

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Darlington County

J. Michael Baxley, Circuit Court Judge

RECEIVED

MAR 28 2012

S.C. Supreme Court

JAMIE MICHAEL GILBERT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Assistant Appellate Defender

South Carolina Commission on Indigent
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PLEA

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF DARLINGTON) 2007-GS-16-0648
) 2008-GS-16-1029
) 2008-GS-16-1030

STATE OF SOUTH CAROLINA)
 PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
JAMIE GILBERT)
 DEFENDANT)

May 22, 2009
Dillon, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

KERNARD REDMOND, ASSISTANT SOLICITOR
Attorney for the State

ROSALIND SELLERS, PUBLIC DEFENDER
Attorney for the Defendant

RICHARD JONES, PUBLIC DEFENDER
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

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1	COURT'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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COLLOQUY

1
2 MR. REDMOND: May it please the Court. Your Honor,
3 before you at this time the Jamie Gilbert. He is indicted
4 on 2007-GS-16-658 [sic]; that being for armed robbery. He
5 is also indicted on 2008-GS-16-1029 for grand larceny and
6 finally 2008-GS-16-0130 that being an indictment for
7 murder. He's pleading to voluntary manslaughter.

8 He's represented by Rick Jones and Rosalind Sellers.
9 I'm sorry. I didn't see Rosalind there. With the Public
10 Defender's Office, and at this time we are proceeding with
11 the plea. We are asking the Court to withhold sentencing
12 and retain jurisdiction until after the trial of the
13 codefendant. That trial is scheduled to commence in
14 Darlington next week starting Monday.

15 THE COURT: Mr. Gilbert.

16 MR. GILBERT: Yes, sir.

17 THE COURT: Good morning.

18 MR. GILBERT: Good morning, sir.

19 THE COURT: I need your age.

20 MR. GILBERT: Nineteen.

21 THE COURT: Where are you from?

22 MR. GILBERT: Darlington.

23 THE COURT: What is your education?

24 MR. GILBERT: I have none.

25 THE COURT: And where did you last work?

Colloquy

5

1 MR. GILBERT: Never worked.

2 THE COURT: All right. Got an indictment for me?

3 MR. REDMOND: Oh, I apologize, Judge.

4 THE COURT: The paperwork that I have before me
5 indicates that you desire to enter a plea to armed
6 robbery, voluntary manslaughter, and grand larceny in
7 excess of \$5,000. Let's take a look at each one. First
8 one I come to is armed robbery under 07-652; that
9 particular indictment alleges that in Darlington County on
10 or about January the 17th 2007 while arm with a deadly
11 weapon along with some codefendants you did felonious take
12 from the person and presence of Tyrone Cornelius Brown by
13 force or intimidation goods or monies of the said Tyrone
14 Cornelius Brown.

15 Such goods or monies being described as a 2002 Honda
16 Accord and bank card. For that you could receive up to 30
17 years for armed robbery. It's a minimum sentence of ten
18 years. How do you plead on that?

19 MR. GILBERT: Guilty, Your Honor.

20 THE COURT: Next one I have is larceny in excess of
21 \$5,000. Occurring in Darlington County. You along with
22 Bobby Gilbert and Jamie Gilbert did on January the 17th
23 2007 feloniously take and carry away the personal goods of
24 Tyrone Cornelius Brown of a value of more than \$5,000.
25 Property described as a 2002 Honda Accord done with intent

1 to deprive the owner permanently of such property. You
2 could receive ten years on that charge. How do you plead?

3 MR. GILBERT: Guilty, Your Honor.

4 THE COURT: Next offense was originally for murder.
5 You're entering a plea to a lesser included offense of
6 voluntary manslaughter which could carry up to a maximum
7 of 30 years. The indictment alleges that you along with
8 Bobby Gilbert and Jamie Gilbert in Darlington County on or
9 about January the 17th 2007 did feloniously, willfully and
10 with malice aforethought kill one Tyrone Cornelius Brown
11 with blunt force trauma to the head and by running over
12 the victim with an automobile. And that the said Tyrone
13 Brown did die in Darlington County as a approximate result
14 thereof.

15 Everything would be present in the -- in that crime
16 as far as the elements that were just described to you
17 except that you don't have to have malice aforethought for
18 voluntary manslaughter. How do you plead to that offense?

19 MR. GILBERT: Guilty, Your Honor.

20 THE COURT: You understand that by entering a plea of
21 guilty you waive your constitutional right to a jury
22 trial?

23 MR. GILBERT: Yes, sir.

24 THE COURT: If you were to have a trial the State
25 would have to prove your guilt beyond a reasonable doubt.

1 and convince 12 jurors unanimously of your guilt?

2 MR. GILBERT: Yes, sir.

3 THE COURT: You would have the right to cross-examine
4 the State's witnesses through your attorneys.

5 MR. GILBERT: Yes, sir.

6 THE COURT: Put up your own defense and witnesses.
7 You could testify at your own defense. You would also
8 have a constitutional right not to testify. If you
9 didn't it couldn't be held against you and I'd tell the
10 jury that.

11 MR. GILBERT: Yes, sir.

12 THE COURT: You understand that you would have -- you
13 would be presumed innocent, and that presumption of
14 innocence would stay with you through any trial and only
15 end if a jury convicted you.

16 MR. GILBERT: Yes, sir.

17 THE COURT: If the jury did convict you you would
18 have a right to appeal just as you can appeal a guilty
19 plea as long as you file a notice of appeal within ten
20 days of sentencing.

21 MR. GILBERT: Yes, sir.

22 THE COURT: Of course, you could be represented at
23 all stages of a trial but by attorney.

24 MR. GILBERT: Yes, sir.

25 THE COURT: Now, any questions about your trial

1 rights?

2 MR. GILBERT: No, sir.

3 THE COURT: You understand them?

4 MR. GILBERT: Yes, sir.

5 THE COURT: You've discussed it thoroughly with your
6 attorneys?

7 MR. GILBERT: Yes, sir.

8 THE COURT: You do not want a trial?

9 MR. GILBERT: No, sir.

10 THE COURT: Are you under the influence of any drugs
11 or alcohol or medication?

12 MR. GILBERT: No, sir.

13 THE COURT: Any mental or physical difficulties that
14 might be affecting your understanding in any way?

15 MR. GILBERT: No, sir.

16 THE COURT: You understand what you're doing?

17 MR. GILBERT: Yes, sir.

18 THE COURT: Has anybody promised you anything or
19 threatened you in any way in order to get you to plead?

20 MR. GILBERT: No, sir.

21 THE COURT: You're entering this plea of your own
22 free will and accord?

23 MR. GILBERT: Yes, sir.

24 THE COURT: Nobody is making you do it?

25 MR. GILBERT: No, sir.

Colloquy

9

1 THE COURT: Most importantly, you're pleading guilty
2 because you are guilty?

3 MR. GILBERT: Yes, sir.

4 THE COURT: You got any questions whatsoever about
5 the charges I've gone over and the possible punishment?

6 MR. GILBERT: No, sir.

7 THE COURT: All right. You discuss the -- all of
8 this with your attorney to your satisfaction?

9 MR. GILBERT: Yes, sir.

10 THE COURT: And you are satisfied with their
11 services?

12 MR. GILBERT: Yes, sir.

13 THE COURT: They've answered all your questions?

14 MR. GILBERT: Yes, sir.

15 THE COURT: Contacted everybody you asked them to
16 contact?

17 MR. GILBERT: Yes, sir.

18 THE COURT: Any problem with their representation I
19 need to hear it now.

20 MR. GILBERT: No, sir.

21 THE COURT: I find your pleas freely, voluntarily and
22 intelligently entered into, and you've had the services of
23 a competent attorney with whom you say you're satisfied.
24 The plea is therefore accepted.

25 MR. REDMOND: Thank you, Your Honor. May it please

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1 the Court. This offense occurred on -- it started on the
2 16th of January, 2007 about a after -- less than a month
3 after the defendant turned 17 years old. The three people
4 involved in this incident, this defendant and his cousin,
5 his first cousin, Bobby Gilbert, who is awaiting trial
6 next week, had actually discussed robbing the victim in
7 this case. That victim being Tyrone Brown.

8 I have several members of Mr. Brown's family. And in
9 fact I indirectly know him through my fiance, and let me
10 just say on their behalf that this was a very shocking
11 incident and traumatic to everybody involved. That being
12 said, Your Honor, this incident again occurred on the 16th
13 of January at which time -- prior to that the defendant
14 and his cousin had discussed robbing Mr. Brown.

15 They -- on the 16th Bobby Gilbert calls Tyrone Brown
16 to come From Florence to Farmington Apartments in
17 Hartsville to pick him up. He picked up the defendant and
18 his cousin, Bobby Gilbert. They go a piece in Darlington
19 County, and then subsequently Bobby Gilbert said for
20 forgot his keys. So they ended up going back to
21 Farmington Apartments. They were headed towards the Oaks
22 Community in Darlington County. Turned back and went to
23 Farmington Apartments. That's where they got up with
24 Christopher Sanders. He's also already previously entered
25 a plea in this case.

1 They picked up Mr. Sanders and then they all go back
2 out to the Oaks Community on Sandbox Road. They go to a
3 residence on Sandbox Road at which time that's when the
4 defendant began to beat on Mr. Brown in an attempt to rob
5 him initiated by Bobby Gilbert with the other two joining
6 in.

7 Mr. Brown attempted to flee, and in fact they
8 actually gathered him. They took him across the street
9 where that continued to beat him, tried to stuff him in a
10 trunk. His maced them. He ended up -- he was fighting
11 for his life at that point and was begging them not to
12 continue with this.

13 Subsequent to that, Judge, or during the same coarse
14 of time they then, once they got him there, there was a
15 cement block across the street on Sandbox. Bobby Gilbert
16 smashes the victim's head several times with that concrete
17 block. We've got evidence. We did recover that block and
18 have evidence from that block that would be offered in
19 corroboration at trial.

20 It doesn't end there. Then they take him and they
21 drive to Cornfield Road which I a couple of miles from
22 Sandbox where Mr. Gilbert [sic] was smashed and stuffed in
23 the trunk. Again, after his head was smashed. They take
24 him to Cornfield Road, but they don't dump him there.
25 They're trying to find a place to dump him. So then they

1 come back across the pond. End up dumping him in a -- on
2 Sandbox Road further down the road in a creek in the
3 woods. In a wooded area. He was there for several days.

4 His sister -- this is Teresa Hennigan. She's a
5 sergeant with the Florence County Detention Center. They
6 leave after they dump him, come back with his car, come
7 back to Hartsville and basically milling around. Well, a
8 friend of Mr. Brown's actually sees that car a few day
9 later after he's been reported missing. Sees the car
10 riding around Hartsville.

11 Calls Hartsville Police Department and they actually
12 initiated a traffic stop, and that's where they found the
13 defendant and a juvenile female in the car at the time.
14 She was actually driving the car when the car was stopped.
15 And that was the break that led us to the chain of events
16 that resulted in finding the body of Tyrone Brown.

17 In fact Bobby Gilbert, all the defendants were
18 brought in for questioning. Bobby Gilbert ended up taking
19 law enforcement out to those areas out in the Oaks
20 Community where this all occurred. I did fail to mention
21 one very important part. On Cornfield Road, and I
22 apologize for missing this, but this especially ties into
23 this defendant's role.

24 He actually ran over, at the direction of Bobby
25 Gilbert, he runs over, after Mr. Brown's head is smashed,

1 they go out to Cornfield Road and Bobby Gilbert instructs
2 this defendant to run over the victim which he does. So
3 the victim is also run over in his own vehicle. And then
4 they put him back in the trunk and take him back to
5 Sandbox Road and dumped him at that creek.

6 Finally, all of the defendants were apprehended. The
7 body of Mr. Brown was found. The defendants were
8 apprehended and questioned. This defendant in July of
9 last year gave a very detailed statement to Mike Bovan at
10 S.L.E.D. I have had the opportunity to review that
11 particular statement outlining the events that I have
12 described and actually outlining them in much more detail
13 than I have described.

14 Obviously, we are anticipating his cooperation at the
15 trial of his cousin, Bobby Gilbert, next week which is why
16 we are asking that the sentencing be withheld. Your
17 Honor, I have talked to the family. They understand that
18 this is just the plea being taken and that at the
19 sentencing, obviously, they're going to have a lot that
20 they're going to want to express to the Court and would
21 ask the Court to retain jurisdiction.

22 THE COURT: Okay. Anything.

23 MR. JONES: Your Honor, two things. Number One, Mr.
24 Gilbert and I spoke yesterday, and I have a two stage
25 affidavit outlining the rights that you just went over

1 with him which I would like to make a part of the record
2 if we could, please. And also Mr. Gilbert is here with
3 his mother both of whom have asked me if this is the
4 appropriate time to make apologies. They -- Mr. Gilbert
5 certainly does want to do that. I told him as the
6 Solicitor just said that probably is appropriate any time
7 but more appropriately at the sentencing.

8 THE COURT: Sure. No problem.

9 (WHEREUPON, Court's Exhibit No. 1 was marked for
10 identification and received into evidence.)

11 MR. JONES: But I did want to convey to the family
12 that he certain has remorse and wants to apologize to
13 them.

14 THE COURT: All right. Before we do that. Now, you
15 heard the basic facts outlined by the Solicitor?

16 MR. GILBERT: Yes, sir.

17 THE COURT: Are they correct?

18 MR. GILBERT: Yes, sir.

19 THE COURT: Okay. All right.

20 MR. GILBERT: First off I want to apologize to the
21 Court for any inconvenience I caused last time in
22 Chesterfield County. I want to apologize to the victim's
23 family because I didn't really realize how serious this
24 whole situation was until I sat down and thought it. And
25 that's why I'm here today to man up and take

1 responsibility. But I do want to apologize because I
2 tried to put myself in y'all shoe's to see where y'all
3 were coming from, and I do understand where y'all are
4 coming from. And I really can't express how sorry I am
5 for this and what happened, but hopefully it will all work
6 out.

7 MR. JONES: That's all we have. I think his mother
8 is going to speak at a later time.

9 THE COURT: Well, I appreciate everybody being here,
10 and we will conclude it. That case will be tried next?

11 MR. REDMOND: Next week. Starting Monday. We're
12 pulling the jury in Darlington on Monday.

13 THE COURT: Okay. See y'all sometime after that.

14 MR. REDMOND: Thank you, Your Honor.

15 MR. JONES: Thank you very much.

16 END OF TRANSCRIPT OF RECORD

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- RECEIPT FOR EXHIBITS

CASE NO. 0865161029/30 JUDGE PAUL BURCH
 PLAINTIFF: STATE PLTF'S ATTY. K REDMOND
 DEFENDANT: JAMIE GILBERT DEF'D ATTY. V JONES
 DATE TRIAL STARTED: 4-22-09 DATE TRIAL ENDED: 4-22-09

Received of H. GORDON, Court Reporter for the above case,
 these exhibits:

C. CLIENT/ATTY CHECKLIST

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for Clerk of
Court's use

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This 22nd day of Apr 2009
DILLON
 COUNTY CLERK OF COURT

Page 1 of 1

By: _____

THE CLERK OF COURT WILL RETAIN THE WHITE COPY OF THIS RECEIPT IN CIVIL CASES.

THE CLERK OF COURT WILL RETAIN THE PINK COPY OF THIS RECEIPT IN CRIMINAL CASES.

THE STATE VS. Jamie Gilbert COURT OF GENERAL SESSIONSINDICTMENT (S) # 08-GS-16-1030
07-GS-16-0648 DEFENSE ATTORNEY JRJ / Rosalind Sellers
08-GS-16-1029 SOLICITOR Sherric Baugh / Kennard Redmond
09-GS-16-0632The Defendant desires to plead guilty to Voluntary Manslaughter Armed Robbery, Grand
and swears to the court that the answers to the following are true: Larceny >5000, Criminal
Conspiracy

1. The Penalty(ies) for my charge(s) is/are: 30 years, 10-20, 10 years, 5 years
2. The maximum sentence I could get is: 75 years (if consecutive)
and that I may be required to serve every day of the sentence imposed. I understand that
the South Carolina Department of Corrections will determine when I am to be released.
My attorney has not made a promise as to my release date and can't. J.D. (int.)
3. Has the State agreed to recommend a sentence to the Judge? YES NO ☒
If so, what is the recommendation? _____
4. Has anyone promised you anything else, threatened you or put pressure on you to get you
to plead guilty? YES _____ NO ☒
If so, who and what? _____
5. Have you taken any medicine, drugs or alcohol within the last 24 hours? YES NO ☒
If yes, explain. _____
6. Are you aware of any emotional, physical or nervous problems that might impact on your
understanding of this plea? YES NO ☒
If yes, explain. _____
7. Do you understand that if you plead NOT GUILTY you have that right to have the help of
a lawyer at all stages of the proceedings, even if you cannot afford to employ one?
YES ☒ NO _____
8. Do you understand that when you plead guilty you give up the right to a jury trial?
YES ☒ NO _____
9. Do you understand that in a trial you would be presumed innocent until the State proved
you to be guilty beyond a reasonable doubt and all jurors unanimously agreed on your
guilt? YES ☒ NO _____
10. Do you understand that in a trial you have the right to see and hear all witnesses called to
testify against you and to confront, cross examine and question them?
YES ☒ NO _____

11. Do you understand that in a trial you have the right to take the witness stand and to testify or not take the witness stand as you choose, and that you cannot be required to take the witness stand? YES ✓ NO
12. Do you understand that if you plead NOT GUILTY and that if you do not take the witness stand, they the jury cannot take that as evidence against you? YES ✓ NO
13. Do you understand that if you plead Not Guilty you have the right to use the subpoena power of the Court to get the attendance of any witnesses on your behalf at a trial whether they want to come or not? YES ✓ NO
14. Do you know that if you plead Guilty you will be found guilty without a trial and you will have given up all the rights mentioned in questions (9) to (14) along with your right to present any defense(s)? YES ✓ NO
15. Have you made any statements in which you admitted all or any part of the crime(s) to which you want to plead guilty? YES ✓ NO
- If yes, would you plead guilty if you knew the statements could not be used against you? YES ✓ NO
16. If you are on Parole or Probation, do you know this plea could result in a revocation? YES N/A NO
17. Has your lawyer gone over your rights and all circumstances of the charge(s) with you? YES ✓ NO
18. Are you satisfied with your lawyer YES ✓ NO
19. Do you understand what you are doing and all the rights you are giving up? YES ✓ NO
20. Are you pleading freely and voluntarily? YES ✓ NO
21. Do you understand that you have a right to appeal from your sentence based on your plea but you must do so within 10 days of the date of the sentence? YES ✓ NO

Jamie Dillert
Defendant's Signature

Sworn before me this 21st day of April, 2009 at
Darlington, South Carolina.

[Signature]
Notary Public for South Carolina.

My commission expires 2/14/2015.

Sentence

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSION
COUNTY OF DARLINGTON	)	2007-GS-16-0648
		2008-GS-16-1029
		2008-GS-16-1030

STATE OF SOUTH CAROLINA	)	
PLAINTIFF	)	
vs.	)	TRANSCRIPT OF RECORD
JAMIE GILBERT	)	
DEFENDANT	)	

June 3, 2009
Chesterfield, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

KERNARD REDMOND, ASSISTANT SOLICITOR
Attorney for the State

RICHARD JONES, PUBLIC DEFENDER
Attorney for the Defendant

BARBARA BROOKS, Defendant's Mother
THERESA HENNEGAN, Victim's Sister

HATTIE O. GORDON
Circuit Court Reporter

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

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COLLOQUY

1
2 MR. REDMOND: May it please the Court, Your Honor.
3 Before you at this time is Jamie Gilbert under
4 2007-GS-16-648 for armed robbery, -1029 for grand larceny
5 and -1030 which was for murder, but he is being sentenced
6 and pled -- excuse me, he pled to voluntary manslaughter.
7 There is no recommendation on this, but at the appropriate
8 time, Your Honor, I do like -- I would like to address the
9 Court regarding Mr. Gilbert's situation which is a little
10 different in that he did testify at the trial of Bobby
11 Gilbert the last week of April over in Darlington.

12 That did result in a conviction and life sentence for
13 Mr. Gilbert, and I can tell the Court that, and I'll be
14 brief with the Court, I hadn't gotten back into the
15 factual background as Your Honor had actually heard the
16 plea in Mr. Gilbert's case and retained jurisdiction.

17 The defendant, of course, you can probably recall,
18 Your Honor, that we had, and I think it was three times
19 that we attempted to take the plea, and finally the third
20 time in Dillon the plea was completed -- was taken. Then
21 we had came -- then we came to the trial, and I've told
22 Ms. Hennegan, and they were present during the trial, and
23 quite frankly, his testimony I believe resulted in the
24 conviction of Bobby Gilbert, his cousin.

25 And I've told Ms. Hennegan and we discussed it at the

1 time that as far as lay witnesses goes that was probably
2 one of the best witnesses I've ever had to testify as far
3 as being forthcoming, discussing his own inadequacies and
4 even volunteering some information that would not have
5 been admissible regarding juvenile convictions which he
6 volunteered to the jury on cross-examination.

7 But that being the case, Your Honor, again, he is
8 pleading. There is no recommendation, but in fairness I
9 do have to state that this defendant helped the State
10 immensely, and I can tell the Court that a conviction
11 would not have been possible without his testimony. He
12 was the only one of the defendants -- I did not call Mr.
13 Samuels, but after talking with him and reviewing his
14 videotaped statement I decided to call him.

15 And fortunately that decision paid off. So I'd ask
16 you to take that into consideration. Of course, Ms.
17 Hennegan will at the appropriate time want to address the
18 Court. But I'll close by saying this; that as difficult
19 as it was to getting them to take the plea, quite frankly,
20 that's how good he was in testifying.

21 And so I was pleasantly surprised at how forthcoming
22 he was and how, even as he was explaining to the jury, I
23 mean his eye contact with the jury. I mean things that
24 you normally have to discuss with witnesses. I mean it
25 was clear and the jury believed that he was telling the

1 truth. And in fact we got a conviction on that in a
2 little over an hour in that particular case. I just want
3 to make the Court aware of that, and I'm sure that
4 Mr. Jones and, again, Miss Hennegan wants to address the
5 Court at the appropriate time.

6 THE COURT: All right. Let me back up here. Now,
7 Mr. Samuels, I'd already accepted his plea?

8 MR. REDMOND: He had pled, and I didn't put that on
9 the record, Judge, but Mr. Samuels -- I don't remember
10 which judge it was. Judge Goodstein took the plea but did
11 not retain jurisdiction on that.

12 THE COURT: So she covered the voluntariness?

13 MR. REDMOND: All of was covered there when she did
14 it in Dillon.

15 THE COURT: And this one, I did it?

16 MR. REDMOND: You did do it, yes, sir. We did it in
17 Dillon. Matter of fact we did it I think during the week
18 or after we finished that Sedrick Hayes Trial. We brought
19 him over and took that plea.

20 THE COURT: Mr. Jones.

21 MR. JONES: And that's correct, Your Honor. I
22 repeat, if you don't mind, several of the things I said
23 then and if -- you probably do not recall, but at that
24 time Mr. Gilbert was very forthcoming with the Court. He
25 apologized to the Court. The sequence of events as I

Colloquy

7

1 recall Mr. Gilbert and perhaps the other defendants gave
2 statements in Columbia.

3 MR. REDMOND: In July.

4 MR. JONES: In July.

5 MR. REDMOND: Of last year.

6 MR. JONES: Of last year. At that time it was
7 anticipated that Mr. Gilbert was pleading. He is a very
8 young man. He was very frightened. He was very uneasy.
9 He did not plead initially. He came up here one afternoon
10 and same thing happened. He was very tentative, and it
11 was called off. When I came to Dillon, I don't know if
12 you recall, but he apologized to you for wasting the
13 Court's time here in Chesterfield on that previous
14 occasion.

15 In addition to that, although we had discussed that
16 it was not the appropriate time, he wanted to make sure
17 that this family knew that he was very sorry for his
18 actions and his part in this awful crime. I watched Jamie
19 testify. He is -- he was as honest as he could be. He
20 told it like it was in vivid detail, and it wasn't pretty,
21 Your Honor. It really wasn't.

22 He was 17 when this happened. I think he was 30 days
23 past his 17th birthday when this happened. He had not
24 finished school. He had not been working. He's been in
25 jail since that time, and I think he was arrested the same

1 day, 863 days ago at the Darlington County Detention
2 Center. His mother has been very supportive. He actually
3 had several other family members outside that did not know
4 that proper dress code. I think they're wearing shorts
5 and was not allowed to come in. He has good family
6 support. He I think told you in Dillon that he did not
7 have any job skills. He had -- he has a long ways to go,
8 Your Honor.

9 He knows that he's got time to serve. He knows that
10 if he is able to take advantage of certain things within
11 the correctional system he may be able to obtain some
12 skills when he gets out. We would certainly ask you
13 consider a sentence in the neighborhood of what
14 Mr. Samuels received as a result of his cooperation.

15 Like I said, and I've know Mr. Redmond a long time.
16 When he tells me that this is as good a witness as he has
17 ever had. He's got a lot of cases, and Jamie did a good
18 job. He really did.

19 MR. REDMOND: Now, and I do need to at least say that
20 one of the reasons he pled to the manslaughter was because
21 at that direction of the main defendant, Bobby Gilbert,
22 this defendant, just so the Court will be clear for
23 recollection what this defendant's role was, he did not
24 hit the victim, Mr. Brown, with the brick initially. The
25 concrete block they went out to the Oak Section of the

1 community of Darlington County, attempted to rob him, and
2 then at that point went across the street, Bobby Gilbert,
3 several times with concrete block that was recovered
4 thanks to Chris Samuels. Beat him over the head.

5 He was put in the trunk, driven to another section,
6 and at that point the defendant, Bobby Gilbert, directed
7 this defendant to run him over several times. I don't
8 remember how many times. So that's why he pled to
9 voluntary manslaughter, this defendant, because he was the
10 one that ran him over on Cornfield Road in the Oak
11 Section.

12 And then so that's why, just to clarify for the
13 Court, that's why Chris Samuels pled to accessory, and
14 that's why this defendant pled to voluntary manslaughter.

15 MR. JONES: And if I can add one thing. Mr. Jamie
16 Gilbert and Mr. Bobby Gilbert are cousins, and Bobby is 32
17 years-old. So there is a fairly significant age
18 difference between the two of them. Between these 17 year
19 olds, and Mr. Gilbert who was sentenced to life because he
20 was 30 something.

21 MR. REDMOND: That's correct, life plus 30.

22 THE COURT: What part did Mr. Samuels take in it
23 other than ---

24 MR. REDMOND: Well, and just to go back. There was
25 discussion and this is based on the testimony of

1 Mr. Gilbert and Chris Samuels' statement, Bobby Gilbert
2 and Jamie Gilbert had discussed robbing the victim prior
3 to the incident. They called him. They were in
4 Hartsville at the Farmington Apartments. Called the
5 victim, Tyrone Brown, who came from another section of
6 Darlington County to pick them up. He picks them up.

7 They start to leave going towards Oaks, but then
8 Bobby Gilbert realizes that he had forgotten a gun that he
9 had. So they go back to Farmington Apartments. That's
10 when they pick up Chris Samuels, and Chris Samuels rides
11 out there with them. And when they get to this residence
12 out in the Oak Section off of Una Road, I believe.
13 Sandbox Road, excuse me.

14 Then they -- that's when they commence to beating and
15 attempting to rob Mr. Brown. And then subsequent to that
16 they try to put him in the trunk. One of them stands on
17 the trunk as they drove across to road, and there was a
18 concrete block. And it was at the direction of Bobby
19 Gilbert, and that's when Bobby Gilbert got him out the
20 trunk, and that's when Bobby Gilbert beat him with the
21 concrete block.

22 Incapacitates him. Dr. Janice Ross testified that
23 that very well -- the nature of those injuries would have
24 been a cause of death as would the running over. If
25 memory serves me correctly, Your Honor, and I don't have

1 the autopsy report right in front of me, but if memory
2 serves me correctly, the determination was that the block
3 actually would be what caused of death at that particular
4 time. They didn't know that. So that's why he was run
5 over to make sure that he was dead.

6 And they subsequently leave the scene, return in the
7 victim's car dump him. I didn't mention this but dumped
8 him out further down Sandbox Road in a wooded area, swampy
9 area about 25 feet in, and left in the victim's car. The
10 defendant -- this defendant and Bobby Gilbert actually
11 kept riding in the car. They dropped Chris Samuels off.
12 Don't see him again and then they go between Florence and
13 I forget where else, Florence, Hartsville.

14 And then this defendant subsequently ends up with the
15 car, and the next morning is when he was stopped by
16 Hartsville P.D. after a friend of the victim, who had been
17 looking around Farmington Apartments to see if he could
18 find the car, spotted the car and calls Hartsville P.D.
19 and they actually stopped the car. And he actually had a
20 juvenile girl. I think she was 13 year old.

21 She was driving the car at the time that the car was
22 stopped going back in Farmington Apartments.

23 MS. HENNEGAN: Your Honor, Jamie did testify in this
24 trial and got a lot of the details out during the trial.
25 One thing that I definitely remember is his description of

1 how he turned the music up, put the car in drive, and
2 reversed and ran over him. Put it back in reverse and ran
3 over him several more times. He could not recall how many
4 times his ran over Tyrone. Tyrone sustained numerous
5 broken bones throughout his body, arms, legs, ribs, a
6 fractured skull.

7 Although we are appreciate the fact that he did
8 testify he was caught in the vehicle at the time when it
9 was discovered. He did not just come forward and tell
10 what happened in the beginning. It took over a year,
11 almost two years, before he actually really started to
12 cooperate with the prosecution. I believe he did this to
13 protect himself because of the severity of the charges
14 that was facing him.

15 My family and I we drove to three different locations
16 to hear a plea, and he did not plea at those hearings
17 until we finally made it to Dillon County. So this wasn't
18 just, you know, an easy transition. Although I appreciate
19 his testimony he did talk about his part in that crime,
20 and I definitely want it to be taken into consideration.
21 That he did drive over him.

22 He did not, you know, after the fact say, "I'm
23 scared. I really need to tell somebody." He waited until
24 he was apprehended and incarcerated for a long time before
25 he actually came forth with what happened to my brother

1 that night. And, again, Tyrone is not here with us today.
2 He was employed working as a beautician. He was ready to
3 go to work the next day, but his life was ended after he,
4 you know, went out to help a friend who was actually his
5 older cousin give him a ride.

6 They planned to rob him. He was a willing
7 participant in that. I don't know if he knew about the
8 death prior to that happening but he is definitely not
9 innocent in this crime. And we want justice to be served
10 in this courtroom today cause Tyrone will never be back
11 with us.

12 THE COURT: Anything you'd like so say?

13 MR. GILBERT: Yes, sir, Your Honor. First off, I
14 want to, like I said before, I apologize. I mean right
15 now words, I can't even explain how truly sorry I am for
16 putting y'all through something. Not only y'all but my
17 family as well, as well as myself. I do understand the
18 consequences of what should be served, and I do agree
19 cause my actions that was taken, not because I'm standing
20 here today, but it was because I was willing to do.

21 I go want to apologize and ask that the Judge have
22 mercy upon me for that.

23 THE COURT: Yes, ma'am.

24 MS. BROOKS: I, too, would like to apologize to the
25 victim's family. My heart goes out to everybody. I could

1 only imagine what they're going through. And at the same
2 time, not to diminish that to anyone, it has been turmoil
3 on our family as well. Never expected anything like this
4 to ever come about, and for him to have a part in it has
5 been devastating to my whole family. I ask for mercy. I
6 ask that the family can somehow come to closure and find
7 some compassion although it was evident that it was not
8 shown to your victim.

9 During that time, and I guess it would be selfish of
10 me to say that I would like for the Judge to give him a
11 light sentence because I do wish that he would be free one
12 day during my lifetime so I can see him go to his
13 potential. Cause I just know it's been a hard time for
14 everybody and I do appreciate the Court giving us time to
15 say something.

16 THE COURT: Well, I appreciate all of y'all being
17 here, and I know it's hard.

18 MR. REDMOND: For the record that's Barbara Brooks,
19 the defendant's mother.

20 THE COURT: His testimony was essential to the
21 conviction in your opinion?

22 MR. REDMOND: It was, Your Honor, because based upon
23 talking with each of the codefendants and, of course,
24 after making assessments on where I think would be the
25 most credible for the jury's standpoint and, quite

1 frankly, based on the detail that this defendant was
2 willing to provide. It was, quite frankly. It was --
3 cause the defendant gave a statement, but it was not a
4 confession. It was basically trying to put everything off
5 on the other two. And, actually, other two, especially
6 through Jamie's testimony, were able to fill in those
7 gaps.

8 And corroborating evidence shows that the defendant,
9 that Bobby Gilbert, was actually not being forthcoming in
10 his statement and we were not -- have been able to get
11 that if Jamie had not testified.

12 THE COURT: Well, clearly the ring leader and the
13 initial attacker?

14 MR. REDMOND: Was Bobby Gilbert.

15 THE COURT: He stood trial and he's been ---

16 MR. REDMOND: Life plus 30 years, yes, sir. He got a
17 life sentence.

18 THE COURT: No doubt in your mind that if he had not
19 instigated all this these other guys probably would not
20 have been standing here today?

21 MR. REDMOND: I would agree with that. He was 32 or
22 34 that the time, and the two codefendants were 17 years
23 old. Chris Samuels just literally happened to be there
24 that night, and they didn't even know him well at all.
25 And the defendant, Bobby Gilbert, brought it up to Jamie

1 about robbing. And based upon his cooperation and
2 forthcoming attitude once we got to a certain point in
3 this process and we didn't have any reason to believe that
4 he was not being credible with us.

5 THE COURT: Well, he deserves to be treated a little
6 differently. He needs some leniency and mercy because he
7 did assist the State. But on the other hand the callus
8 act, to turn a radio up and just run over somebody, not
9 knowing whether they were dead or alive just to mutilate a
10 body.

11 MR. REDMOND: And therein lies the quandary, Your
12 Honor, unfortunately. The fact that the act itself was so
13 heinous as Miss Hennegan indicated. But for the purpose
14 of so seeking full justice in this case we needed his
15 cooperation, and that's where we stand.

16 SENTENCE OF THE COURT

17 THE COURT: Well, we'll just have to measure it out
18 the best we can. With the three stack in line see who
19 should get what. Most culpable has been dealt with. It's
20 a tough one. But it's awful callus. I'm going to
21 sentence you on the voluntary manslaughter and armed
22 robbery to 23 years. Maximum on grand larceny, five.
23 They're all concurrent and get credit for your jail time.
24 If you had not stepped forward and helped I got a feeling
25 that you would have been convicted of murder based on the

Sentence of the Court

17

1 third defendant's testimony.

2 And that by taking the action that you have done I
3 think you probably will have a little life left to where
4 you can make something out of yourself instead of like the
5 oldest one who is gone forever. He will be a ward of the
6 State for the rest of his days. Good luck to y'all.

7 MR. REDMOND: Thank you, Your Honor.

8 END OF TRANSCRIPT OF RECORD

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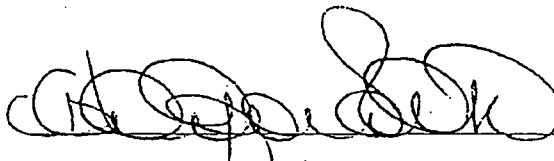
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Darlington County, South Carolina, on the 3rd day of June,
2009.

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

November 3, 2009



HATTIE O. GORDON, Court Reporter

FORM 5

0901160639

STATE OF SOUTH CAROLINA

County of DarlingtonSamie Gilbert #335126

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

APR 11 2015 2:28 PM
 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

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 Lee Correctional Institution
2. Name and location of Court which imposed sentence I plead in Dillon but was convicted in Chesterfield County Courthouse (General Sessions)
3. Name(s) of co-defendant(s) (if any) Bobby Gilbert and Christopher Samuel
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 08-AS-16-1030 (Voluntary manslaughter)
 - (b) 08-AS-16-1029 (Grand Larceny)

(c) 07-GS-116-0648 (Armed Robbery)

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

(a) June 3, 2009

(b) 23 years 85%

(c) non-eligible

6. Check whether a finding of guilty was made:

(☒) after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

NO

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

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

i.

ii.

iii.

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

i.

ii.

iii.

(c) the date of each such result:

i.

ii.

iii.

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

i.

ii.

iii.

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

(a) lawyer never informed me that I had the right to appeal.

(b)

09 100639

(c) _____

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

- (a) Ineffective Assistance of Counseling
- (b) Plea was not voluntarily and intelligently made
- (c) _____

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

- (a) My attorney didn't investigate my case properly. I had 3
- (b) attorneys at the Public Defender's Office and I never had
- (c) the lawyer/client relationship with none of them. That is partial
the reason why I plead guilty.

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

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No _____

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

(a) which grounds have been presented:

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

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

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

09 02 16 0639

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) Nobody ever informed me of these things and my
- (b) attorney never filed for a motion on my behalf. At
- (c) least not one that I know about

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

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

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. Rich Jones, Public Defender Corporation, P.O. Box 648
Darlington, S.C. 29540
 - ii. Rosalind Sellers
Address Unknown
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment
 - ii. Plea
 - iii. Sentencing

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

I am seeking a sentence reduction. Or possibly my case
overturned.

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

No

STATE OF SOUTH CAROLINA)

County of Darlington)

VERIFICATION

I, Jamie Gilbert #335126, 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.

Jamie Gilbert #335126

SWORN to and subscribed before me this 20
 day of Aug., 2009.

Cynthia Gilbert
 Notary Public

(L.S.)

My Commission Expires: 10-31-2015

89-2-139839

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

I, Jamie Gilbert #335126, 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.

Jamie Gilbert #335126
Applicant

SWORN or affirmed to and subscribed before me this
19th day of August, 2009.

Cynthia Walker
Notary Public

My Commission Expires: 10-31-2015

FILED
2009 AUG 28 PM 11:34
JILL B. SUGGS
CLERK OF COURT/R.D.
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF DARLINGTON)

C.A. No. 2009-CP-16-0639

Jamie Michael Gilbert,)

S.C.D.C. No. 335126,)

Applicant,)

RETURN

v.)

State of South Carolina,)

Respondent.)

In response to the post-conviction relief application filed August 29, 2009, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Darlington County Clerk of Court's orders of commitment. The Darlington County Grand Jury indicted the Applicant at the January 2007 term of General Sessions for armed robbery (2007-GS-16-0648) and at the July 2008 term for grand larceny (2008-GS-16-1029) and murder (2008-GS-16-1030). J. Richard Jones, Esquire represented the Applicant.

On April 22, 2009 before the Honorable Paul M. Burch. Sentencing was deferred until a later date. On June 3, 2009, Judge Burch sentenced the Applicant to concurrent terms of twenty-three (23) years for armed robbery, ten (10) years for grand larceny, and twenty-three (23) years for voluntary manslaughter. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Darlington County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The guilty plea and sentencing transcripts will be

forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel:
 - a. Failure to investigate.
 - b. Lack of a lawyer/client relationship.
2. Involuntary guilty plea.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

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

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

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant 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 Applicant would not have pled guilty and would have insisted on going to

trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

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)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

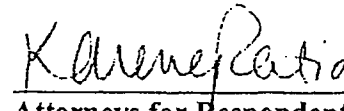
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

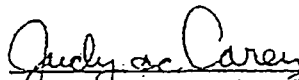
October 27, 2009

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2009-CP-16-0639
	)	
JAMIE MICHAEL GILBERT, 335126	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

**Jamie Michael Gilbert, 335126
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010**

DATED this 27th day of October, 2009.


Judy A.C. Carey, Legal Assistant
For Respondent

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
JAMIE MICHAEL GILBERT	)	JUNE 9, 2011
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
THE STATE OF SOUTH CAROLINA	)	2009-CP-16-639
	)	
DEFENDANT.	)	
_____	)	

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

APPEARANCES

Karen C. Ratigan, Esquire
Attorney for The State

Charles T. Brooks, Esquire
Attorneys for the Defendant

Pamela Ozment-Cartee
Circuit Court Reporter

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1 (Whereupon, this trial began at 11:50 a.m.
2 on Thursday, June 9, 2011.)

3 **THE COURT:** Are you Mr. Jamie Gilbert?

4 **MR. GILBERT:** Yes, sir.

5 **THE COURT:** Very good. Is this going to be a
6 hearing, Ms. Ratigan?

7 **MS. RATIGAN:** I believe so.

8 **THE COURT:** All right. We are here today because
9 you filed a Post Conviction Relief Claim, Mr. Gilbert.
10 Welcome to the courtroom. What we're going to do is we're
11 going to let the Attorney General give us the history of
12 your claim, how you got here today, and then we will move
13 forward into your case. Are you ready to go forward, sir?

14 **MR. GILBERT:** No, sir.

15 **THE COURT:** You're not ready?

16 **MR. GILBERT:** No, sir.

17 **THE COURT:** Okay. First of all, let me hear from
18 counsel. Is there a request for a continuance?

19 **MR. BROOKS:** Judge, he wanted to express his
20 dissatisfaction with me.

21 **THE COURT:** Okay All right. Let's do this.
22 Let's place Mr. Gilbert under oath. Mr. Gilbert, please
23 follow our Clerk's instructions. Just from where you are
24 will be all right. I'm just going to ask you some
25 questions.

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WHEREUPON, JAMIE GILBERT,

FIRST BEING DULY SWORN, TESTIFIES AS FOLLOWS

MR. GILBERT: Yes, I do.

THE COURT: Mr. Gilbert, tell me what is the problem or issue which you tell me you're not able to go forward.

MR. GILBERT: Okay, Your Honor, earlier me and my counsel had a talk and discussion. And, I was trying to explain to him why I felt we needed a continuance. He was trying to tell me that we needed to go forward. And, okay, I've got the letter right here that was sent to Ms. Sellers, telling her that I needed all my files. I have no paperwork, Your Honor, nothing but my motions. I have no paperwork. He sent the paperwork to Ms. Sellers from my files to have all my paperwork, you know, up. I have nothing. So, I'm telling him today I ain't got nothing. I can't move forward when I ain't got nothing. We don't have nothing. We just met today. We ain't got no --- we got a little correspondence through mail. But, I ain't nowhere near prepared. I got a letter right here, Your Honor.

THE COURT: Very good. Mr. Brooks, do you want to respond to that?

MR. BROOKS: Judge, as Your Honor very well knows. I probably do hundreds of PCRs if you want to put a number

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1 on it. As he indicated we have corresponded.

2 This was a guilty plea. And what probably got Mr.
3 Gilbert upset is basically all I did was explain to him,
4 although he's in a bad situation, he could be worse. He
5 was originally charged with murder and armed robbery. He
6 got twenty-three-years.

7 I just explained to him that if we go in here we
8 could possibly prevail, but it actually could put him in a
9 situation where he could get a life sentence. He's
10 approximately twenty-one-years of age. He didn't
11 necessarily like that. Some things you tell people they
12 are the truth, but they don't necessarily like them.

13 I also explained to him that because it was a guilty
14 plea that, that as I always tell my clients, and I use the
15 basketball analogy. When you go to trial there's a lot
16 more you can shoot at in terms of your lawyer. Your
17 lawyer, he or she, didn't file certain motions, and object
18 to certain testimony coming in, things of that nature.

19 In a guilty plea, as Your Honor well knows, the
20 scope, or in this case the hoop gets narrow. Did you
21 understand what you were doing? And obviously then it
22 goes back to the transcript. And obviously the Court's
23 conversation with the Judge.

24 I did explain to him, I said, now, if you really want
25 to continuance I'll ask the Court. I did tell him my

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1 experience with Your Honor dealing with a guilty plea.
2 All I did was, I said, look, based on my experience with
3 the judge and the guilty plea it's probably my opinion,
4 only my opinion, that Your Honor probably would not grant
5 that continuance.

6 We were having these courses of conversation and
7 those are things that I would presume my client didn't
8 like to actually hear.

9 **THE COURT:** Alright, very good. Ms. Gilbert, do
10 you want to be heard by way of Ms. Ratigan --

11 **MS. RATIGAN:** -- Just very briefly. The victims
12 have been waiting very patiently all day. We've got the
13 witness here. Not only did Mr. Gilbert plead guilty, he
14 also testified about his involvement at a co-defendant's
15 trial. We would argue that he hasn't articulated a good
16 reason for a continuance at this time.

17 **THE COURT:** Mr. Gilbert, I'm going to
18 respectively deny your request for a continuance for this
19 reason.

20 First of all, Mr. Brooks well knows what he's doing,
21 and has represented many individuals at Post Conviction
22 Relief Hearings.

23 The issues on whether or not your lawyer was
24 deficient below, or whether you were prejudiced by that in
25 terms of a guilty plea. Prejudice has been defined by our

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1 Supreme Court, but for your lawyer, you would not have
2 plead in the first place and would have gone to trial.

3 So the issues are fairly clear. The law is fairly
4 clear. And plus the fact that you don't have your
5 paperwork with you should not prevent this case from going
6 forward.

7 We had you transported. Everyone is here today for
8 this. The victims are here as well. And rather than
9 postpone this matter, the Court is going to go forward
10 into the hearing.

11 If at the close of the hearing you believe there is
12 some necessary document that you must have, and wish to
13 leave the record open to submit, then I will hear from you
14 at that time.

15 But as far as today, we are going to go forward.

16 So your Motion for Request of Continuance is denied.
17 All right, sir.

18 **MR. GILBERT:** Can I say something else?

19 **THE COURT:** You can speak to him, if you wish.

20 (Whereupon, a private conversation between
21 counsel and Mr. Gilbert was held off the record.)

22 **MR. BROOKS:** Judge, I want to make sure. You have
23 --- basically what you would indicate you have heard us
24 and my client's request for postponing this matter.

25 **THE COURT:** I heard your client's request for

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1 continuance, and I respectively denied it. We are going
2 to go forward into the hearing, Mr. Gilbert.

3 **MR. GILBERT:** I can't go forward if I have no issue
4 to raise.

5 **THE COURT:** All right. Mr. Gilbert, listen to
6 me now. You can either be in the room with us, or you can
7 be back in the back while we're at the hearing, sir. If
8 you're not going to be cooperative I'm going to eject you
9 from the courtroom.

10 What I'm getting ready to tell you is this, at the
11 end of your hearing, now listen to me, if there is some
12 document you believe is necessary that you don't have
13 today, or some other issue with which we need to leave
14 this record open, I would be glad to hear from you.

15 But you are here today and we're going to take
16 testimony and go forward, and see whether or not, at the
17 end, you believe further information is necessary.

18 All right, that's the Court's decision. Please be
19 seated.

20 Alright, please call your first witness.

21 **MS. RATIGAN:** I'm sorry, may I just briefly
22 introduce the victims for the record?

23 **THE COURT:** If you would, please.

24 **MS. RATIGAN:** This is Teresa Hennigan, and her
25 brother Cedric. They are members of the victim's family.

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1 I believe Ms. Hennigan actually spoke during mitigation.

2 Again, they have been waiting patiently all day and
3 are here to observe.

4 **THE COURT:** All right. Let me speak to the our
5 victim's who are here today. Welcome to the courtroom.
6 You have been patiently waiting this morning.

7 The victims of crime have numerous rights in this
8 process, including the right to be present at a post
9 conviction relief proceeding. I thank you for being here
10 today to see that justice is done, as it is determined to
11 be. We will go forward with the hearing at this time.

12 All right, please call your first witness.

13 **MR. BROOKS:** We would call Mr. Gilbert to the stand.

14 **THE COURT:** All right. Mr. Gilbert, please come
15 forward and take the oath of a witness.

16 **WHEREUPON, JAMIE MICHAEL GILBERT**

17 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

18 **MR. GILBERT:** I do.

19 **THE COURT:** All right. Counsel.

20 **DIRECT EXAMINATION BY MR. BROOKS**

21 Q. Mr. Gilbert, who was your lawyer in this case?

22 A. Bobby Kilgo, Rosaland Sellers, and Rick Jones.

23 Q. Now, you plead guilty in this case; is that correct?

24 A. Yes, sir.

25 Q. And you're asking the Judge here today to set aside

JAMIE MICHAEL GILBERT VERUS THE STATE

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1 that guilty; is that right?

2 A. No, sir.

3 Q. What are you asking for, Mr. Gilbert?

4 A. I had misunderstanding because --

5 Q. -- Let me help you out, let me help you out, let me
6 help you out. Do you know that, and we talked about
7 this, if we win, if we convince Judge Baxley to give
8 you a new trial that you will go back and you will
9 face murder, and all of the other charges that you
10 were originally facing could potentially put you at a
11 life sentence? Not saying you are going to get life,
12 but that is opens up the door. Let me ask you this,
13 Mr. Gilbert. You are a young fellow. You're about
14 twenty-one, right?

15 A. Yes, sir.

16 Q. Have you ever played a computer game before?

17 A. Yes, sir.

18 Q. And you know when you're playing a computer game
19 sometimes you might not like the way the game is
20 going and you can press the reset button and start
21 the game over to the same thing. Do you know what
22 I'm talking about?

23 A. Yes, sir.

24 Q. Well, that is kind of like what we do at a PCR, we
25 are asking Judge Baxley to press the reset button and

JAMIE MICHAEL GILBERT VERUS THE STATE

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1 he is going to decide if you are going to press that
2 reset button for you. Now knowing that, do you want
3 him to press the reset button to give you a new
4 trial?

5 A. Yes, sir.

6 Q. So you want a new trial in this case; is that right?

7 A. Yes, sir.

8 Q. Now, you had these lawyers represent you and you
9 ended up pleading guilty. So you want to press that
10 reset button and take away that guilt plea, right?

11 A. Yes, sir.

12 Q. Why do you want him to do that?

13 A. Because I mean, see that is what I'm talking about.
14 I can't --- I can't --- I can't --

15 Q. -- No, no, no, no, no. Why do you want him to do
16 that? There is a --- in your head that you want him
17 to do that, and tell me why do you want him to do
18 that?

19 A. Because I don't feel that I deserve this time.

20 Q. Why is that?

21 A. I can't prove nothing.

22 Q. No, no, no, no, that's not what I'm asking. Why
23 don't you feel that you deserve this time. That is
24 part of a PCR. I'm trying to help you. You are
25 asking Judge Baxley to press the reset button. Why

JAMIE MICHAEL GILBERT VERUS THE STATE

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1 do you feel that you deserve that time?

2 A. Personal opinion.

3 Q. Personal opinion, is that the only reason you feel
4 like the lawyers forced you to take this --

5 A. -- They --- They --- ineffective, and I'm going to
6 prove that, but I can't prove it if I don't have the
7 paperwork.

8 Q. I'm here. I'm your lawyer. I have proved that
9 lawyers have been ineffective before. Why do you
10 think they were ineffective? Why, is it because you
11 shouldn't have taken that deal?

12 A. Because they didn't challenge my Indictments, which
13 was irrelevant. That is one.

14 Q. That is one reason. They didn't challenge your
15 Indictment. They should have moved to quash the
16 Indictment. Is that right?

17 A. Yes, sir.

18 Q. Why do you think they should have done that?

19 A. Because they was my lawyer. It's more --- I can't
20 really --- if you are my lawyer, you are suppose to
21 do what you are suppose to do. I can't really.

22 Q. What else should they have done? We've got the
23 Indictment issue. What else should they have done?
24 Did they force you to make this deal?

25 A. Yes, sir.

JAMIE MICHAEL GILBERT VERUS THE STATE

13

1 Q. How did they force you to make that deal?

2 A. Because they kept threats --- not really threats,
3 they were like more pressure than anything. There
4 wasn't no threats. It was just pressure.

5 Q. It was pressure. Was it the pressure like?

6 A. Like if you don't get this time right here, you are
7 going to get a life sentence type --

8 Q. -- Now, that's bringing us back to where we started
9 off with, because if I help you convince Judge Baxley
10 to press that reset button, you going back to that
11 same position that you was in right before you plead
12 guilty. Do you understand that?

13 A. Yes, I am willing to take that chance.

14 Q. You're willing to take that chance? You're willing
15 to roll that dice, and go to trial, right?

16 A. Yes, sir.

17 Q. But you feel that you could win at trial, right?

18 A. Yes, sir.

19 Q. And why do you think you would win at trial?

20 A. Because I can't --- I can't -- I can't -- I can't
21 explain it.

22 Q. Wait a minute.

23 A. I can't --- I can't -- I can't -- I ain't got ---

24 **THE COURT:** Please, let me break in and ask a
25 few questions.

JAMIE MICHAEL GILBERT VERUS THE STATE

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1 Tell me, what is in your mind, what is it that makes
2 you believe factually you will win at trial?

3 MR. GILBERT: Because like for instance the things
4 that was brought forth such as testimony and voluntary
5 statements and things like that --- it was a --- it is a
6 gap right there --- something wasn't right about it. I
7 could prove it if I could get the paperwork. But I
8 understand that you are going to just hear it. I
9 understand that. I can explain it though.

10 THE COURT: All right, thank you. Go ahead.

11 Q. Did you, in the beginning, did you give a statement
12 to the police?

13 A. Yes, sir, but not about the crime.

14 Q. Okay, so what they have as evidence on you in this
15 case?

16 A. Nothing, except for me getting caught in the car.

17 Q. You getting caught in the car/

18 A. Yes, sir, me and a female.

19 Q. Okay, you got caught in a car with a female.

20 A. Yes, sir.

21 Q. Did you testify at the trial of co-defendant?

22 A. Yes, sir.

23 Q. Was the co-defendant in the car with you?

24 A. No, sir, not at that time.

25 Q. Okay. So, when you were at trial, at the co-

JAMIE MICHAEL GILBERT VERUS THE STATE

15

1 defendants trial you told the members of the jury
2 what happened, right?

3 A. Yes, sir.

4 Q. Do you know --

5 A. -- Which was based on the statement that I gave. It
6 is like I admitted to it.

7 Q. So a statement involving your involvement in the
8 crime?

9 A. Yes, sir.

10 Q. Now do you know if you go to trial that's probably
11 going to come in at a trial of the case?

12 A. Correct me if I am wrong, but I don't think that
13 could be used against me.

14 Q. Well, I'm correcting you.

15 A. Okay That's what I'm trying to tell you, none of
16 that was supposed to be brought forward. That is a
17 gap I am trying to fill in.

18 Q. Now, having heard me tell you, and correct you, as
19 coming forward, does that change your opinion as to
20 whether or not you want a new trial?

21 A.. It don't change my opinion at all.

22 Q. Okay. So, you still want that trial for murder?

23 A. Yes, sir.

24 Q. And you understand you could get life?

25 A. Yes, sir.

JAMIE MICHAEL GILBERT VERUS THE STATE

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1 Q. When is your max out date time?

2 A. 2028.

3 Q. You're twenty-one-years old now, right?

4 A. Yes, sir.

5 Q. That's about seventeen years from now.

6 A. Yes, sir.

7 Q. You want to give up seventeen for a potential life?

8 A. Yes, sir.

9 Q. All right. What else do you want to say about how
10 bad your lawyers were in this case and how they ---
11 you said they tricked you into pleading guilty or
12 pressured you into pleading guilty.

13 A. Yes, sir. I can't think of nothing.

14 Q. And, you feel, based on what you know of your case,
15 and the statement that you gave, you think that if
16 you would have a trial you could win your trial?

17 A. Excuse me. Could I ask a question. I feel like I am
18 under pressure right now. To go through this, and I
19 have no paperwork whatsoever.

20 Q. Well, what we're trying to do is we trying to
21 convince Judge Baxley to give you a reset button.

22 A. This ain't going right. This is --- something ain't
23 right.

24 Q. Something ain't right?

25 A. Like I've been telling you, this ain't right.

JAMIE MICHAEL GILBERT VERUS THE STATE

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1 Q. You know what, we told Judge Baxley that, and Judge
2 Baxley heard you, and he ruled that we're going
3 forward, so we're here. We're at the here and now.

4 A. That's the part. How do you make me go forward with
5 something I can't bring to court. I can't manifest
6 something. I'm sitting up here. I'm stunned trying
7 to think of something, when I could get all of my
8 paperwork together, like you sent the letter to her.

9 Q. That was just from discovery that you may have had in
10 the case.

11 A. Why I ain't ever looked at it.

12 Q. Let me ask you this. What do you know about your
13 case now that would have caused you not to have pled
14 guilty back then? What do you know now?

15 A. All I have is the Rule 5, and that right there. The
16 other thing that I know now is my Indictments.

17 Q. But you know the facts of the case?

18 A. Yes, sir.

19 Q. You know the facts of the case better than anybody in
20 this room?

21 A. Not off the cap, no, sir. But I understand what you
22 are saying.

23 Q. You know them better than I could ever know them or
24 the Judge could ever know them.

25 A. If we had had a conversation --

JAMIE MICHAEL GILBERT VERUS THE STATE

18

1 Q. Tell me, what do you know about your case now that
2 you otherwise would have caused you not to plead
3 guilty?

4 A. I'm telling you the same thing over and over again.

5 THE COURT: All right. That's asked and
6 answered. I'll let you lead the witness if you have
7 issues that you perceive from the transcript that are in
8 his favor. If not, we'll let Ms. Ratigan go to cross
9 examination.

10 MR. BROOKS: Beg the Court's indulgence one second,
11 Your Honor.

12 THE COURT: Yes, sir.

13 (PAUSE.)

14 MR. BROOKS: Judge, I don't have any other
15 questions.

16 THE COURT: Very well. Cross examination?

17 MS. RATIGAN: No cross examination, Your Honor.

18 THE COURT: All right. What you've asked for is
19 a copy of Ms. Sellers' file; is that the document you're
20 talking about that you don't have?

21 MR. GILBERT: No, sir, I need all of it.

22 THE COURT: How did you go about asking for
23 those?

24 MR. GILBERT: I wrote Mr. Charles Brooks, and the
25 Motion to Rosalyn Sellers, which was never --- nothing was

ROSALIND SELLERS - DIRECT EXAMINATION BY MR. BROOKS 19

1 ever brought back. I sent my Motions to Scott Suggs. I
2 got copies down there right now where he is suppose to
3 give me more paperwork that has been ordered for me to
4 proceed with my case, and I have nothing from nobody.

5 **THE COURT:** So you're telling me you have not
6 seen what was in Ms. Sellers' file?

7 **MR. GILBERT:** No, sir.

8 **THE COURT:** All right. very good. I'm going to
9 let you stand down. Watch your step as you exit. Please
10 return to your chair. Are there further witnesses?

11 **MR. BROOKS:** We will call Ms. Sellers to the stand.

12 **THE COURT:** Alright. Please come forth and take
13 the oath of a witness.

WHEREUPON, ROSALIND SELLERS**FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

15 **MS. SELLERS:** I do.

16 **THE COURT:** All right. Go ahead, Mr. Brooks.

DIRECT EXAMINATION BY MR. BROOKS

18
19 Q. Ms. Sellers, good morning. You were part of
20 representing Mr. Gilbert?

21 A. That's correct.

22 Q. And you were familiar with all of the discovery in
23 his file?

24 A. That's correct.

25 Q. He ended up pleading guilty; is that correct?

ROSALIND SELLERS - DIRECT EXAMINATION BY MR. BROOKS 20

1 A. That's correct.

2 Q. Can you give a brief summary of what the State --- as
3 far as the evidence they had against Mr. Gilbert?

4 A. There was a --- there were a couple of statements, I
5 believe, and I'm going vaguely off memory. Because,
6 in actually, I just came in and assisted Mr. Kilgo
7 and Mr. Jones in this guilty plea.

8 At one point in time there was a breakdown
9 in the communication between Mr. Gilbert and the
10 Public Defender's Office in Darlington County.
11 I was employed by the Public Defender's Office.
12 My primary location was in Dillon. I came over
13 one term of Court and was asked to speak with
14 Mr. Gilbert about his case. I went in, had a
15 file from The Darlington County Public
16 Defender's Office. Went in and reviewed that
17 information with Mr. Gilbert. I recall there
18 being statements. I recall there being pictures
19 specifically from a cell phone. I recall there
20 being again photographs of the crime scene, as
21 well as some information that was provided by
22 individuals when law enforcement did an
23 investigation, and spoke with them. But again,
24 I don't recall every single item that was in
25 that file. But there was a number of pieces of

ROSALIND SELLERS - DIRECT EXAMINATION BY MR. BROOKS 21

1 evidence that would pinpoint Mr. Gilbert
2 knowledge and involvement in this crime.

3 Q. Okay. And how was it arrived that he actually plead
4 guilty?

5 A. Well, Mr. Gilbert's co-defendant went to trial. Mr.
6 Gilbert testified at the trial. We worked very
7 diligently on Mr. Gilbert's behalf in trying to
8 minimize his exposure, because he was facing a lot of
9 time. But, he was very young at the time. He had
10 been in the Detention Center, I believe, for about
11 two years. We arranged several things. I
12 specifically remember arranging a plea date in
13 Chesterfield Count. I contacted Mr. Gilbert's
14 mother, spoke with her, and also his aunt, and a
15 cousin, I believe. They live over to Chesterfield.
16 Mr. Gilbert again we went over the information, the
17 Indictment, all of the evidence that the State
18 intended to use at his trial. Mr. Gilbert decided
19 that he did indeed want to plead guilty.

20 He got to Chesterfield County, the plea
21 broke down. Mr. Gilbert once he was in the
22 room with his mother and myself just decided
23 that he was not ready to plead guilty. And it
24 broke down. What he actually did enter --- when
25 he actually did plead guilty I was not there.

ROSALIND SELLERS - DIRECT EXAMINATION BY MR. BROOKS 22

1 We had gone through this maybe two or three
2 times, you know. It was always his decision
3 whether or not he wanted to plead guilty.
4 Again, I arranged a time for him to do that in
5 Chesterfield County. When that broke down ---
6 Again, my primary responsibilities were in
7 Dillon County. I was later informed that he
8 plead guilty, but the facts surrounding that
9 plea date, I don't have any knowledge of it,
10 because I was not there.

11 **MR. BROOKS:** No other questions of this witness.

12 **THE COURT:** Let me ask a follow up question. You
13 said communication was broken down with Mr. Gilbert at
14 some point between Mr. Gilbert and the Public Defenders's
15 Office. How did that happen?

16 **MS. SELLERS:** From my understanding --- this is
17 based on my conversation with Mr. Gilbert, he just felt as
18 if he was not getting enough time devoted to his case. So
19 when I got to --- when I came to Darlington County I
20 remember there being a huge binder, maybe a two inch
21 binder, filled with documentation. His file was not in
22 the traditional folder that was used. It was actually in
23 a binder. Mr. Kilgo had all the Motions filed from the
24 beginning. It was very organized. It had all the
25 photographs and things of that nature.

ROSALIND SELLERS - CROSS EXAMINATION BY MS. RATIGAN

23

1 Mr. Gilbert was cautioned about the possibility and
2 the sentence that he would receive, if he pursued a trial.
3 Mr. Gilbert then used that information to somewhat --- I
4 felt like to somewhat, I felt like to manipulative the
5 attorneys, because if you went to the Detention Center and
6 you didn't agree with everything that he said then he, of
7 course, may not talk to you for another week, you know.
8 We just went through those type issues with Mr. Gilbert.

9 **THE COURT:** Cross examination?

10 **MS. RATIGAN:** Just very briefly.

11 **CROSS EXAMINATION BY MS. RATIGAN**

12 Q. So, your testimony is that you reviewed the discovery
13 with him more than once?

14 A. Several times.

15 Q. And you reviewed the charges with him?

16 A. Several times.

17 Q. And that would include the elements and the possible
18 penalties, and things of that nature?

19 A. That's correct. And we also explained all that to
20 Jamie's mother. She lived here in Darlington County.
21 And she was one of the closest family members that he
22 had here. And explained that to the mother and I
23 believe there was also an aunt that I explained it
24 to.

25 **MS. RATIGAN:** That's all I have, Your Honor.

RICHARD JONES - DIRECT EXAMINATION BY MR. BROOKS

24

1 **THE COURT:** Any redirect?

2 **MR. BROOKS:** No, sir.

3 **THE COURT:** All right. You may step down. Are
4 there further witnesses now?

5 **MR. BROOKS:** We would call Mr. Jones.

6 **THE COURT:** Please come forward and take the
7 oath of a witness.

8 **WHEREUPON, RICHARD JONES**

9 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

10 **MR. JONES:** I do.

11 **DIRECT EXAMINATION BY MR. BROOKS**

12 Q. Mr. Jones.

13 A. Yes, sir.

14 Q. You represented Mr. Gilbert?

15 A. I was one of three.

16 Q. And you were actually at the plea; is that correct?

17 A. Yes, sir.

18 Q. And you went over --- Did you go over all the stuff
19 with him?

20 A. I had, Mr. Kilgo had, and Ms. Sellers had.

21 Q. Now, did you --- I mean you, you, --- Did you
22 pressure him and get him to take this deal?

23 A. I think I would have to answer yes. We encouraged
24 him very strongly to take it because we felt very
25 seriously that if he went to trial that he would be

RICHARD JONES - DIRECT EXAMINATION BY MR. BROOKS

25

1 receiving, at least, life if not more.

2 Q. Okay. And why is that, just briefly?

3 A. Mr. Gilbert --- Mr. Jamie Gilbert and Mr. Bobby
4 Gilbert were the two related co-defendants. And
5 unrelated co-defendant was Mr. Samuels. Mr. Samuels
6 had agreed to cooperate first. He was helping the
7 State. He was providing information which would have
8 been used against both Mr. Gilberts. That being the
9 case, we felt after reviewing all of the evidence,
10 that Mr. Bobby Gilbert was the primary culprit, if
11 you will. And Mr. Jamie Gilbert and Mr. Christopher
12 Samuels were secondary, although they were very much
13 involved from the start. So we encouraged Mr. ---
14 we, being Mr. Kilgo, who began the representation of
15 Mr. Jamie Gilbert --- I was put in a similar position
16 to Ms. Sellers. Mr. Kilgo was representing Mr. Jamie
17 Gilbert. When they would have difficulty
18 communicating I would come in and I would try and
19 help. And then when I began --- When Mr. Kilgo left
20 the office, I began being the primary attorney for
21 Mr. Jamie Gilbert. Ms. Sellers, who had already been
22 involved, continued to help me with Mr. Gilbert. A
23 long answer to the question, yes we encouraged him
24 very strongly to try and let us work something out.

25 (Whereupon, a private conversation between

RICHARD JONES - DIRECT EXAMINATION BY MR. BROOKS

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1 counsel and Mr. Gilbert was held off the record.)

2 Q. Okay. Mr. Jones, did the State have a good case on
3 Mr. Gilbert?

4 A. Yes, and it became better when Mr. Samuels decided to
5 cooperate.

6 Q. And that became known to you, and, of course, you did
7 relate that to Mr. Gilbert?

8 A. I think primarily Mr. Kilgo related that to Mr.
9 Gilbert, because at some point in time, and this was
10 I want to say about a year after all three gentlemen
11 had been charged, Mr. Kilgo, Mr. Gilbert, and members
12 of the Solicitor's Office all went to SLED. And Mr.
13 Gilbert gave a full confession at that time. It was
14 sometime after the arrest. It was a considerable
15 time after the arrest.

16 Q. To your knowledge, why did Mr. Kilgo get off his
17 case?

18 A. I'm not sure if he left the office or --

19 Q. Was it because he left the office?

20 A. I think I ended up taking Mr. Gilbert to do his
21 guilty plea, because Mr. Kilgo no longer worked with
22 us, I think.

23 Q. That's basically the reason why he was off the case?

24 A. I may or may not --- but I ended up taking Mr.
25 Gilbert to the plea. If that's not the case I'm not

RICHARD JONES - DIRECT EXAMINATION BY MR. BROOKS

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1 real sure why.

2 **MR. BROOKS:** All right. No other questions.

3 **THE COURT:** Let me ask, if I may. You said that
4 you felt like Mr. Gilbert may could get greater than life.
5 What were the facts in the confession he gave that you
6 felt would be so culpable?

7 **MR. JONES:** It was included in the guilty plea.
8 And I think the victim's sister pointed it out at the
9 sentencing phase.

10 Mr. Gilbert, Mr. Samuels, and Mr. Bobby Gilbert, were
11 at the apartment complex in Hartsville. Mr. Bobby
12 Gilbert, as I recall, Mr. Bobby Gilbert asked the victim
13 to come to Hartsville to give him a ride. Mr. Jamie
14 Gilbert and Mr. Bobby Gilbert got in the car with the
15 victim. They took off. At some point in time Mr. Bobby
16 Gilbert realized he did not have a gun, so she asked the
17 victim to turn around and take him back to the apartment
18 complex, which he did. And they picked up Mr. Samuels who
19 had the gun. Then all three of them left with the victim
20 and the events which took place after that were detailed
21 in as detailed a fashion as I have seen by Mr. Gilbert's
22 video confession. From the time that Mr. Bobby Gilbert
23 and Mr. Jamie Gilbert and Mr. Samuels started until they
24 ended Mr. Jamie Gilbert gave an extremely detailed
25 statement.

RICHARD JONES - CROSS EXAMINATION

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1 **THE COURT:** Was it a fully Mirandized statement?

2 **MR. JONES:** It was on video tape.

3 **THE COURT:** You have the belief that in a
4 subsequent trial it would have been admissible?

5 **MR. JONES:** I do.

6 **THE COURT:** Alright. Thank you. Any questions,
7 Ms. Ratigan?

8 **MS. RATIGAN:** Thank you, Your Honor.

9 **CROSS EXAMINATION BY MS. RATIGAN**

10 Q. So would Mr. Kilgo have already filed the Brady and
11 Rule 5 by the time you got involved?

12 A. Absolutely.

13 Q. And did you review those materials with Mr. Gilbert?

14 A. I think all three of us did, yes. That being Mr.
15 Kilgo, Ms. Sellers, and myself.

16 Q. And that included discussing with him the impact that
17 his statement would have on the case?

18 A. Yes.

19 Q. And you reviewed the charges and the penalties with
20 him?

21 A. Absolutely.

22 Q. And did you explain to him your belief that the State
23 had a very strong case against him?

24 A. Yes.

25 Q. Did you explain to him the theory of accomplish

RICHARD JONES - CROSS EXAMINATION

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1 liability or the hand of one is hand of all?

2 A. Yes.

3 Q. Do you recall their being any issues with the
4 indictment in this case?

5 A. I don't recall anything about the indictment being
6 deficient. And he and Mr. Kilgo may have spoken
7 about that. But I don't ever recall any
8 conversations, no.

9 Q. If you had seen a defect in the Indictment, would you
10 have moved to quash them?

11 A. Absolutely.

12 Q. Now, the ultimate deal in this case was for him to
13 plea straight up to voluntary manslaughter and to
14 testify against his brother; is that correct?

15 A. Correct. It was a cousin.

16 Q. A cousin, I'm sorry. And you explained to Mr.
17 Gilbert all of the parts to that plea deal?

18 A. Yes.

19 Q. And he understood he could receive anything from the
20 minimum to the maximum and still wanted to go ahead
21 and plead guilty?

22 A. He did. I think the crust of the problem is he was
23 very dissatisfied with the twenty-three-years he
24 received. The co-defendant who agreed to cooperate
25 first, and who, in fact, was less culpable, received

RICHARD JONES - CROSS EXAMINATION

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- 1 a seventeen-year sentence. And I think Mr. Jamie
2 Gilbert was very disappointed in the twenty-three-
3 year sentence. Not only because the other fellow got
4 seventeen, but he, Mr. Kernard Redmond, the
5 prosecutor told the sentencing judge, Judge Burch,
6 that Mr. Jamie Gilbert was the best lay witness he
7 had ever had. And I think Mr. Gilbert expected much
8 more in the way of a reward.
- 9 Q. Were you present at Bobby Gilbert's trial when your
10 client testified?
- 11 A. I was.
- 12 Q. Did he give a full and detailed accounting of what
13 happened that night?
- 14 A. It was almost word-for-word of his video statement he
15 gave. It was a very, very good account of everything
16 that happened.
- 17 Q. And clearly it implicated him in the murder of the
18 victim?
- 19 A. No question.
- 20 **MS. RATIGAN:** That's all I have, Your Honor.
- 21 **THE COURT:** Is there redirect?
- 22 **MR. BROOKS:** No, sir.
- 23 **THE COURT:** All right. You may step down.
- 24 **MR. JONES:** Thank you.
- 25 **THE COURT:** Are there further witnesses?

RICHARD JONES - CROSS EXAMINATION

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1 **MR. BROOKS:** No, sir that's the applicant's case.

2 **THE COURT:** All right. The applicant rests. Now,
3 is there any testimony from the State?

4 **MS. RATIGAN:** No, Your Honor, the State would rest
5 on the record and the testimony that's been given today.

6 **THE COURT:** All right, very good. Now, I'm going
7 to give you a moment to talk to your client and see
8 whether or not there is some specific documents that you
9 believe, and let me first ask of you, counsel, have you
10 had the opportunity to review the file and documents in
11 this case?

12 **MR. BROOKS:** Judge, I have had ample time to go
13 through the plea transcript, which as, as Mr. Jones said,
14 is detailed about his situation.

15 Personally, Judge, I kind of lean more towards --- I
16 know it's bad, but this situation could be a lot worse. I
17 mean, had we not gone through this, so.

18 **THE COURT:** Do you think there would be any
19 benefit to you to further review documents or memoranda
20 that may be in either Mr. Jones or Ms. Sellers file, or
21 any other paperwork related to this case?

22 **MR. BROOKS:** As an attorney who has done this
23 numerous times, to be truthful, Judge, no.

24 **THE COURT:** I'm going to let you have a moment to
25 talk to Mr. Gilbert to see if he believes there is some

RICHARD JONES - CROSS EXAMINATION

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1 documentation that he requires to go forward with this
2 case.

3 (Whereupon, a private conversation between
4 counsel and Mr. Gilbert was held off the record.)

5 **MR. BROOKS:** Judge, after consulting with my client,
6 it is his position that he wants all the discovery to be
7 put in regards to his case.

8 **THE COURT:** All right. Thank you. Let me hear
9 from the State as to what position you take as to whether
10 those records should be held open for that purpose. What
11 do you say, Ms. Ratigan?

12 **MS. RATIGAN:** Your Honor, we would object to the
13 record being held open at this time. Mr. Gilbert has not
14 articulated a reason why any of the discovery materials
15 would be relevant in this case. Furthermore, as Your
16 Honor knows, his burden is to prove ineffective counsel,
17 not to retry the facts of the case, and attack the
18 underlying facts that were developed. He hasn't
19 articulated any probative value that any of these
20 documents would have.

RULING OF THE COURT

21
22 **THE COURT:** Very good. The Court is prepared to
23 rule on this. I'm going to ask the Attorney General to
24 prepare an Order. I'm going to deny your Post Conviction
25 Relief Claim, Mr. Gilbert for these reasons.

RICHARD JONES - CROSS EXAMINATION

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1 First, there is no proof that your lawyers were
2 deficient. Here's what happened in your case. You had a
3 very serious crime for which you were charged. You gave a
4 confession to it. You then turned State's evidence
5 against co-defendants to assist your position. And in
6 doing so, you fully detailed, in a statement that would
7 then be admissible against you in any later trial your
8 involvement. You took a guilty plea because it got you
9 out of the siltation where you were facing life in prison
10 or greater. And thus, for you at the time, and now you
11 are complaining of that.

12 This Court finds no basis that there has been any
13 evidence of deficient representation or any prejudice to
14 you. I don't find any reason in this record whatsoever
15 that you would have gone to trial on the facts.

16 So, for those reasons I'm going to deny your Post
17 Conviction Relief Claim. I don't find there's any benefit
18 or further time to allow you to review documents. Mr.
19 Brooks has reviewed the pertinent documents. And as your
20 lawyer tells this Court, as an officer of the Court, there
21 was not anything there that would assist you in trial.

22 You don't accept that. But I would say this is
23 consistent with you. You have not been cooperative at any
24 point in this process. You have not been cooperative with
25 your own lawyers. You're not cooperative today. There's

RICHARD JONES - CROSS EXAMINATION

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1 nothing new here. And the Court denies your Post
2 Conviction Relief Claim.

3 Now, you can appeal this decision. And this is
4 how the process works. I'm going to ask Ms. Ratigan,
5 to prepare the Order, and do so within thirty days.
6 Whenever she presents the Order to me I'm going to
7 sign it. We're going to serve it on your lawyer.
8 And you have thirty days from that day, not from
9 today, but thirty days from future date to appeal
10 this decision.

11 Do you understand that, Mr. Gilbert?

12 **MR. GILBERT:** Yes, sir. May I ask a question?

13 **THE COURT:** Yes, sir, you can ask a question.

14 **MR. GILBERT:** Now do you understand what I've
15 been saying from the beginning? I can't prove nothing.
16 That's why there's nothing for me to show, no type
17 deficiency because I have nothing.

18 **THE COURT:** No, sir, I don't understand it,
19 Mr. Gilbert, because you don't have anything to prove,
20 sir. You were involved in a serious crime. You plead
21 guilty to it. You got a sentence. You are not happy
22 with it. But that's the way the process works, sir.
23 I can't help you out.

24 At this point I'm going to turn you to the
25 Department of Corrections to finish your sentence.

RICHARD JONES - CROSS EXAMINATION

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1 Good luck to you.

2 (Whereupon, these proceedings were
3 concluded at 12:36 p.m. on Thursday, June 9, 2011.)

4 -- END OF TRANSCRIPT --
5

CERTIFICATE OF REPORTER

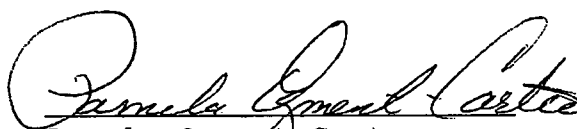
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THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DARLINGTON	)	
	)	
JAMIE MICHAEL GILBERT	)	JUNE 9, 2011
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
THE STATE OF SOUTH CAROLINA	)	2009-CP-16-639
	)	
DEFENDANT.	)	
	)	

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of Common Pleas in Darlington County, South Carolina, on the 9th day of June 2011.

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

October 19, 2011


Pamela Ozment-Cartee
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2009-CP-16-0639
COUNTY OF DARLINGTON	)	
	)	
Jamie Michael Gilbert,	)	
S.C.D.C. No. 335126,	)	
	)	
Applicant,	)	
	)	ORDER DENYING
v.	)	POST CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

 This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 29, 2009. The Respondent made its return on October 27, 2009. An evidentiary hearing into the matter was convened on June 9, 2011 at the Darlington County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General represented the Respondent. Also present at the hearing were Teresa and Cedric Henneghan, members of the victim's family.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Applicant's plea attorneys, Rosalind Sellers, Esquire, and J. Richard Jones, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Darlington County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and Respondent's return.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Darlington County Clerk of Court. Applicant was

indicted at the January 2007 term of the Darlington County Grand Jury for armed robbery (2007-GS-16-0648) and at the July 2008 term for grand larceny (2008-GS-16-1029) and murder (2008-GS-16-1030). He was represented on these charges by J. Richard Jones, Esquire.

On April 22, 2009, Applicant pled guilty to armed robbery, grand larceny, and voluntary manslaughter before the Honorable Paul M. Burch. Sentencing was deferred until a later date. On June 3, 2009, Judge Burch sentenced Applicant to concurrent terms of twenty-three (23) years for armed robbery, ten (10) years for grand larceny, and twenty-three (23) years for voluntary manslaughter. Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failure to investigate.
 - b. Lack of a lawyer/client relationship.
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard 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 their 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).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his

allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). 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).

The Applicant stated three (3) attorneys from the Public Defender’s Office were involved with his case, and they were all ineffective. Applicant testified his indictments should have been challenged. Applicant admitted in the PCR hearing that he was found in the victim’s car and had given a statement to authorities, but argued that there was no evidence against him. Regardless, Applicant stated he would have been successful at trial, and his attorneys forced him to plead guilty to the charges.

Rosalind Sellers testified she was brought in to assist with this case because communication had broken down between Applicant and his original attorneys—Robert L. Kilgo, Jr. and J. Richard Jones. Attorney Sellers testified she reviewed the charges, the possible sentences, and the impact of his statement with the Applicant, his mother, and his aunt. Attorney Sellers testified she reviewed the discovery materials with Applicant on more than one occasion. Counsel testified the evidence showed both Applicant's knowledge and direct involvement in the crime; moreover, the Applicant testified against his co-defendant at the co-defendant's trial.

Richard Jones testified the initial attorney on this case was Robert Kilgo, and that Mr. Kilgo had filed the discovery motions. Attorney Jones testified all three lawyers had reviewed the case with Applicant. He testified that he personally reviewed the State's evidence with Applicant, as well as the charges, the potential sentences, and the doctrine of accomplice liability. Attorney Jones testified the State had a strong case against Applicant, and that Applicant had given a full confession. In his opinion, there were no problems with the indictments as now claimed by Applicant, and that he would have challenged the indictments if they were defective. Counsel testified he encouraged Applicant to plead guilty because he was concerned Applicant would receive – at a minimum – a life sentence if he went to trial. Attorney Jones testified the State agreed to reduce the murder charge to voluntary manslaughter and allow Applicant to plead guilty without a sentence recommendation if he testified at his co-defendant's trial. Mr. Jones testified he explained all of this to Applicant and that Applicant's testimony at his co-defendant's trial was consistent with his statement. Attorney Jones testified there was no question of Applicant's involvement in the victim's death.

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 Applicant's testimony is not

credible, while also finding counsels' testimony is credible. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and were thoroughly competent in their representation. Further, it is clear from the record that Applicant was a very difficult client, and was uncooperative with his attorneys throughout their representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.9; p.14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.6-9).

Jms
5
This Court finds Applicant has failed to meet his burden of proving his plea attorneys did not properly investigate or prepare his case. This Court notes Applicant had three (3) attorneys working on his case at various times. Further, both attorneys Sellers and Jones testified they reviewed the discovery materials, State's evidence, charges, and potential sentences with the Applicant. This Court finds their testimony is credible. While Applicant testified there was no evidence linking him to the victim's death, this Court finds this assertion is without support. The Applicant gave a full confession and was found in the victim's vehicle. Furthermore, the doctrine of accomplice liability also applied in this case. Regardless, Applicant failed to articulate what else counsel should have done to better prepare his case. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

As to the indictments, Applicant failed to articulate why he believed they were insufficient. This Court has examined the indictments, and finds they were sufficient to put Applicant on notice of the charges he was facing. See State v. Gentry, 363 S.C. 93, 103, 610

S.E.2d 494, 500 (2005); State v. Tumbleston, 376 S.C. 90, 95-96, 654 S.E.2d 849, 852 (Ct. App. 2007).

This Court finds Applicant has also failed to meet his burden of proving he was forced or pressured into pleading guilty, and such an allegation is clearly refuted by the guilty plea transcript. See Anderson v. State, 342 S.C. at 57, 535 S.E.2d at 657. The Applicant told the plea judge the facts recited by the solicitor were accurate and did not dispute that he was the one who ran over the victim several times with the victim's own car. (Plea transcript, p.14; Sentencing transcript, pp.8-11). Applicant told the plea judge he was guilty and did not want to take his charges to a jury trial. (Plea transcript, pp.8-9). Applicant told the plea judge he was satisfied with Jones' representation on these charges. (Plea transcript, p.9), that he had not been threatened into pleading guilty, and that he was entering the plea of his own free will. (Plea transcript, p.8). This Court finds Applicant has completely failed to present any credible evidence or testimony that his plea counsel coerced him into entering a guilty plea to the charges.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence plea counsel committed either errors or omissions in representing Applicant. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsels' performance.

This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

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 Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant has waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

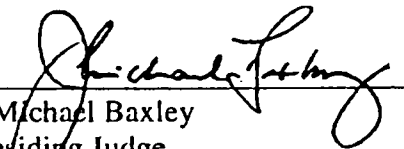
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Applicant's three attorneys were not deficient in any manner, and Applicant was not prejudiced by counsels' representation. Furthermore, Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application 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 this Order if he wants 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 filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed, with prejudice; and
2. That Applicant must remain in the custody of Respondent for the completion of his sentence.

IT IS SO ORDERED this 15th day of July, 2011.

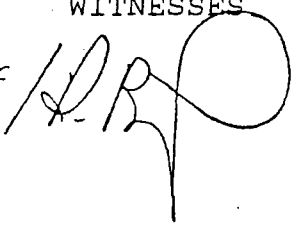


J. Michael Baxley
Presiding Judge
Fourth Judicial Circuit

Darlington, South Carolina.

WITNESSES

Locklair
DCSD



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

Defendant

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

Defendant

WITNESS:

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

ARREST WARRANT #:
DAR0767

Arrested on

ACTION OF GRAND JURY

JUL 17 2008

Foreman:

Grand Jury

TRUE BILL

Foreman:

Petit Jury

Date:

DOCKET #: 08GS16-1030

THE STATE OF SOUTH CAROLINA
County of Darlington

COURT OF GENERAL SESSIONS

Term: July, 2008

THE STATE

vs.

Jamie Gilbert

I N D I C T M E N T F O R

0116

MURDER

16-3-10

STATE OF SOUTH CAROLINA)
)
County of Darlington)

INDICTMENT #08GS16-1030

'At a Court of General Sessions, convened on July 21, 2008
the Grand Jurors of Darlington County present upon their oath:

COUNT: MURDER
16-3-10

That Jamie Gilbert either did by himself or with Bobby Gilbert and Christopher Samuel or any combination thereof, in the County of Darlington on or about January 17, 2007, feloniously, wilfully and with malice and aforethought, kill one Tyrone Cornelius Brown with blunt force trauma to the head and by running over the victim with and Automobile, and that the said Tyrone Cornelius Brown did die in Darlington County as a proximate result thereof.

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

SOLICITOR:

Fragebogen

TRUE CERTIFIED COPY.

Seat 8 Supra

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

add ss#

*replaced 07-0647

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF DARLINGTON

STATE VS.

INDICTMENT/CASE#: 08-GS-16-1030

Jamie Gilbert

AW#: DAR 0767

AKA:

Date of Offense: 1-17-07

Race: B

Sex: M

Age:

S.C. Code §: 16-11-330(A)

DOB:

CDR Code#: 0116

Address:

City, State, Zip:

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Voluntary Manslaughter in violation of § 16-3-0050 of

the S.C. Code of Laws, bearing CDR Code # 0217

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ Mandatory GPS (CSC w/minor 1st or Lewd Act)

☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Therese Boush Solicitor

Jamie Gilbert Defendant

SC Bar # 3192 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 23 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient: Teresa Hennigan

*Fine:
\$14-1-206 (Assessments 107.5%) \$
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$
\$56-5-2995 (DUI Assessment) \$12 \$
\$35.13 (Public Def/Prob) \$500 \$
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$
\$50-21-114(BUI Breath Test Fee) \$50 \$
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) 5.00 \$5.00
Total \$133.90

Clerk of Court/Deputy Clerk

Court Reporter Hattie Gordon Hattie Gordon

White--Clerk

Green--Jail

Canary--SCDPPPS

Pink--Solicitor

Gold--Defendant

SCCA/217 (9/2006)

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ Beginning

\$ paid to Public Defender Fund

Other:

Please do not place with Co-Defendant Billy Gilbert.

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 48

Sentence Date:

TRUE CERTIFIED COPY

6-23-2009

CLERK OF COURT/REC

WITNESSES

Locklair

DCSD

R. R. P.

ARREST WARRANT #:

H837967

Arrested on January 23, 2007

ACTION OF GRAND JURY

APR 12 2007**TRUE BILL**

Foreman:

Bunda J. Locklair
Grand Jury

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 07GS16-0648

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: April, 2007

THE STATE

vs.

Jamie Gilbert

I N D I C T M E N T F O R

0139

ARMED ROBBERY

16-11-330 (A)

STATE OF SOUTH CAROLINA)
)
County of Darlington)

INDICTMENT #07GS16-0648

At a Court of General Sessions, convened on April 16, 2007
the Grand Jurors of Darlington County present upon their oath:

COUNT: ARMED ROBBERY
16-11-330 (A)

That Jamie Gilbert in the County of Darlington on or about January 17, 2007, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, did feloniously take from the person in the presence of Tyrone Cornelius Brown, by means of force or intimidation goods or monies of the said Tyrone Cornelius Brown, such goods or monies being describes: a 2002 Honda Accord and a Bank Card.

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

SOLICITOR:

Engelberg

TRUE CERTIFIED COPY.

Seat 8 Suggs

CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

needs ss#:

99

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF DARLINGTON

STATE VS.

INDICTMENT/CASE#: 07-GS-16-0648

Jamie Michael Gilbert

AW#: H-837967

AKA: Jamie Gilbert

Date of Offense: 1-17-07

Race: B Sex: M Age:

S.C. Code §: 16-11-330 A

DOB: [REDACTED]

CDR Code# 0139

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED] SID# [REDACTED]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Armed Robbery in violation of § 16-11-330(A) of

the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS

☐ Mandatory GPS (CSC w/minor 1st or Lewd Act)

☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sherris S. Baur
Solicitor 9863

Jamie Dillont
Defendant

Paul Jones
Attorney for Defendant
SCB # 3192

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 23 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections;

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ Beginning

\$ paid to Public Defender Fund

Other:

*Fine:
§14-1-206 (Assessments 107.5%) \$
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$
§56-5-2995 (DUI Assessment) \$12 \$
§35.13 (Public Def/Prob) \$500 \$
§73.3, 1B TP (Law Enforce. Funding) \$25 \$25.00
§33.7, 1B TP (Drug Court Surcharge) \$100 \$
§50-21-114(BUI Breath Test Fee) \$50 \$
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$5.00 \$133.90

Faye J. Allen
Clerk of Court/Deputy Clerk

PRESIDING JUDGE

Judge Code: 48

Sentence Date: 6-3-2008

Court Reporter Hattie Gentry Hattie Gordon

White--Clerk

Green--Jail

Canary-- SCDPPPS

Pink--Solicitor

Gold--Defendant

SCCA/217 (9/2006)

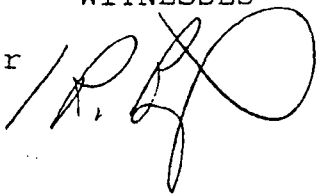
Dillon - Dillon

1 Sentence - Clerk

CLERK OF COURT/RMC

WITNESSES

Locklair
DCSD



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

Defendant

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

Defendant

WITNESS:

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

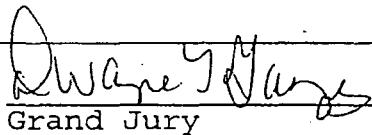
ARREST WARRANT #:
DAR0766

Arrested on

ACTION OF GRAND JURY

JUL 17 2008

Foreman:


Grand Jury

VERDICT

TRUE BILL

Foreman:

Petit Jury

Date:

DOCKET #: 08GS16-1029

THE STATE OF SOUTH CAROLINA
County of Darlington

COURT OF GENERAL SESSIONS

Term: July, 2008

THE STATE

vs.

Jamie Gilbert

I N D I C T M E N T F O R

0479

LARCENY IN EXCESS OF \$5,000

16-13-30 (B) (2)

STATE OF SOUTH CAROLINA)
) INDICTMENT #08GS16-1029
County of Darlington)

At a Court of General Sessions, convened on July 21, 2008
the Grand Jurors of Darlington County present upon their oath:

COUNT: LARCENY IN EXCESS OF \$5,000
16-13-30 (B) (2)

That Jamie Gilbert either did by himself or with Bobby Gilbert and Christopher Samuel or any combination thereof, in the County of Darlington on or about January 17, 2007, feloniously take and carry away the personal goods of Tyrone Cornelius Brown, of the value of \$5,000 or more described as follows: a 2002 Honda Accord, with intent to deprive the owner permanently of such property.

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

SOLICITOR:

Fraser

TRUE CERTIFIED COPY
Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

102 needs ss#

replaces: 07-0646

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF DARLINGTON

STATE VS.

INDICTMENT/CASE#: 08 -GS- 16- 1029

Jamie Gilbert

AW#: DAR 0766

AKA:

Date of Offense: 1-17-07

Race: B

Sex: M

S.C. Code §: 16-13-30(A)

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code# 0479

Address:

City, State, Zip:

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Grand larceny > 5000 in violation of § 16-13-0030(B)(2) of

the S.C. Code of Laws, bearing CDR Code # 0479

☒ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☐ MOST SERIOUS

☐ Mandatory GPS (CSC w/minor 1st or Lewd Act)

☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: -

Shirley Bowers
Solicitor

9863

Jamie Gilbert
Defendant

John D. Jones
Attorney for Defendant
SC Bar # 3192

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ Beginning

\$ paid to Public Defender Fund

Other:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

\$100

\$100

§14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§35.13 (Public Def/Prob)

\$500

\$

§73.3, 1B TP (Law Enforce. Funding)

\$25

\$25

§33.7, 1B TP (Drug Court Surcharge)

\$100

\$

§50-21-114(BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$390

\$500

Christy A. Gaddy
Clerk of Court/Deputy Clerk

\$133.90

PRESIDING JUDGE

Judge Code: 48

Sentence Date: 6-3-09

Court Reporter Hattie Gordon/Hattie Gordon

White--Clerk

Green--Jail

Canary--SCDPPPS

Pink--Solicitor

Gold--Defendant

SCCA/217 (9/2006)

CLERK OF COURT/RMC