power chair tipped over,
24 et cetera. I went and did the probable cause hearing. I
25 was early on in that matter. I think we did a large

1 probable cause hearing, which I think you already have, with
2 a bunch of attorneys there, in regard to the original matter
3 in front of Judge Gosnell. He never received a bond. He
4 stayed in jail, I believe, the entire time. I think there
5 was only one of the individuals that got out of jail and
6 that was Gwynetta Duckett. She was the only one that was
7 not a family member. She was a roommate of Tocarra's. We
8 looked into the matter. We negotiated the matter with the
9 Solicitor's Office as best we could as a group. Bruce
10 Durant, the Deputy Solicitor, was involved in this matter
11 because of the nature of the matter being that Mr. Johnson,
12 I believe, the victim, was a quadriplegic and had a power
13 chair and was found dead. And then I think the connection
14 with the jail, also, because Tocarra had been a nurse's aid,
15 Tocarra being his older sister, had been a nurse's aid at
16 the jail. That's how she developed a relationship with the
17 victim on this matter and they kept the relationship going
18 afterwards, et cetera. So I think Bruce Durant was involved
19 initially because of those alleged portions.

20 Q. Did you investigate any of the issues Mr. Smith has
21 discussed today with his bill date or the date of his Grand
22 Jury indictment?

23 A. Absolutely I investigated it. The Grand Jury
24 indictment, he was indicted on March 5th, 2007. I think
25 it's included in the packet. And in regard to the charge, I

1 think it satisfied the burg first in that it said that in
2 Charleston County between August 23rd and August 24th, 2006,
3 in concert with others, that Jerard Antonio Smith, a/k/a
4 Jerard Smith did enter the residence of Danny Johnson at
5 4005 Ratcliff Place, Apartment A-3, without the consent of
6 the owner and with the intent to commit a crime therein. So
7 he entered into the dwelling satisfies it without -- with
8 the intent to commit a crime therein. So it satisfied those
9 elements that are necessary for a burglary first. And did
10 cause the physical injury to Danny Johnson on participating
11 with the crime. So that's what is there. So that is the
12 burglary first.

13 Q. Did you investigate any of the issues that he discussed
14 about there not being a date on the -- on some of the
15 indictments or having an incorrect number?

16 A. No. I don't recall discussing the indictments with
17 him, honestly. I just don't. If that's a concern of his,
18 he might have developed it afterwards, which I think is what
19 his testimony was. But I don't have an independent
20 recollection of actually discussing the indictments with
21 him. I think the indictments were less of a point because
22 he was facing the murder charge and the burg first, and the
23 murder was a, was a main event, so to speak. So we had to
24 get away from the murder charge because of the testimony and
25 his own statement of the events that took place, where the

1 individual's chair was flipped over. He, Jerard, put a
2 blanket or a piece of cloth over the guy's face. The other
3 members kicked him a couple of times when he was down in the
4 wheelchair in the bathroom. So we were more concerned with,
5 we've got to get away from the murder charge and get as low
6 as we can on the burg, if we can get out of burg, get it
7 down to a burg second. We were trying to do that. We were
8 unsuccessful with that, but we were successful in dodging
9 the murder charge.

10 Q. When you were negotiating a plea with the Solicitor's
11 Office, did you ever have discussions with him about having
12 a sentencing recommendation or a negotiated sentence?

13 A. Absolutely. We tried absolutely everything we could
14 with them. The best we could negotiate was the concurrent
15 sentence, the burg first, which was going to carry the
16 mandatory minimum of fifteen years in prison. The
17 involuntary manslaughter, of course, carried less than that
18 so we knew that was not going to be an issue if it was going
19 to be run concurrent, that would be fine. So we knew it was
20 going to be between fifteen and thirty because they weren't
21 going to ask for life on it, because that was determined
22 early on that the victim's ex-wife, who was kind of driving
23 this plea, she didn't live here, she lived out- of-state,
24 they indicated they were not going to seek the death penalty
25 and they were not going to seek a life sentence. So that

1 being said, we tried to get a lower number, but that was not
2 going to happen. Now, do I think he deserved a lower number
3 than Tocarra, his older sister, who is the individual who I
4 think was the impetus behind this? Absolutely. And we
5 discussed that several times when we met with him. We
6 wanted her to take responsibility for the matter because if
7 she did take responsibility, then it would lessen his role,
8 even though he technically did go in and did participate,
9 did take things out. But he was not the one -- it wasn't
10 his motive. He was not the one who was insulted and
11 disrespected and we were just kind of hoping she'd step up
12 to the plate and take responsibility and thus lessen the
13 responsibility of the other individuals. But we were only
14 left with that. We were not given any -- Bruce Durant would
15 not give us anything.

16 Q. Did you ever discuss with Mr. Smith your experiences
17 with group plea hearings in front of Judge Dennis and how
18 they can, at times, have harsher sentences than you would
19 expect?

20 A. I did discuss that with him. I advised him that I'd
21 had had some success in front of Judge Dennis and I've had
22 some other matters that were less successful and sensitive
23 if my client had had the opportunity to go up individually,
24 or we could just articulate on their behalf, advocate for
25 them, mitigate as much as possible and take responsibility.

1 I explained to him that sometimes with Judge Dennis what can
2 happen is, if the plea goes on an extended period of time,
3 the Judge gets tired of hearing people talk about things
4 that are just an absolute waste of time. And, you know,
5 when they get to the third grandfather or the fourth cousin
6 that's just going on and saying, I'm sorry, I'm sorry, that
7 really doesn't serve the purpose for the sentencing and
8 Judge Dennis will immediately say that. We had another
9 option. We tried to go in front of Judge Young. With all
10 due respect, Your Honor was not an option. We had looked in
11 regard to the plea of which Judge to maybe go in front of
12 with these particular set of facts. And we had actually
13 gone and spoke with another Judge. And the Judge indicated
14 that the sentence would be actually harsher than the
15 sentence he ended up with on this one. So we opted out of
16 that Judge to go in front of Judge Dennis because that was
17 an option. But we had to do it as a group. It was not a --
18 and the Solicitor held -- you know, the Solicitor controls
19 the docket. They held the plea offer and the offer was if
20 one of the persons backed out, one of the Defendants backed
21 out, they were not going to go forward and give anybody a
22 deal. They would go forward and try the case if they needed
23 to try the case and then come back to it later. So we
24 explained that to him. And we explained that we were going
25 to try to lessen his degree of participation as much as

1 possible and that we had hoped his older sister would take
2 responsibility. And I think he would agree with that.

3 Q. During the sentencing hearing, do you recall Judge
4 Dennis saying that fifteen years for the burglary was
5 warranted?

6 A. I don't recall that, and I looked back at the
7 transcript because I didn't know that was specifically his -
8 - one of his claims here. During my presentation, I
9 specifically said, I'm asking you -- and this is on page 70
10 of the transcript. I'm asking that you be as lenient as you
11 can for Jerard because his family does need his help. His
12 mom's cancer and his father's heart surgery, because that
13 had been mentioned. His parents were -- had some health
14 issues. If he has to do fifteen years, they might not be
15 around and might very well be in the same position that the
16 Johnson daughters are in, living without their parents. And
17 I talked about how they raised hardworking, close-knit, law
18 abiding children, how they essentially did it. I mean, they
19 did do that. And I mention again, fifteen again. They
20 would have to enter society at a time when their children
21 would, unfortunately, be grown and that -- meaning Jerard
22 had twins. While he was in prison, his girlfriend, I think
23 had children. These are the formative years for the
24 children and I think that fifteen years is a staggering
25 amount of time. So I referenced fifteen years twice,

1 because I was trying to, as I often try to do, explain to
2 the Judge that fifteen years in prison, of which he'd have
3 to serve eighty-five percent of the time, is a staggering
4 amount of time. So I tried to point out that fifteen is
5 staggering, that, you know, twenty -- we were trying to get
6 away from the twenty to twenty-five, possible thirty years
7 in prison. I don't remember specifically, and I didn't have
8 a chance to scan it quickly enough to see if Judge Dennis
9 mentioned the fifteen years.

10 Q. Towards the end of the hearing, Judge Dennis stated
11 that fifteen years ought to be served for burglary and it
12 was warranted and that Mr. Smith should serve five years for
13 involuntary manslaughter, but then sentenced him to twenty-
14 three years. Did you ever seek clarification during that
15 hearing from Judge Dennis as to -- to try to reconcile those
16 two concepts? That he ought to do fifteen years for
17 burglary, but then he sentenced him to twenty-three years
18 for burglary.

19 A. Can you tell me where he said that? I just haven't
20 seen that yet. Because I haven't -- again, it was just
21 brought up this morning.

22 Q. That would be page, I believe, 86, 87 and 88. If we're
23 working from the same page numbers.

24 A. Okay. Yeah. I think we probably are. And he's
25 speaking to the entire group because ---

1 Q. Yes.

2 A. --- order is now done. So the Judge says, I'm faced
3 with an absolute intentional burg first, no ifs, ands, and
4 buts about it. So I look now at a range, comma, fifteen or
5 life. Well, your records tell me fifteen is warranted, lack
6 of record, no question about it. So he says fifteen is
7 warranted. It's a tough sentence and maybe that would be
8 appropriate, but I can't in good conscience bring myself to
9 that, to that -- to do that because something happened
10 during that burglary. Nobody intended for him to die, but
11 he did. Now, if that's what -- and he says, and I can't in
12 good conscience from that standpoint, fashion a sentence,
13 fashion a sentence of fifteen years. It changes the
14 dynamics of the burglary. So I've used that as a basis and
15 I've decided what I think is appropriate. The appropriate
16 punishment for the burglary is fifteen years. I think the
17 appropriate punishment for the involuntary manslaughter,
18 which is horrible -- and let me say this, and I'm not trying
19 to land any guilt or blame on anyone of you or more so than
20 the other, but Ms. Smith, as a nurse, I'm sorry, that just -
21 - you had knowledge the others did not have. You needed to
22 say, wait a minute. Okay. So a good thing about this is
23 for the purpose of fashioning sentence, and I know the
24 lawyers are not going to like this, but I believe that
25 fifteen years ought to be served for that, and I believe

1 that five years ought to be served for that and that I can
2 make calculations and I've done it. What this sentence will
3 result in, if you're good, is nineteen point nine five years
4 as punishment for the fifteen and five. So the sentence of
5 the Court on each of your burg first -- and I am not going
6 to read all of the indictments because the record on those
7 has been clearly stated -- on all the burg first and
8 everybody is treated the same is twenty-three years. You're
9 given credit for the time that you've served. Each one of
10 you is five years -- let's see -- on each of the other
11 indictments, it is five years on each one and you are --
12 that is concurrent that you're given for the time that you
13 served on each of those. Good luck to you. You will be
14 out, if you're good, in your forties. Just as I've stated,
15 you'll start your life at forty. What I think Mark and
16 Dennis did, only because I know how the Judge has done this,
17 if there is -- if there was just a burglary first and we
18 were asking for fifteen and I think he pretty much said it
19 there, he thinks it's worth fifteen, he'd give them fifteen.
20 Because there was another component to it, obviously, the
21 murder, which we plead to involuntary manslaughter, I think
22 the Judge at that point said, there's got to be more time
23 involved. So what he did is he used the fifteen as a
24 starting point, because it had to be the bare minimum
25 anyway, and then he added on for the death, because he said

1 something else happened during the burglary. So he added on
2 more time. So he added that on to give them twenty-three
3 years. And I think that's what he was thinking about that.
4 And, of course, Judge Dennis has been on the bench for
5 probably, somewhere between -- over fifteen years, probably
6 seventeen to nineteen years. I've been in front of him a
7 great many times. So that's how -- if you're asking me how
8 I interpreted it, probably interpreted it back then, it was
9 that way because that's what he said. He said, something
10 else happened. So fifteen would be good, but something else
11 happened. So he meant to add on more because he wasn't
12 going to let them get away with murder. Burglary is a
13 burglary, death involved, he added more to it.

14 Q. But you didn't seek for any clarification at that time?

15 A. I did not.

16 Q. At any time during the plea hearing, for instance, when
17 there were extended family members speaking or where you saw
18 a shift in the tone of the plea hearing, did you attempt to
19 withdraw the plea at any time?

20 A. I did not. We had already -- I think we had already
21 gone forward at that point. The shift in the tone did not
22 happen until one of the counsel went on fairly ad nauseam
23 and the Judge was less than thrilled with that.

24 Q. I don't have anything else. Thank you.

25 THE COURT: Mr. Friedman.

1 MR. FRIEDMAN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. FRIEDMAN:

4 Q. Good morning, Mr. Brown.

5 A. Good morning.

6 Q. How long have you been practicing law?

7 A. Twenty-four years.

8 Q. And how much of your practice is in criminal law?

9 A. Probably fifty, fifty percent, if not more.

10 Q. Were you appointed or retained on this case?

11 A. I was appointed.

12 Q. Do you recall how many times you met with the
13 applicant?

14 A. I do not, no. I mean, obviously, at all the critical
15 stages and then some. And I think ---

16 Q. Do you recall --- I'm sorry.

17 A. And I think several times in regard to the plea
18 negotiations in what we were trying to do, as it stepped up,
19 I was making him aware of the developments.

20 Q. Do you recall if you discussed the elements of the
21 charges and what the State was required to prove?

22 A. I'm sure I did with him.

23 Q. Do you recall if you discussed potential defenses with
24 him?

25 A. Absolutely.

1 Q. Did you see any problems with the indictments?

2 A. Again, I did not specifically go over the indictments
3 with him. I did not see any at that time.

4 Q. I believe you testified that there were never any
5 negotiations or recommendations from the State?

6 A. Well, the negotiations were that we got the murder
7 charge knocked down to an involuntary manslaughter. So that
8 was a big one. We also had the agreement that they were
9 going to -- that they would run concurrent, and that they
10 weren't going to -- I don't think that they were going to
11 ask for life on the burg first. And they weren't going to
12 ask for a specific number. The Deputy Solicitor was going
13 to allow us to argue our own individual's case for as
14 lenient a sentence as possible. So that, while it's not a
15 negotiated sentence in the sense of, yes, we agreed to
16 accept eighteen years in prison or fifteen years or twenty-
17 three years, it is part of the negotiations to allow us to
18 argue on our own on behalf of our individual client.

19 Q. I believe you testified that you knew the sentence
20 would be somewhere between fifteen and thirty. Is that
21 right?

22 A. It had to be by statute. Mandatory minimum fifteen,
23 top end thirty, as long as life is off the table on the burg
24 first.

25 Q. Did you communicate that to the applicant?

1 A. Absolutely.

2 Q. Did you ever explain to the applicant the maximum
3 sentence of burglary first?

4 A. Yes, I did. He understood it was potentially thirty
5 years in prison.

6 Q. Was there any confusion that the applicant was
7 sentenced to twenty-three years for the burglary first?

8 A. There was no confusion over it.

9 Q. Did you inform the applicant of the consequences of the
10 plea?

11 A. Oh, absolutely.

12 Q. Whose decision was it to plead guilty?

13 A. It was his decision.

14 MR. FRIEDMAN: I have nothing further, Your Honor.

15 MR. WEATHERLY: Nothing further, Your Honor.

16 THE COURT: You may step down and be excused.

17 Call your next witness.

18 MR. WEATHERLY: We have no further witnesses, Your
19 Honor.

20 THE COURT: Anything from the State?

21 MR. FRIEDMAN: Nothing from the State, Your Honor.

22 THE COURT: Okay. Do you have argument -- do you
23 wish to argue?

24 MR. WEATHERLY: Briefly, Your Honor, in
25 conclusion, Mr. Smith has testified here today and I believe

1 there's a preponderance of the evidence that if Mr. Smith's
2 counsel had investigated some of the irregularities with the
3 State's pre-trial procedures, Mr. Smith would not have
4 entered a guilty plea to any of these charges. Similarly,
5 if Mr. Smith had known of the tendencies of the presiding
6 judge for his plea hearing, he would not have agreed to have
7 a sentencing hearing in front of this judge, but instead
8 would not have plead guilty and gone forward on to trial.
9 And Mr. Smith believes that his counsel should have
10 attempted to withdraw his plea at some point during the plea
11 hearing.

12 Your Honor, we think there is significant -- we think
13 there is evidence today, a preponderance of the evidence,
14 that if Mr. Smith had effective assistance of counsel in
15 this case, he would not have pled guilty to these charges.
16 Therefore, we are requesting that the Court overturn his
17 plea agreement in this post-conviction relief hearing, Your
18 Honor.

19 MR. FRIEDMAN: Thank you, Your Honor. Briefly,
20 the State would submit the applicant's failed to meet his
21 burden. There's nothing to suggest that Mr. Brown was
22 ineffective. He testified that he fully investigated, he
23 explained the possible sentences to the applicant. The
24 record reflects that the plea was entered freely and
25 voluntarily. The applicant admitted that there were no

1 threats or promises. He said that he understood the nature
2 of the charges and the possible punishments. He agreed with
3 the Court that the only agreement was that he would get a
4 lesser included offense on the murder charge, he would get
5 involuntary manslaughter. And he also admitted guilt at the
6 plea hearing. For those reasons, we ask the Court to deny
7 his application.

8 MR. WEATHERLY: Nothing further, Your Honor.

9 THE COURT: I'm going to take this matter under
10 advisement. I'd like proposed orders by Friday at ten a.m.
11 Can you complete that, Mr. Weatherly?

12 MR. WEATHERLY: Yes, Your Honor.

13 THE COURT: Mr. Friedman?

14 MR. FRIEDMAN: Yes, ma'am.

15 THE COURT: All right. Thank you.

16 Good luck to you, Mr. Smith.

17

18 (END OF REQUESTED TRANSCRIPT OF RECORD)

1

CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State of
5 South Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of all the
7 proceedings had and evidence introduced in the trial/hearing
8 of the captioned case, relative to appeal, in the Common
9 Pleas Court, Charleston County, South Carolina, on the 14th
10 day of November, 2011.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

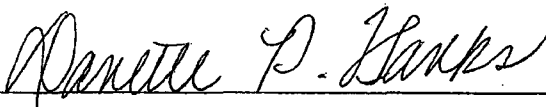
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January 30, 2012

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Circuit Court Reporter

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Jerard Smith, #332154;

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-10-754

ORDER OF DISMISSAL

BY [Signature]
JULIE J. ARMSTRONG
CLERK OF COURT
2011 NOV 28 PM 4:12

FILED

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 1, 2011. The Respondent made its Return on March 22, 2011. An evidentiary hearing into the matter was convened on November 14, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Lee Cannon Weatherly, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant and plea counsel, Peter Brown, Esquire, testified at the PCR hearing. This Court had before it the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Record on Appeal, the Initial Anders Brief, the Court of Appeals' Opinion dismissing the appeal, the Remittitur dated February 16, 2010, the PCR application, and Respondent's Return thereto.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the March 2007 term of the Charleston County Grand Jury for grand larceny (\$1000-\$5000) (2007-

GS-10-4286), murder (2007-GS-10-4288), and burglary – 1st degree (2007-GS-10-4289). Peter Brown, Esquire, represented Applicant. On December 5, 2008, the Applicant pled guilty to the lesser-included offense of involuntary manslaughter and as indicted to grand larceny and burglary – 1st degree. The Honorable R. Markley Dennis, Jr. sentenced him to confinement for twenty-three (23) years for burglary – 1st degree, five (5) years for involuntary manslaughter, and five (5) years for grand larceny. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Lanelle Cantey Durant of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Smith, Op. No. 2010-UP-063 (S.C. Ct. App. filed January 28, 2010). The Remittitur was issued on February 16, 2010.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of plea counsel in that counsel failed to investigate the facts and circumstances surrounding Applicant's criminal accusation.
2. Involuntary guilty plea.
3. Constitutional violation and statutory violation in that Applicant was sentenced in excess of the statutory maximum for involuntary manslaughter.
4. At the PCR hearing, Applicant alleged that counsel did not completely advise him regarding the likely sentence and the tendencies of the judge and did not seek clarification of the confusing sentence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety and hear the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of

fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified that the indictment for burglary was flawed. He testified that counsel did not request the Grand Jury transcript, did not investigate pre-hearing irregularities, and did not investigate how these irregularities would have given him more negotiating power. He asserted that counsel told him that Judge Dennis sometimes gave harsher sentences, but he thought he would get fifteen (15) years. Applicant testified that counsel told him there was no cap, but since he did not have a record he would probably get the minimum. He contended that counsel should have moved to withdraw the plea. He testified that counsel did not seek clarification of the sentence. Applicant asserted that he would not have pled guilty had he known of counsel's deficiencies.

Plea counsel testified that he conducted a thorough investigation, including meeting with Applicant, reviewing the discovery, and looking at the photographs and the crime scene. He testified that they negotiated with the solicitor as a group. He asserted that he tried to get a recommendation or a negotiation, but the best offer he could get was to take murder off the table and plead guilty to involuntary manslaughter and run the sentences concurrently. Counsel testified that he knew the State was not going to ask for life for burglary – 1st degree so he told Applicant that he was looking at 15-30 years. He also told Applicant that burglary – 1st degree carried a possible sentence of 15-life. He testified that he informed Applicant that he had some success in pleas with Judge Dennis and some pleas that were less successful with Judge Dennis. He asserted that he opted out of going in front of Judge Young because he indicated that the sentence would be harsher than twenty-three (23) years. He testified that the only other option was to plead guilty as a group in front of Judge Dennis. Counsel testified that he did not seek clarification from the sentence, but he contended that he did not think the sentence was

confusing. He testified that he did not attempt to withdraw the plea.

Counsel testified that he investigated the Grand Jury indictment, and Applicant was indicted on March 5, 2007. He asserted that the indictment for burglary – 1st degree satisfied the statute and the elements of burglary – 1st degree. He testified that he does not recall discussing the indictments with Applicant, but he asserted that he was focusing more on dodging the murder charge.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (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, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel’s deficient performance must have prejudiced

the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that Applicant’s testimony is not credible while also finding that counsel’s testimony is credible. This Court finds that counsel is a trial practitioner who has experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant’s constitutional rights, Applicant’s version of the facts, and possible defenses or lack thereof.

This Court finds that the record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he understood the nature of the charges and the possible punishments. He told the court that the only agreement was that the State was permitting Applicant to plead to the lesser-included offense of involuntary manslaughter. He indicated that no one had threatened him or promised him anything to get him to plead guilty. He admitted that he was pleading guilty because he was, in fact, guilty of these offenses. Applicant told the court that he was satisfied with counsel's representation. This Court finds that it was Applicant's decision to plead guilty with a full understanding of the consequences of the plea.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. He obtained a favorable sentence for Applicant under the circumstances. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly advised Applicant regarding the possible sentences he was facing and the tendencies of Judge Dennis. Counsel communicated to Applicant that he was facing 15-30 years since the State was not pursuing life on the burglary – 1st degree charge. This Court also finds that the plea judge's sentence was not confusing and did not require clarification.

This Court finds that the allegations related to the insufficiency of the indictment are without merit. This Court finds that Applicant fully understood the nature of the charges against him. “[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.” State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (S.C. Ct. App. 2007) (citations omitted). Tumbleston establishes that an indictment is a notice document. Here, there is no question that the Applicant and plea counsel had adequate notice of the charges and ample time to prepare a defense.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel’s performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel’s performance. Applicant’s complaints concerning counsel’s performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

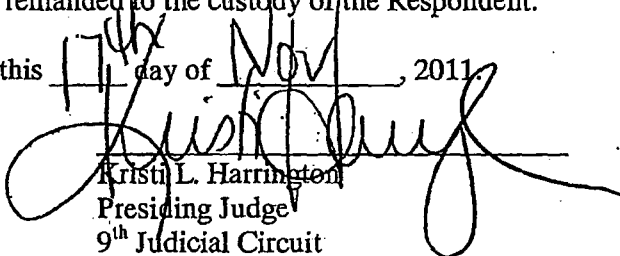
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation.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

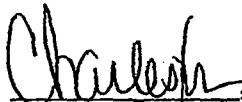
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 17th day of Nov, 2011.


 Kristi L. Harrington
 Presiding Judge
 9th Judicial Circuit

 South Carolina.