

RECEIVED

Jan 19 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Calhoun County

Honorable Maite Murphy, Circuit Court Judge

EDWARD BRITT, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2021-000845

APPENDIX

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

SAMANTHA WEIDAUER
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

GUILTY PLEA TRANSCRIPT FROM HEARING HELD MAY 22, 20171

APPLICATION FOR POST-CONVICTION RELIEF27

RETURN.....35

AMENDED APPLICATION FOR POST-CONVICTION RELIEF41

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED FEBRUARY 26, 2019....43

ORDER OF DISMISSAL FILED AUGUST 19, 201980

MOTION PURSUANT TO RULE 59(e), SCRCP.....86

ORDER OF DISMISSAL FILED JULY 16, 2021.....88

INDICTMENTS96

SENTENCE SHEETS98

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PLEA

WITNESS/DESCRIPTION

PAGE NO.

EXHIBITS:

NO EXHIBITS WERE MARKED TO THIS PROCEEDING

Certificate of Court Reporter 26

State v Britt

5/22/17

3

1 THE COURT: Yes, sir.

2 MR. SORENSON: The State calls Edward Britt, Jr.

3 (The defendant was duly sworn)

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

6 THE COURT: Yes, sir.

7 MR. SORENSON: Before you is Edward Britt, Jr.
8 We're here on indictment 2016-GS-09-0312. Mr. Britt has
9 indicated that he wishes to plead guilty on that indictment.
10 It's one count of murder and he's here with his lawyer,
11 Martin Banks.

12 THE COURT: Thank you, sir.

13 All right. Mr. Banks, you represent Mr. Britt?

14 MR. BANKS: Yes, Your Honor.

15 THE COURT: Okay. And you have had an opportunity
16 to meet with him and review with him the evidence the State
17 has against him regarding this murder that occurred on
18 August 25th, 2016 here in Calhoun County?

19 MR. BANKS: Yes, Your Honor.

20 THE COURT: Okay. And you have discussed with him
21 the law and how it applies to the facts in this case?

22 MR. BANKS: Yes, Your Honor.

23 THE COURT: You have explained to him that a
24 murder charge carries a sentence of between thirty years to
25 life?

1 MR. BANKS: Yes, Your Honor.

2 THE COURT: Okay. And you have explained to him
3 his constitutional rights?

4 MR. BANKS: Yes, Your Honor.

5 THE COURT: And you've also explained to him the
6 fact that it's a violent and most serious offense?

7 MR. BANKS: Yes, Your Honor.

8 THE COURT: And the effect of those strikes on
9 him?

10 MR. BANKS: Yes, sir.

11 THE COURT: Okay. I understand that we were
12 getting ready to try the case this week?

13 MR. BANKS: Yes, Your Honor.

14 THE COURT: Okay. And at some point over --
15 before the weekend you indicated to the Solicitor's office
16 that Mr. Britt wished to plead guilty to this charge?

17 MR. BANKS: Yes, Your Honor.

18 THE COURT: And my sentencing sheet indicates that
19 it is without any negotiations or recommendations?

20 MR. BANKS: That's right.

21 THE COURT: And he is aware of that?

22 MR. BANKS: Yes, Your Honor.

23 THE COURT: Okay. And you believe it's in his
24 best interest to go forward with this plea?

25 MR. BANKS: Yes, Your Honor.

State v Britt

5/22/17

5

1 THE COURT: Okay.

2 All right. Mr. Britt, my sentencing sheet indicates
3 you are fifty-six years old is that correct?

4 DEFENDANT BRITT: Yes, sir.

5 THE COURT: Okay. And Mr. Britt before you were
6 arrested, what did you do for a living?

7 DEFENDANT BRITT: I had a little detail shop.

8 THE COURT: Okay. And how long did you -- this
9 was a shop that you owned?

10 DEFENDANT BRITT: I worked there.

11 THE COURT: How long did you work there?

12 DEFENDANT BRITT: Well, I moved down here about
13 three and a half years ago.

14 THE COURT: And you moved down here from where?

15 DEFENDANT BRITT: From Columbia.

16 THE COURT: Oh, from Columbia?

17 DEFENDANT BRITT: Uh-huh. (Affirmative response)

18 THE COURT: Okay. What did you do in Columbia?

19 DEFENDANT BRITT: Same thing, detail cars and
20 motorcycles and boats.

21 THE COURT: Okay. That's what you've done
22 essentially all your life?

23 DEFENDANT BRITT: Yes, sir.

24 THE COURT: Mr. Britt, how far did you go in
25 school?

1 DEFENDANT BRITT: Twelfth.

2 THE COURT: You graduated?

3 DEFENDANT BRITT: Uh-huh. (Affirmative response)

4 THE COURT: From what high school?

5 DEFENDANT BRITT: Darlington.

6 THE COURT: Darlington?

7 DEFENDANT BRITT: Yes, sir.

8 THE COURT: Any education past high school?

9 DEFENDANT BRITT: Midland's Tech. I took a couple
10 of courses of blueprint reading and stuff like that.

11 THE COURT: Okay. Mr. Britt, have you ever been
12 treated for any mental health issues?

13 DEFENDANT BRITT: Yes, sir. I'm bipolar.

14 THE COURT: Okay. Now, are you taking medication
15 for your bipolar condition?

16 DEFENDANT BRITT: Yes, sir.

17 THE COURT: Okay. What time of day do you
18 normally take it?

19 DEFENDANT BRITT: I take it about 5:30, 6:00 in
20 the morning.

21 THE COURT: In the morning?

22 DEFENDANT BRITT: Yeah.

23 THE COURT: Did you take it this morning?

24 DEFENDANT BRITT: Yes, sir.

25 THE COURT: Okay. All right. Have you ever been

State v Britt

5/22/17

7

1 treated for any drug or alcohol abuse or dependency?

2 DEFENDANT BRITT: Yes, sir.

3 THE COURT: Do you mind telling me about that?

4 DEFENDANT BRITT: Yeah. I had a problem with
5 marijuana and cocaine.

6 THE COURT: Okay.

7 DEFENDANT BRITT: I've been to rehab for it.

8 THE COURT: For both of them?

9 DEFENDANT BRITT: Yes, sir.

10 THE COURT: When was the last time you were in
11 rehab? Just about?

12 DEFENDANT BRITT: 2014.

13 THE COURT: 2014?

14 DEFENDANT BRITT: Uh-huh. (Affirmative response)

15 THE COURT: Okay. Now, today are you under the
16 influence of any alcohol or illegal drugs?

17 DEFENDANT BRITT: No, sir.

18 THE COURT: Okay. Other than your bipolar
19 medication, do you take any other prescription medication?

20 DEFENDANT BRITT: Well, I'm a diabetic. I take
21 shots.

22 THE COURT: Okay. And you took your shot this
23 morning?

24 DEFENDANT BRITT: Yes, sir.

25 THE COURT: Okay. Now, does the medication you

1 take for your bipolar condition affect your ability to
2 understand what you're doing here today?

3 DEFENDANT BRITT: No.

4 THE COURT: Okay. Are you thinking clearly today?

5 DEFENDANT BRITT: Yes, sir.

6 THE COURT: And you know why you're here?

7 DEFENDANT BRITT: Yes, sir.

8 THE COURT: Why are you here?

9 DEFENDANT BRITT: For a murder charge.

10 THE COURT: Okay. Okay. And that's the murder
11 charge -- that's the murder that occurred on August 25th,
12 2016?

13 DEFENDANT BRITT: No, that was August 24th.

14 THE COURT: Okay. Okay.

15 MR. BANKS: Early morning on the 25th.

16 THE COURT: And Mr. Parker was the victim?

17 DEFENDANT BRITT: Yes, sir.

18 THE COURT: Okay. All right. Now, Mr. Banks has
19 indicated that he has met with you and reviewed with you the
20 evidence that the State has against you; is that correct?

21 DEFENDANT BRITT: Yes, sir.

22 THE COURT: Okay. Has he explained to you the law
23 that applies in this situation?

24 DEFENDANT BRITT: Yes, sir.

25 THE COURT: Has he advised you that this is a

State v Britt

5/22/17

9

1 violent and most serious offense?

2 DEFENDANT BRITT: Yes, sir.

3 THE COURT: Okay. Has he told you that the
4 sentence you face on this is between thirty years to life?

5 DEFENDANT BRITT: Yes, sir.

6 THE COURT: Okay. Has he also explained to you
7 your constitutional rights?

8 DEFENDANT BRITT: Yes, sir.

9 THE COURT: Okay. And you were aware of the fact
10 that you had the right to have a jury trial?

11 DEFENDANT BRITT: Yes, sir.

12 THE COURT: Because we were scheduled to start
13 that tomorrow; is that correct?

14 DEFENDANT BRITT: Yes, sir.

15 THE COURT: Okay. You understand if you plead
16 guilty you give up your right to remain silent?

17 DEFENDANT BRITT: That's right.

18 THE COURT: You give up your right to present any
19 evidence on your own behalf, though you don't have to?

20 DEFENDANT BRITT: Yes, sir.

21 THE COURT: You give up your right to cross-
22 examine any of the witnesses that the State has and you give
23 up your right to require that the State prove you guilty
24 beyond a reasonable doubt in a trial; you understand that?

25 DEFENDANT BRITT: Uh-huh. (Affirmative response)

1 THE COURT: That's a yes?

2 DEFENDANT BRITT: Yes, sir.

3 THE COURT: Okay. And you want to give up all
4 those rights?

5 DEFENDANT BRITT: Yes, sir.

6 THE COURT: Okay. Now, has anybody promised you
7 anything to get you to plead guilty here today?

8 DEFENDANT BRITT: Well, my lawyer, he told me when
9 I turn seventy I'll be up for parole at least, due to my
10 chronic diabetes and stuff.

11 MR. BANKS: Your Honor, I mentioned to him a
12 program that they had in the jail that could, if he made it
13 that far, if he's got that sick, it's a contingent thing.
14 It's not a given thing.

15 THE COURT: Okay. You --

16 MR. BANKS: I don't think I used the number
17 seventy. He's been using the number seventy.

18 THE COURT: Okay. Well, Mr. Britt, I want you to
19 make sure you understand on a murder conviction it's a day-
20 for-day sentence; you understand that?

21 DEFENDANT BRITT: Uh-huh. (Affirmative response.)

22 THE COURT: Now, if the department of corrections
23 has some other in-house procedure, I'm not aware of it;
24 okay?

25 DEFENDANT BRITT: Uh-huh. (Affirmative response.)

State v Britt

5/22/17

11

1 THE COURT: So I need to make sure you understand
2 that when you plead guilty here today.

3 DEFENDANT BRITT: Okay.

4 THE COURT: Do you want to go forward with your
5 plea or do you want to talk to your attorney a little bit.

6 DEFENDANT BRITT: (Witness pauses)

7 MR. BANKS: Let me talk to him.

8 THE COURT: Okay. Okay.

9 (Court in recess for a short break)

10 (Court in session after short
11 break)

12 THE COURT: All right. Mr. Britt, we took a short
13 break because I wanted to make sure you understood about
14 sentencing and like that, okay?

15 DEFENDANT BRITT: Yes, sir.

16 THE COURT: And you had mentioned something you'd
17 talked about with your attorney and I'd explained to you
18 that the sentencing in a murder charge is a day-for-day
19 sentence?

20 DEFENDANT BRITT: Yes, sir.

21 THE COURT: And you are aware of that?

22 DEFENDANT BRITT: Yes, sir.

23 THE COURT: And now you have talked with your
24 attorney?

25 DEFENDANT BRITT: Uh-huh. (Affirmative response.)

1 THE COURT: You understand your situation?

2 DEFENDANT BRITT: Yes, sir.

3 THE COURT: Sir?

4 DEFENDANT BRITT: Yes, sir.

5 THE COURT: Okay. Now, do you still want to go
6 forward with the guilty plea?

7 DEFENDANT BRITT: Yes, sir.

8 THE COURT: Okay. Now, has anybody promised you
9 anything to get you to plead guilty here today?

10 DEFENDANT BRITT: No, sir.

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

13 DEFENDANT BRITT: No, sir.

14 THE COURT: Okay. So you are doing this freely
15 and voluntarily?

16 DEFENDANT BRITT: Yes, sir.

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

18 DEFENDANT BRITT: Yes, sir.

19 THE COURT: And you believe it's in your best
20 interest to go forward with the plea?

21 DEFENDANT BRITT: Yes, sir.

22 THE COURT: Okay.

23 All right. Mr. Sorenson.

24 MR. SORENSON: Thank you. May it please the
25 Court.

State v Britt

5/22/17

13

1 Your Honor, this incident came to the Calhoun County
2 Sheriff's Office attention on the afternoon of August the
3 25th of 2016. About 4:30 that afternoon two individuals by
4 the name of Donald Boan (sp) and Felicia Grubbs arrived at
5 the sheriff's office, made contact with Captain Regalis and
6 Sergeant Worso (sp) there. And ultimately had indicated
7 that they felt like something bad had happened the night
8 before at a residence on Midnight Lane here in St. Matthews
9 in Calhoun County. Ultimately Captain Regalis and Sergeant
10 Worso rode out with Mr. Boan out to that location. It was
11 ■ Midnight Lane here in St. Matthews, which is the
12 residence of the victim in this case, Frank Parker. When
13 they arrived out there, they had an opportunity to look
14 inside and they saw Mr. Parker lying on his living room
15 floor, right inside of the front door. It appeared at that
16 point in time that he was deceased. Subsequent to that,
17 they did -- EMS was called out there and they check on him
18 and it turned out that he had suffered four gunshot wounds,
19 which I'll talk about a little more in a second, and he was
20 deceased. Mr. Boan, at that point in time, had kind of
21 further elaborated on what had happened the night before.
22 He'd indicated that he had given this defendant a ride over
23 to Mr. Parker's residence, that this defendant had indicated
24 that Mr. Parker had owed him some money, had taken him over
25 there. Mr. Britt had gone inside the residence. He had

1 heard what sounded like four -- he thought they could have
2 been gunshots -- inside the residence, that Mr. Britt came
3 back out and he indicated it was a cap gun that had gone
4 off. And then they left the residence at that point in
5 time, stopped alongside a bridge where he had indicated that
6 he felt that Mr. Britt had thrown something off into the
7 water. Ultimately, he had a large amount of money on him,
8 which Mr. Boan, Mr. Britt and Ms. Grubbs ultimately spent
9 the rest of that evening -- it was probably about 12:30 in
10 the morning on August 25th -- spent basically the rest of
11 that night into the early part of the following day smoking
12 a large amount of crack cocaine. Mr. Boan had indicated at
13 that time to the sheriff's office that day that he had --
14 that they had dropped Mr. Britt off at a gas station on the
15 pretext that they were going to buy some pills and that the
16 person they were buying them from would not sell them if Mr.
17 Britt was there. The sheriff's office responded then at
18 that time over to that gas station. The Defendant was still
19 there. It's now about 5:30 in the afternoon on the 25th.
20 He was taken into custody at that point in time and brought
21 back to the sheriff's office. He was advised of his rights
22 on video and audio. At that point in time he did admit to
23 that murder of Mr. Parker. He indicated basically that they
24 were going over there to rob Mr. Parker because they had
25 heard -- were familiar with him and were aware that he had a

State v Britt

5/22/17

15

1 large amount of money. That he'd gone in. Initially, he
2 hoped to talk Mr. Parker into giving him some money. And
3 that Mr. Parker ultimately looked like he was going for a
4 gun that was on a shelf inside the, inside the residence.
5 Mr. Britt got that from him and ended up shooting him a
6 couple of times. He ended up then going back and taking --
7 he found Mr. Parker's wallet in his pants back in his
8 bedroom. He took about eighteen hundred dollars out of his
9 wallet, which he then stated that he'd spent basically
10 buying crack cocaine throughout the following twelve hours
11 or so. As I indicated, that confession is on audio and
12 video. The following day he was brought over and had his
13 initial bond hearing. And then ultimately he ended up
14 giving two additional audio taped statements, one to
15 Sergeant Worso and one after that, to Captain Regalis. That
16 first one was in route in Sergeant Worso's vehicle where Mr.
17 Britt took him out and basically showed him the bridge that
18 he had indicated that he actually threw the gun that was
19 used off of. They then brought him back to the sheriff's
20 office and that third statement at that point in time, as
21 alluded to, was to Captain Regalis. Also, -- the day before
22 when he had the audio -- the videotaped statement, he also
23 gave a written statement immediately after that in his own
24 handwriting admitting to this incident. An autopsy was
25 performed on Mr. Parker a day or so later. That indicated

1 he had suffered four gunshot wounds, three of them to the
2 chest, two of which of those were fatal. The third one
3 potentially could have been fatal. And then the fourth one
4 was to his back, which probably was not anything fatal. It
5 basically would have paralyzed him from the waist down. He
6 was found, as I indicated, right inside his front door. He
7 was in just a tee-shirt and boxers when he was shot.
8 Ultimately, as a result of Mr. Britt taking the sheriff's
9 office out to the bridge where he'd indicated he'd thrown
10 the gun off, the sheriff's office got the dive team from
11 Lexington County to come out on August the 30th and in
12 searching that area they did find it. It's a .38 caliber
13 revolver that the SLED matched up to the projectiles that
14 were recovered from the autopsy as being the gun that was
15 used. That would basically be the factual background.

16 THE COURT: Thank you.

17 Mr. Britt, I want to make sure that I asked you -- and
18 I can't remember whether I asked you this or not -- but you
19 did review the evidence that the State had against you with
20 your attorney; is that correct?

21 DEFENDANT BRITT: Yes, sir.

22 THE COURT: And I think I remember doing that
23 earlier. And he explained your constitutional rights to
24 you. And I went through that; is that correct?

25 DEFENDANT BRITT: Yes, sir.

State v Britt

5/22/17

17

1 THE COURT: I think I failed to ask you -- are you
2 satisfied with the services of your attorney?

3 DEFENDANT BRITT: Yes, sir.

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

6 DEFENDANT BRITT: No.

7 THE COURT: Okay. All right, sir. Now, Mr.
8 Britt, you heard what the Solicitor told me about the
9 evidence that they would intend to present at trial?

10 DEFENDANT BRITT: Yes, sir.

11 THE COURT: Okay. Do you generally agree with
12 what I was told about that?

13 DEFENDANT BRITT: Yes, sir.

14 THE COURT: All right, sir. Mr. Britt, the
15 indictment that I have is indictment number 2016-GS-09-0312.
16 It is a true-billed indictment for murder. Allegations are
17 that you did, in Calhoun County, on or about August 25th,
18 2016, with malice aforethought kill one Franklin Parker by
19 means of shooting the victim and that he died as a result of
20 thereof. And that this offense is in violation of the laws
21 of this state. Do you understand the allegations contained
22 in this indictment?

23 DEFENDANT BRITT: Yes, sir.

24 THE COURT: How do you plead to this charge of
25 murder?

1 DEFENDANT BRITT: Guilty.

2 THE COURT: All right, sir. Mr. Britt, you
3 understand if I accept your guilty plea of murder it's going
4 to be a conviction on your record?

5 DEFENDANT BRITT: Yes, sir.

6 THE COURT: You understand that without
7 negotiations or recommendations you could be given a
8 sentence of between thirty years to life?

9 DEFENDANT BRITT: Yes, sir.

10 THE COURT: Okay. You understand it's a violent
11 and a most serious offense and counts as a strike?

12 DEFENDANT BRITT: Yes, sir.

13 THE COURT: Okay. And you understand that any
14 sentence I give you is a day-for-day sentence?

15 DEFENDANT BRITT: Yes, sir.

16 THE COURT: Okay. Do you want me to accept your
17 guilty plea?

18 DEFENDANT BRITT: Yes, sir.

19 THE COURT: Mr. Britt, I find your decision to
20 plead guilty is freely, voluntarily, intelligently made. I
21 find you've had the advice and counsel of a competent
22 lawyer. I find you're satisfied with the services of your
23 lawyer. I find as a factual basis on which to base your
24 guilty plea. I am going to accept your guilty plea.

25 All right. Mr. Sorenson, is there anything else from

State v Britt

5/22/17

19

1 the State?

2 MR. SORENSON: Yes, sir, just a couple of things
3 if I could -- initially, Your Honor -- basically on Your
4 Honor's right, on those first two rows, are family members
5 of Mr. Parker. I do have, if I could approach, an email
6 from his daughter that I have shown to Mr. Banks.

7 THE COURT: Okay. (Reviews email) All right.
8 Anything else?

9 MR. SORENSON: That would be -- just to point out,
10 that would be from his daughter. She is second to Your
11 Honor's left in the front row.

12 THE COURT: Okay.

13 MR. SORENSON: The other members that are here are
14 several siblings of Mr. Parker, along with nieces, his
15 grandchildren, cousins. If I could just give you just a
16 tiny bit of background about him. Mr. Parker, Your Honor,
17 was seventy-nine years old at the time of his death. He
18 would have been eighty by now. He had run the Cayce Bait
19 and Tackle Shop in Cayce, here in South Carolina for about
20 four decades or so before ultimately kind of retiring to St.
21 Matthews. And unfortunately, I think he had kind of had
22 reputation of somebody that was a fairly generous person.
23 And I think unfortunately, that reputation and the fact that
24 he was known probably to have money on him ultimately lead
25 to the reason why this defendant went there that night. Mr.

1 Britt indicated to law enforcement he didn't really know Mr.
2 Parker, knew of him. He had just kind of heard through
3 mutual acquaintances about the fact that he would likely
4 have money at his home that night. Can I let you know his
5 prior record at this time?

6 THE COURT: Yes, sir.

7 MR. SORENSON: Your Honor, Mr. Britt, he was
8 fifty-six years old, I think, at the time of this incident.
9 In looking back at his criminal history, I mean he has been,
10 for the most part, in and out of the department of
11 corrections for the vast majority of his adult life. His
12 prior record goes back to 1977. He has a forgery,
13 housebreaking and grand larceny conviction, which he
14 received a youthful offender sentence for. In 1979, he has
15 four counts of forgery, two counts of housebreaking and
16 larceny, and a marijuana conviction, which he received a
17 total of a twenty year sentence on. And in 1987 he has an
18 assault and battery of a high and aggravated nature, which
19 he received a ten-year sentence suspended to four years.
20 1990, failure to stop for blue light, DUI, and manufacturing
21 marijuana, which he received a ten-year sentence suspended
22 to a year and five years of probation. Then in 1992 a
23 forgery, two counts of assault and battery of a high and
24 aggravated nature, assault and battery, public disorderly
25 conduct, resisting arrest, and a criminal domestic violence,

State v Britt

5/22/17

21

1 which he received a five-year sentence on. Then in 1999,
2 possession of crack cocaine, four counts of strong arm
3 robbery, and a breach of trust, which he received a total of
4 a fifteen year sentence on. 2006, he had a parole
5 revocation on those charges. 2009, a forgery, receiving
6 stolen good conviction. And then in 2010 a grand larceny,
7 which he received a thirty month sentence on. As I said,
8 looking at that, I mean, he literally has been in and out of
9 prison basically for the last four decades of his life. And
10 as a result of that, Your Honor, obviously I'm aware of his
11 age. But, I mean, this is a case that I think demands a
12 significant sentence. Obviously, the State appreciates Mr.
13 Britt not putting the family through a trial. But other
14 than that, I mean, you know, the egregiousness of not only
15 this offense but that it happened in this man's own home,
16 coupled with his prior record, I mean, he is obviously a
17 danger to society. And we respectfully just ask you for a
18 substantial sentence, Your Honor.

19 THE COURT: All right.

20 All right. Mr. Banks.

21 MR. BANKS: Thank you, Your Honor. Your Honor,
22 I've gotten to know my client over about the last two years.
23 He had a little incident that was never fully prosecuted a
24 couple of years ago. Intoxicated and he took and damaged a
25 truck. And he spent that year -- I got appointed to the

1 case. And he spent that year paying over -- I think it was
2 definitely over three thousand dollars. I can't remember
3 how much it was, but like thirty-three hundred dollars or
4 more back. And he was very consistent. He went to work.
5 He came to my office. He delivered the money and we sent it
6 to the victim. And he spent a year basically, Your Honor,
7 on sort of a self-imposed probation paying off that mistake
8 he made. I got to know him pretty good and he's a very
9 likable, friendly, resourceful guy. And then back right
10 before this August event that we're here for today, he got
11 involved in some drugs and went -- sort of went on a bender
12 that way. He was staying several days with the two other
13 folks that were mentioned as witnesses. And started looking
14 to see where he could borrow some money and he ended up at
15 Mr. Parker's house. And just to point out the fact that my
16 client truly went there to borrow money. He didn't have any
17 sort of weapon with him. There was no knife, there was no
18 gun. He did not bring a weapon with him. He truly went
19 over there to borrow some money. And he was invited in.
20 And I guess in a disagreement over the money, the victim
21 went for the gun and my client wrestled it away from him and
22 did this act.

23 THE COURT: Okay.

24 MR. BANKS: I know he's got a long criminal
25 record, but this particular type of thing is not

State v Britt

5/22/17

23

1 characteristic of the Edward Britt that I know. And he
2 certainly remorseful. One of his big hangups, and I'll give
3 him this. He has the utmost respect for the sheriff's
4 department here. And I believe that's, in fact, why he --
5 their prior treatment of him through that other case that
6 never went to trial, and their treatment of him in that case
7 lead to him being extremely overly cooperative in my view.
8 He was as open as he possibly could about the events to the
9 point that it would have made trial very difficult for us.
10 And my client seeing that and understanding his position, he
11 had -- he didn't have many other goals that he could
12 accomplish. But one of them is clearly to spare the victims
13 family from the problems and issues and dredging up for a
14 trial. My client was trying to do at least what little he
15 can to make some sort of amends by allowing them closure
16 without going through something like a several day trial.
17 And that's the kind of Edward Britt that I know. Again, his
18 respect for law enforcement was to his own detriment and he
19 certainly wrapped this case up pretty nice and neat, almost
20 at the start, the first day just about. And that's why he
21 was so cooperative. And his remorse and his respect for law
22 enforcement has left us here today. I think he would like
23 to address the Court at this time.

24 THE COURT: Mr. Britt, I'll be glad to hear from
25 you.

1 DEFENDANT BRITT: Yes, sir. This is for the
2 victim's family and stuff. I do apologize for this crime
3 and the loss of their loved one, and I hope one day that
4 they can find it in their heart to forgive me.

5 MR. BANKS: Your Honor -- and not that it makes
6 that much difference, but I noted that in that email that
7 you read that I think he was an elderly man and he had
8 cancer at the time of his death, I believe, is that correct?

9 THE COURT: That's what she said. He was
10 recovering from it?

11 MR. BANKS: Yes, sir.

12 THE COURT: And was taking cancer treatments every
13 three months. Anything else?

14 MR. BANKS: No, sir. I'm sorry, Your Honor. We
15 would like to point out that thirty year sentence would be
16 with my client's age would he certainly, he wouldn't see the
17 light of day unless something unusual happened.

18 THE COURT: Is there something else?

19 MR. BANKS: No, sir.

20 THE COURT: All right. Mr. Britt, I appreciate
21 the fact that you are pleading guilty and not putting the
22 family through all of this. And I can understand your age
23 but my take on it, it was senseless, you know, for this to
24 happen at all. So what I'm going to do is the sentence of
25 this Court is you're remanded to the State Department of

State v Britt

5/22/17

25

1 Corrections for a period of forty years. I give you credit
2 for the time you've served. Thank you, sir.

3 MR. BANKS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (This proceeding was concluded.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR CALHOUN COUNTY, SOUTH CAROLINA, ON THE 22 DAY OF MAY, 2017.

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

Hilda M. Jordan, CVR-M

September 28, 2017

FORM 5

2018-CP-09-00033

STATE OF SOUTH CAROLINA

COUNTY OF Calhoun

Edward Britt Jr 097580
Full name and prison number (if any) of Applicant.

FILED IN THE COURT OF COMMON PLEAS

2018 MAR 21 P 12:15

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEWS, SC

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Inst
2. Name and location of Court which imposed sentence First Circuit Calhoun County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2016-65-09-0312
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 22, 2016
 - (b) _____

ATTEST TRUE COPY
K. Hasty
Revised 3/2003
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty i /
- (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) Plea counsel advise that I was not entitled to appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ~~Ineff~~
- (b) Ineffective assistant Plea Counsel Respect to
- (c) Hill v lockhart

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

- (a) Reserve to Right to amend S.C.R.C.P. 71.1. (d)
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

- i. _____
- 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. _____

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) Plea counsel advise that I was not to appeal

(b) _____

(c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? /
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? /
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? /
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. Martin Banks Esquire
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Plea hearing
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
From conviction and sentence
20. Are you now under sentence from any other court that you have not challenged?
Yes

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

I, _____, 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.

Edward Britt Jr

Edward Britt Jr Applicant

SWORN or affirmed to and subscribed before me this
13th day of MARCH, 2018.

Lisa Brown-Alston

 Notary Public

LISA BROWN-ALSTON
 Notary Public, State of South Carolina
 My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

STATE OF SOUTH CAROLINA)
)
County of CAHoon.)

VERIFICATION

I, _____, 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.

Edward Butt Jr
Edward Butt Jr

SWORN to and subscribed before me this 13th
day of March, 2018.

Liba Brown-Alston (L.S.)
Notary Public

LIBA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023

amend this Return upon receipt of any relevant materials.

II.

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

1. “Ineffective assistance of Plea Counsel with respect to Hill v. Lockhart.”
2. “Plea counsel advised that I was not entitled to appeal.”

III.

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466

U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant has also alleged Plea Counsel advised him he was not entitled to an appeal. Respondent submits this allegation is without merit. Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). Respondent submits Applicant cannot satisfy the requirements set forth in the Roe test. However, the allegation of counsel's failure to advise the Applicant regarding the possibility of an appeal probably raises questions of fact that cannot be conclusively refuted by the record. Respondent therefore requests an evidentiary hearing to fully resolve this issue.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any

claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

VI.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that

there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VIII.

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

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

05/25, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CALHOUN

EDWARD BRITT, JR., #097580

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2018-CP-09-00033

AFFIDAVIT OF SERVICE BY MAIL

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 and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D Waller, Esquire
Waller Law Group, LLC
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201

DATED this 25th day of May, 2018.

Tamieka Russell-Brown, Legal Assistant

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

FILED

2019 FEB 25 A 11:07

Edward Britt, 097580,

Applicant

Vs.

State of South Carolina

Respondent.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

**AMENDMENT TO APPLICATION FOR
POST CONVICTION RELIEF**

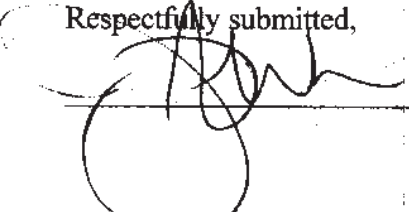
Case No. 2018-CP-09-00033

Applicant, by and through his Attorney, Jonathan D. Waller, Esquire, would amend his Application for Post Conviction Relief filed March 21, 2018, by adding the claims of ineffective assistance of to question 10 and by adding the following specific prayers for relief to his original allegations:

1. As to representation rendered by Martin Banks, Esquire:
 - a. Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant and his subsequent statements to law enforcement, thus rendering Applicant's plea unknowingly and involuntarily entered into.
 - b. Counsel was ineffective for failing to conduct adequate amount of meeting with Applicant to review discovery so that Applicant would know of the allegations against him, thus rendering Applicant's plea unknowingly and involuntarily entered into.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,



Jonathan D. Waller
Waller Law Group
1116 Blanding Street
Suite 2B
Columbia, South Carolina 29201
ATTORNEY FOR APPLICANT

February 22, 2019

Columbia, South Carolina

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Proceedings 4

TESTIMONY - WITNESS

Edward Britt, Jr.,

 Direct Examination by Mr. Waller 6

 Cross-Examination by Mr. Limbaugh. 18

 Redirect Examination by Mr. Waller 22

Martin Banks, Esq.,

 Direct Examination by Mr. Limbaugh 24

 Cross-Examination by Mr. Waller. 29

 Redirect Examination by Mr. Limbaugh 35

Certificate Page. 37

E X H I B I T S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
------------	--------------------	-------------	--------------

No exhibits marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:11 a.m.)

THE COURT: All right. Counsel, are we ready to proceed? This is the case versus Mr. Edward Britt; is that correct?

MR. LIMBAUGH: That's correct, Your Honor.

THE COURT: All right.

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

THE COURT: Yes, sir.

MR. LIMBAUGH: Ben Limbaugh for the state. This is Mr. Edward Britt, Jr., Case No. 2018-CP-09-0033. Applicant is represented by Mr. Jonathan Waller.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. In March 2017 the Calhoun County Grand Jury indicted applicant for murder. The charge resulted from August 2016 incident in which applicant -- applicant fatally shot the victim in the victim's home following an apparent armed robbery.

The Honorable Martin R. Banks represented applicant. Donald Sorenson, Esq., prosecuted the case. On May 22nd, 2017, applicant pled guilty as indicted without negotiations or recommendation before the Honorable Ed -- Edgar W. Dickson. Judge Dickson sentenced the applicant to imprisonment for 40 years each for murder. Applicant did

1 not appeal from his guilty plea or sentence.

2 In his application for postconviction relief,
3 applicant alleges that he's being held in custody
4 unlawfully for the following reasons (as read):

5 "Ineffective assistance of plea counsel with respect to
6 *Hill v. Lockhart*; plea counsel advised that I was not
7 entitled to appeal."

8 Mr. Waller also sent me last week an amendment to this
9 application. Mr. Waller added: "Counsel was ineffective
10 for failing to properly investigate the facts and
11 circumstances surrounding the allegations against applicant
12 and his subsequent statements to law enforcement, thus
13 rendering applicant's plea unknowingly and involuntarily
14 entered into. Counsel was ineffective for failing to
15 conduct adequate amount of meeting with applicant to review
16 discovery so that applicant would know of the allegations
17 against him, thus rendering applicant's plea unknowingly
18 and involuntarily entered into."

19 I will now hand it over to Mr. Waller at this time,
20 Your Honor.

21 THE COURT: All right. Mr. Waller?

22 MR. WALLER: Thank you, Your Honor. May it please the
23 Court?

24 THE COURT: Yes, sir.

25 MR. WALLER: Your Honor, the applicant would call

1 Edward Britt.

2 THE COURT: Come on up, Mr. Britt.

3 (Whereupon, the applicant came forward.)

4 DEPUTY CLERK OF COURT: Please raise your right hand.

5 THE APPLICANT: (Complied.)

6 DEPUTY CLERK OF COURT: State your full name for the
7 record.

8 THE APPLICANT: Edward Britt, Jr.

9 EDWARD BRITT, JR., having been first duly sworn,
10 testified as follows:

11 DEPUTY CLERK OF COURT: Thank you and have a seat.

12 THE APPLICANT: (Complied.)

13 THE COURT: Your witness.

14 MR. WALLER: Thank you, Your Honor. May it please the
15 Court?

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. WALLER:

19 Q Good morning, Mr. Britt. How are you today?

20 A Good.

21 Q All right, Mr. Britt. I want to, if I can, take you
22 back to when you were first arrested for this murder
23 charge. Do you recall that?

24 A Yes, sir.

25 Q Okay. Who was your attorney?

DIRECT EXAMINATION BY MR. WALLER - EDWARD BRITT, JR. 7

1 A Martin Banks.

2 Q All right. And when you were first arrested, how long
3 after -- how long after you were arrested did -- did you
4 see Mr. Banks?

5 A About a month -- month and a half.

6 Q Okay. Do you remember what y'all talked about?

7 A Yeah. He wanted me to plead guilty.

8 Q Okay. Did y'all talk about your constitutional
9 rights?

10 A No, sir.

11 Q Okay. Did y'all ever talk about your right to a
12 trial?

13 A No.

14 Q Okay. How long did you meet with Mr. Banks that ---

15 A How long ---

16 Q --- first time ---

17 A --- what?

18 Q How long -- the first time, how long did you meet with
19 Mr. Banks?

20 A Probably about 30 minutes.

21 Q Okay. In those 30 minutes, what did y'all talk about?

22 A He didn't -- all he wanted me to do was plead guilty.
23 He didn't talk about no defense or nothing.

24 Q Okay. You gave a statement to law enforcement. Do
25 you recall that?

1 A Yes.

2 Q Okay. Do you recall giving the statement, or do you
3 recall that you gave a statement?

4 A I gave a statement.

5 Q Okay. Did you and Mr. Banks have a chance to discuss
6 your statement?

7 A He never discussed nothing hardly.

8 Q Okay. You -- you gave some information to law
9 enforcement, aside from your statement, where to find
10 certain pieces of evidence. Do you remember that?

11 A Uh-huh.

12 Q Did you and Mr. Banks discuss that?

13 A No. Just me and law enforcement.

14 Q Did y'all talk about it after the fact, you and Mr.
15 Banks?

16 A No.

17 Q Okay. Did y'all discuss any of the other evidence
18 against you?

19 A Nope.

20 Q Okay. Two other people gave statements against you,
21 people that were in the car with you. Do you ---

22 A Right.

23 Q Were -- did you and Mr. Banks ever talk about their
24 statements?

25 A No.

DIRECT EXAMINATION BY MR. WALLER - EDWARD BRITT, JR. 9

1 Q All right. Mr. Britt, what did you and Mr. Banks talk
2 about?

3 A All he talked about was pleading guilty. He came to
4 see me twice. And the second time we went to court.

5 Q Okay. So the first time, you met for 30 minutes?

6 A Uh-huh.

7 Q And all -- all he talked about was -- was you pleading
8 guilty?

9 A Uh-huh.

10 Q And then, the second time ---

11 THE COURT: Sir ---

12 Q --- you met ---

13 THE COURT: --- would you ---

14 Q --- was at ---

15 THE COURT: --- answer ---

16 Q --- the court ---

17 THE COURT: -- "yes" or "no," instead of "uh-huh" or
18 "unh-unh"? Because the court reporter's got to be able to
19 take down ---

20 A Yes.

21 THE COURT: --- what you say.

22 Q Okay. The second time you met was at the courthouse?

23 A Yes.

24 Q And that was the day you pled guilty?

25 A Right.

1 Q Okay. Did you know why you were going to the
2 courthouse that day?

3 A Yeah.

4 Q Okay. You knew you were going to plead guilty?

5 A Uh-huh. Yes, sir.

6 Q Okay. Did you tell Mr. Banks you wanted to go to
7 trial?

8 A Well, I was supposed to pick a jury that day. And we
9 end up pleading guilty.

10 Q Okay. And you were supposed to pick a jury. Did you
11 -- did you know your trial was going to start that day?

12 A No. Well, I thought the trial was going to start that
13 day we picked the -- the jury. But I end up pleading
14 guilty.

15 Q Okay. Had you and Mr. Banks talked about the trial?

16 A He -- all we discussed is coming to the courthouse,
17 picking a jury. The next thing I know, I'm pleading
18 guilty.

19 Q Okay. Had y'all talked about any defenses that you
20 might have?

21 A No. All he want to do was plead guilty.

22 Q Okay. What did you want to do, Mr. Britt?

23 A I wanted to go forward with -- for trial.

24 Q Okay. Well, what -- what changed?

25 A Well, he told me something like if you plead guilty,

DIRECT EXAMINATION BY MR. WALLER - EDWARD BRITT, JR. 11

1 you'll get a certain amount of time and that wasn't the
2 case.

3 Q Okay. Mr. Britt, when you went in front of the judge
4 and he asked you if you were pleading guilty because you're
5 -- because you are guilty and you said "Yes," why did you
6 do that if you wanted to go to trial?

7 A I don't know. Feel like I was being rushed and
8 pushed, you know. I didn't -- I was just ready to get it
9 over with.

10 Q Okay. When you were arrested, Mr. Britt, how old were
11 you?

12 A Fifty-six.

13 Q Okay. And what was the sentence that you got?

14 A Forty years.

15 Q Okay. All right. Do you -- did you and Mr. -- Mr.
16 Banks discuss the amount of time you would be facing if you
17 were convicted at trial?

18 A No.

19 Q Okay. Did you know what the potential penalties of
20 murder are?

21 A I think one time he said 30 to life or life or
22 something.

23 Q Okay. Did you tell -- did you give Mr. Banks any
24 information, anything that you wanted him to investigate or
25 look into, about your case?

DIRECT EXAMINATION BY MR. WALLER - EDWARD BRITT, JR. 12

1 A Yeah. He was supposed to look into the statements and
2 stuff and never did.

3 Q The statements of who?

4 A The -- the statements that the two other people gave.

5 Q Okay. What did you tell him about their statements?

6 A I told him that their statements weren't no good.

7 Because, I mean, they never did a -- a residue report -- a
8 gunshot residue on me or them or none of us. And all of us
9 together, you know, so who's to say who shot who?

10 Q Okay. Let -- let me -- let me slow you down for just
11 a minute. So there were -- there were three people
12 together?

13 A Right.

14 Q You, Donald -- a man named Donald Bowen ---

15 A Uh-huh.

16 Q --- and a -- a female; is that right?

17 A Correct.

18 Q Okay. All three of y'all were together?

19 A Right.

20 Q When this incident took place?

21 A Uh-huh.

22 Q Okay. The other ---

23 A Yes.

24 Q --- two -- the other two individuals gave statements
25 to law enforcement saying that you committed this crime?

DIRECT EXAMINATION BY MR. WALLER - EDWARD BRITT, JR. 13

1 A Right.

2 Q Okay. What information did you give to Mr. Banks
3 about what they told law enforcement?

4 A I told him that was -- that was -- that was not
5 correct.

6 Q Okay. Did you give him -- did you tell him what was
7 correct?

8 A Yeah.

9 Q Okay. Did you ask him to follow up on that?

10 A Sure did. Yes, sir.

11 Q To your knowledge, did he ever do that?

12 A No.

13 Q Okay. Did you come to find out that -- that Donald
14 Bowen was offered a polygraph test at some point?

15 A Yes, sir.

16 Q Okay. Do you know if Mr. Banks ever followed up and
17 found whether he took it or not?

18 A I never -- I never got results. And also, too, Donald
19 Boland [sic], the -- the -- the chief in -- the
20 investigator with Calhoun County, Jimmy Orso, that's Donald
21 Boland's uncle. He investigated this case.

22 Q Okay. Did you -- did you know that at the time to
23 tell Mr. Banks?

24 A No. I ---

25 Q Okay.

1 A After about five months I learned it -- I -- I -- I
2 learned it and learned the truth of it. And I told Martin
3 Banks. And he said, "Well, that don't matter."

4 Q Okay. The allegations -- or -- or by everyone's
5 statement is that you were quite intoxicated for -- for a
6 number of days; is that right?

7 A Yeah.

8 Q Okay. Did you and Mr. Banks ever talk about you being
9 intoxicated and how that would relate to your case?

10 A No.

11 Q Okay. Did y'all ever talk about how it would relate
12 to the statement that you gave to law enforcement?

13 A No, sir.

14 Q Okay. Did you ask him any questions about it?

15 A Not -- not -- not that I could recall. No.

16 Q Okay. Did you have a copy of any discovery in your
17 case?

18 A Repeat that again.

19 Q Did you have a copy of any of the evidence the state
20 said they had against you?

21 A No.

22 Q Okay. Did you ask for a copy?

23 A Yes.

24 Q Okay. When did you ask for a copy?

25 A I asked for a copy before -- way before my trial.

DIRECT EXAMINATION BY MR. WALLER - EDWARD BRITT, JR. 15

1 Q Okay. And you never got one?

2 A Unh-unh.

3 Q Okay.

4 A I got all this after -- when I filed a postconviction.

5 Q Okay. So after you -- you got to prison is when you
6 -- you found out ---

7 A Yes, sir.

8 Q --- some of this stuff?

9 Okay. Did you -- when you asked for it, what did --
10 what was the response from Mr. Banks?

11 A He said it would take a while. And I just asked --
12 kept asking why would it take a while. And he never give
13 me an answer. And I didn't never pursue it.

14 Q Okay. Do you know if he had a copy when you asked for
15 it?

16 A Yeah.

17 Q Okay. How do you know he had a copy?

18 A I don't know that for sure. But I'm -- he -- I --
19 there was a lot of paperwork I didn't get till after I got
20 my time.

21 Q Okay.

22 A Just like from SLED, there wasn't no fingerprints on
23 the gun or nothing. And so I can -- who say -- whatever
24 say that I shot the man.

25 Q Okay. And you didn't know there weren't -- did you --

1 let me ask you this question: Did you know there were no
2 -- that the report had come back that there were no
3 fingerprints on the gun before you pled guilty?

4 A No.

5 Q Okay. Did you and Mr. Banks ever discuss the gun?

6 A No.

7 Q Okay. But you took law enforcement to the creek or
8 river where the gun was; is that right?

9 A That's correct.

10 Q Okay. Did you and Mr. Banks ever discuss you taking
11 law enforcement out there?

12 A No.

13 Q Okay. Did you and Mr. Banks ever discuss any mental
14 health issues or anything like that that you might have?

15 A No. But me and the judge did.

16 Q You and the judge did? The ---

17 A Yeah.

18 Q The judge asked you if you'd been treated for
19 anything?

20 A Yeah.

21 Q Is that right?

22 A (No audible response.)

23 Q Okay. What did you tell the judge?

24 A I told him I've been treated for bipolar.

25 Q Okay. Did that have any effect on you and Mr. Banks's

DIRECT EXAMINATION BY MR. WALLER - EDWARD BRITT, JR. 17

1 conversations, that you know of?

2 A Not really. Ain't too much matter to him.

3 Q Okay. In your application you -- you said that Mr.
4 Banks told you, you could not file an appeal from your
5 plea.

6 A Yeah. He told me if I pled guilty or whatever, I
7 couldn't file no kind of -- no kind of appeal or nothing.

8 Q Okay. Did you ask him about filing an appeal?

9 A Yeah.

10 Q Okay. When did you ask him that?

11 A When I -- when I got my sentence. He said, "Well, you
12 -- there's no reason to appeal."

13 Q Okay. So after -- after you got your sentence, you
14 asked about filing an appeal?

15 A Uh-huh.

16 Q Okay. You asked ---

17 A Yeah.

18 Q Did you ask him to file one?

19 A Yeah.

20 Q Okay. And he said there was no -- no reason to?

21 A He said there -- he -- he said I didn't have no
22 reason, no grounds or nothing.

23 Q Okay. So, Mr. Britt, your -- you've testified here
24 today that you and Mr. Banks met two times before you
25 entered your plea?

1 3A That's correct.

2 Q And one was at -- at the courthouse?

3 A Right.

4 Q Okay. All right, Mr. Britt. I think I've asked you
5 all the questions that I have for you. Is there anything
6 you think I've left out that the judge needs to be aware of
7 Mr. Banks's representation of you?

8 A No.

9 Q Okay. Please answer any questions Mr. Limbaugh has.

10 A Okay.

11 THE COURT: Cross-examination?

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

13 CROSS-EXAMINATION

14 BY MR. LIMBAUGH:

15 Q How you doing, Mr. Britt?

16 A Good.

17 Q When you entered your plea, were you sworn in? Did
18 you swear to tell the truth?

19 A (No audible response.)

20 Q Okay. Do you remember the Court asking you if you
21 reviewed the evidence in your case with your attorney?

22 A Vaguely, yeah.

23 Q And do you remember saying that you had?

24 A Yeah. That morning of the -- excuse me. I didn't
25 mean to cut you off. But that morning that I pled guilty

CROSS-EXAMINATION BY MR. LIMBAUGH - EDWARD BRITT, JR. 19

1 or whatever, because Martin Banks with -- with -- with --
2 with -- with what you asked me now, what evidence stuff.

3 Q Okay. And you were prepared, or at least your
4 attorney was prepared, to go to trial because you were
5 expected to go to trial that day, correct?

6 A We was supposed to pick the jury that day and go to
7 trial the next day.

8 Q Okay. Do you remember the judge at your plea asking
9 you if Mr. Banks had discussed the law and the facts of the
10 case with you?

11 A Uh-huh.

12 Q And you remember saying "yes" to that?

13 A Uh-huh.

14 THE COURT: Is that a "yes," sir?

15 A Yes, sir.

16 THE WITNESS: Yes, ma'am. Yes, sir.

17 Q Do you remember the judge asking if Mr. Banks had
18 reviewed your constitutional rights with you?

19 A No, sir.

20 MR. LIMBAUGH: Your Honor, I'll just reference the
21 page, instead of refreshing every time. That's transcript,
22 page No. 4.

23 THE COURT: Yes, sir.

24 Q And you were aware of the fact that you had a right to
25 a jury trial because you're about to proceed to one that

1 day; is that correct?

2 A That's correct.

3 Q Okay. You remember the judge at your plea going over
4 the rights you were giving up by entering your plea, like
5 remain silent, cross-examine the witnesses, things of that
6 nature?

7 A Unh-unh.

8 THE COURT REPORTER: I'm ---

9 A No, sir.

10 THE COURT REPORTER: --- I'm sorry, Your Honor. I
11 just -- I didn't understand his answer.

12 THE COURT: He said, "No, sir."

13 MR. LIMBAUGH: That colloquy begins on page 9 of the
14 transcript, Your Honor.

15 Q Do you remember the judge asking if anyone had
16 threatened you or forced you into entering your guilty
17 plea?

18 A Yeah.

19 Q And you remember saying "no" to that?

20 A I remember saying "no." But also, too, that --
21 something about at a certain age, I could be released
22 because of my chronic diabetes and stuff.

23 Q Okay. You remember the judge asking if you were
24 satisfied with Mr. Banks' representation of you?

25 A Yeah.

CROSS-EXAMINATION BY MR. LIMBAUGH - EDWARD BRITT, JR. 21

1 Q You remember saying "yes" to that?

2 A Yeah.

3 Q Okay. And the judge asked if you needed any more time
4 to speak with Mr. Banks. You remember that?

5 A Right.

6 Q And you said "no"?

7 A That's correct.

8 Q Okay. Remember the solicitor at your plea reciting
9 the facts that they were going to present at trial in your
10 case?

11 A Uh-huh. Yes, sir.

12 Q Do you remember agreeing to those facts?

13 A Yeah.

14 Q Okay. And the judge reviewed your mental health
15 concerns at your plea; is that correct? You had a
16 conversation with the judge?

17 A Yes.

18 Q Okay. Did you just tell Mr. Waller that you -- you
19 asked Mr. Banks to file an appeal on your behalf?

20 A Yes.

21 Q Okay. Do you recall when you might've done that?

22 A Well, when I asked my -- Martin Banks to file when I
23 got -- when I received my sentence.

24 Q Okay. And how many times did you said you met with
25 Mr. Banks before you entered your plea?

REDIRECT EXAMINATION BY MR. WALLER - EDWARD BRITT, JR. 22

1 A Twice.

2 Q Twice? Okay.

3 MR. LIMBAUGH: That's all I have, Your Honor.

4 THE COURT: Okay. Any redirect?

5 MR. WALLER: Just very briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. WALLER:

8 Q Mr. Britt, on cross-examination you -- you were asked
9 if you were -- you were ready to go to -- to trial that day
10 because you came to pick the jury, okay?

11 A (No audible response.)

12 Q Were -- regardless of if your trial was scheduled to
13 start that day, were you ready to go to trial? Had you and
14 Mr. Banks prepared?

15 A Not really. I mean, I only saw him twice.

16 Q Okay. Based on your conversations with him, had he
17 done preparations to start that trial that day?

18 A No. Not as I know of.

19 Q Okay. Ultimately, you ended up pleading guilty that
20 -- that same day; is that right?

21 A Yes.

22 Q Okay. Did you plead guilty because you didn't feel
23 prepared to go to trial?

24 A I was -- basically, I was just aggravated and wanted
25 to get it over with. I mean, I didn't know. Because this

REDIRECT EXAMINATION BY MR. WALLER - EDWARD BRITT, JR. 23

1 lawyer had a -- I -- I felt like I was pushed or rushed
2 into it.

3 And then, I was supposed to pick the jury and then
4 plead guilty. I was really confused. But I went ahead and
5 pled guilty.

6 Q Okay. So when you got to court that day, you thought
7 you were starting your trial?

8 A Yes.

9 Q Okay. And then, you were confused and frustrated and
10 ended up pleading guilty; is that right?

11 A Yes. That's correct.

12 Q Nothing further. Thank you, Mr. Britt.

13 THE COURT: You may step down, sir. Thank you.

14 THE APPLICANT: Thank you.

15 THE BAILIFF: Yes, sir. Watch your step.

16 (Whereupon, the applicant exited the witness stand.)

17 THE COURT: You may call your next witness.

18 MR. WALLER: Nothing further from the applicant, Your
19 Honor.

20 THE COURT: Okay. Anything from the state?

21 MR. LIMBAUGH: Yes, Your Honor. The state would call
22 Mr. Martin Banks.

23 (Whereupon, the witness came forward.)

24 DEPUTY CLERK OF COURT: Please raise your right hand.

25 THE WITNESS: (Complied.)

1 DEPUTY CLERK OF COURT: State your full name for the
2 record.

3 THE WITNESS: Martin Banks.

4 MARTIN BANKS, having been first duly sworn,
5 testified as follows:

6 THE COURT: Your witness.

7 MR. LIMBAUGH: Thank you, Your Honor.

8 THE WITNESS: Morning.

9 DIRECT EXAMINATION

10 BY MR. LIMBAUGH:

11 Q Morning, Mr. Banks. How you doing this morning?

12 A Good.

13 Q Start off with a few little background things. How
14 long have you been practicing law?

15 A Twenty-six years.

16 Q And has most of that been criminal work?

17 A Yeah. I've been public defender for, like, 24/5 of
18 those.

19 Q Okay. I'll get straight into it, then. How many
20 times did you meet with Mr. Britt?

21 A Well, let me start by saying I -- that's the first --
22 when I read the petition, it was just about that I had not
23 advised him that he could have an appeal.

24 Q Uh-huh.

25 A The first I heard that any of that was an issue was

1 when they brought it up just a minute ago. I've never seen
2 that in writing. So I'm not -- I wasn't fully prepared for
3 that. I -- I -- but I guarantee it was more than twice.

4 Q Okay.

5 A And -- and let me add: I have a stack of letters from
6 Mr. Britt, a stack of them, that go into detail about "What
7 about this?" "What about that?" that I responded to,
8 whether it was in person or it was -- it had to be in
9 person because I don't have any letters I wrote back to
10 him. I -- I -- I don't like to write letters to the prison
11 because they can get spread around when it talks about your
12 case. But, I mean, I literally have a stack of letters
13 that I -- if he had a question, it was answered or -- or I
14 -- he'd probably grievanced me at that point -- at some
15 point.

16 Q So it would've -- would've been your practice to
17 answer all of his questions?

18 A Absolutely. Absolutely.

19 Q Okay. And as I went over with Mr. Britt, you were
20 prepared to go to trial, because you were supposed to go to
21 trial that day; is that correct?

22 A Yeah. Let -- let me -- let me show you just a subtle
23 hint. This -- this -- this is one of the papers in my
24 folder. And again, I'm -- I'm totally unprepared for that.
25 I was not prepared to -- to go into all this. But it's a

1 three-hole tab in that. And to me that means that I had
2 prepared a tabbed, three-ring binder, which I only do for
3 trial, in, you know, every -- not every paper, but I have a
4 hundred papers in here that are tabbed, three-ring binder,
5 ready to go.

6 And here's my jury list that I had already researched
7 every juror, which I know plenty of the jurors in my small
8 county. So I -- I have all these notes on the jury list.
9 I mean, I -- I was fully prepared to go to trial.

10 Q All right. And so you -- you did an investigation in
11 preparation for that trial?

12 A I just happened to come across the -- the subpoena for
13 his high school records, the subpoena for his mental health
14 records, the subpoena for -- you know, getting all the
15 background I can on him; and my notes on listening to every
16 minute of his audio confession to the police. And then, he
17 went and confessed at the scene. And I've got pictures of
18 him standing there, showing them where the gun is.

19 I mean, it's just -- yeah. I've -- I did a great deal
20 of work on -- I hired a private investigator, for Pete's
21 sake. And he didn't actually spend a great deal of time on
22 it because he was so convinced that this was a -- going to
23 be a difficult ride.

24 Q Did you have any mental health concerns with Mr. Britt
25 when you were working with him?

DIRECT EXAMINATION BY MR. LIMBAUGH - MARTIN BANKS 27

1 A You know, I actually like Mr. Britt. He -- he's -- he
2 was a pleasant person to deal with. He was never -- you
3 know, that -- the bipolar, if he -- if he was -- and I -- I
4 -- I guess he had been diagnosed bipolar at some point.
5 But he -- he was very -- he -- he didn't swing one way or
6 the other.

7 So I think he understood -- I -- I -- he may have some
8 IQ-type issues. I don't know that they would be a -- an
9 appealable-type issue. But he -- he's not the brightest
10 client I've had. But -- but he -- I believe he understood,
11 you know, the -- our discussions.

12 Q I believe you said earlier he asked you numerous
13 questions about his case in his letters to you?

14 A Oh, gosh, yeah. Detailed -- I mean, very thoughtful
15 questions. And -- and like I said, I -- I -- if I was more
16 prepared for the presentation they made today, I could
17 probably dig up the -- whether I actually gave him a copy
18 of his file. I -- I'm sure he asked for it.

19 But I don't always give a copy of the file to a client
20 for that same -- "things get out in the jail" kind of
21 thing. So sometime I advise them, you know, "That's not a
22 smart thing sometimes. I'm happy for you to work with your
23 file."

24 It seems to me I did. But I -- I can't say that I did
25 that. But if I do, I usually get them to sign something

1 saying: "Look, I've kind of advised you not to do this
2 because -- and if you do it, you need to 'keep -- keep it,
3 you know, on your person at all times' kind of thing." And
4 I hadn't seen that letter. But anyway ---

5 Q So if you did not give it to him, it would be in your
6 normal practice to review all of that with him?

7 A Yeah.

8 Q Okay. And you would've reviewed his constitutional
9 rights with him; is that correct?

10 A Yeah.

11 Q Okay. And to the issue that you are prepared for, did
12 you ever tell Mr. Britt that he did not have the right to
13 appeal?

14 A I -- I've never told that to a criminal defendant in
15 my life. The closest I've ever come to saying something
16 similar to that would be that it's very difficult to appeal
17 a -- a guilty plea.

18 Q So if he had asked you about filing an appeal, would
19 that have been your response, that it is difficult ---

20 A I'm sorry. He -- it's very difficult to successfully
21 appeal a guilty plea. I'm sorry. What was the question?

22 Q I'll change the question. Do you specifically recall
23 Mr. Britt asking you to file an appeal?

24 A No.

25 Q Okay.

1 MR. LIMBAUGH: That's all I have for this witness,
2 Your Honor.

3 THE COURT: All right. Cross-examination?

4 MR. WALLER: Just briefly, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. WALLER:

7 Q Mr. Banks, what -- what was your understanding of the
8 -- the -- kind of the general allegations against Mr.
9 Britt?

10 A He was charged with murder, armed robbery, and I
11 believe it was grand larceny. What -- is that what you
12 mean?

13 Q Factually, what was he ---

14 A Factually.

15 Q --- accused of?

16 A He was accused of basically coming to this guy's house
17 with the two codefendants and basically entering the man's
18 house, trying to get money from him. He refused. I
19 believe he knew that the man had lots and lots of money
20 there in cash and ended up killing him with his gun and
21 then taking the money and leaving and meeting back up with
22 these folks.

23 Q Okay. What -- if you recall, what did you and Mr.
24 Britt as far as potential defenses that you might have?

25 A Well, I -- I mean, I've got his -- potential defenses?

1 Well, he -- he has some -- I don't -- I don't know if he
2 had much in the way of a defense. But he -- he had, you
3 know, mental issues. He had competency issues.

4 He had two defendants who weren't that savory either
5 -- actually, the -- the -- the man had a little more
6 credibility. He had a job and so -- so forth. The -- the
7 -- the woman, Ms. Grubbs, was a little less credible, I
8 think, in many ways.

9 The -- so he had -- he -- we could poke some holes.
10 But, I mean, he could try to say that they did this instead
11 of he did that. At that point you have to weigh the
12 statements of the two and his own two confessions, which
13 were quite detailed. And -- and so yeah. You could say
14 that they did it instead of he did it.

15 Q Okay. To your recollection, what -- y'all came to the
16 courthouse that day ready to -- to start a trial?

17 A Yes.

18 Q Is that right?

19 A Uh-huh.

20 Q Okay. What -- to your recollection, what changed in
21 Mr. Britt's mind?

22 A Well, all along, from day one, from the very first
23 day, the -- the background of this is Mr. -- Mr. Britt had
24 got in some trouble. I think he damaged some property or
25 something. This is previous case. All right? He damaged

1 some property or something like that. And he was looking
2 at some time.

3 And he had quite a rap sheet -- I mean, a very
4 extensive rap sheet. I'm sure you've seen it and -- which
5 actually played into him testifying. He would've had to
6 testify, I think, at his own trial on this case.

7 But anyway, he -- he damaged some property. And --
8 and he's arranged with the sheriff, without my assistance
9 -- because it -- basically, I had just gotten on the case.
10 But he arranged with the sheriff to not charge him if he
11 paid off the -- the -- however much he owed.

12 And to his credit, he -- he spent months. And every
13 week or two, he'd come into my office with \$40 or \$60 or
14 \$100 or whatever. And I -- I believe it was a -- it was
15 some -- it was a -- I think it was a felony-level malicious
16 injury or something like that. I -- I can't remember.

17 And he'd paid -- I don't know -- a couple thousand
18 dollars approximately to -- to do this. And so the -- he
19 -- he had this relationship with the sheriff.

20 Q This was a previous offense?

21 A Yes, a previous case.

22 Q So -- so you ---

23 A And -- and ---

24 Q --- represented him before?

25 A Yeah. But it got dismissed.

1 Q Okay.

2 A And ---

3 Q Was -- it was ---

4 A --- but ---

5 Q --- a police car, was it ---

6 A I'm sorry?

7 Q --- not? Was the -- the property was a police car?

8 A I -- I can't remember. I -- I -- honestly, it's been
9 quite a while.

10 Q Okay.

11 A But the -- again, he had this relationship with the
12 sheriff. And I think that's why he confessed twice, is
13 because they really -- I mean, the sheriff really went out
14 on a limb for this guy. Because he had such a rap sheet.
15 I -- I -- I would -- I don't think I could've gotten it
16 myself on -- on anybody else.

17 But it was -- so he -- he arranged that. And he had
18 this relationship with the -- I mean, specifically, the
19 sheriff, not -- not the department. And -- and when he
20 paid it off, I mean, it was just all good.

21 Well, it wasn't long after that that -- that this
22 happened. And he -- so he had this overwhelming sort of
23 relationship with the sheriff kind of thing in the back of
24 his mind. And -- and he wanted to do the right thing.
25 That's why he confessed two different ways, very detailed,

1 and -- and had sort of an overriding feel in this case that
2 he should do the right thing, which would be to admit what
3 he'd done wrong.

4 And so he changed his mind at some point, which, you
5 know, perfectly fine. He -- that's his right. But -- so I
6 -- I think it -- when it came down to trial on that day of
7 trial, he decided to do the right thing.

8 Q Okay. Would there have been -- I -- I believe Mr.
9 Britt testified that he was 56 or 58 at the time.

10 A Uh-huh.

11 Q He got a 40-year sentence. That's obviously ---

12 A Yeah.

13 Q --- well into his 90s. Would there have been a
14 significant risk, based on your experience, of -- of going
15 to trial, even if convicted of getting more time than it
16 would matter, I guess, is the -- the ---

17 A Yeah. I -- I mean, I -- we -- I considered, look, he
18 could get a burglary and not get convicted of the other
19 stuff. Or he could get a grand larceny and got -- no. But
20 -- but -- so yeah. There was some consideration that it
21 might happen. But I think the -- do the right thing still
22 won the day. I -- I -- I -- I think he'd have gotten the
23 same result, I mean.

24 I -- actually, when I looked at this jury list a
25 minute ago. I -- I wasn't real happy with the pool, to --

1 to be honest with you too. That was another factor.

2 Q Okay. From a practical sense -- I guess I won't dance
3 around anymore. From a practical sense, would -- is the
4 life expectancy in SCDC 96 or 98 years?

5 A No. And -- and I -- actually, I think I had a short
6 discussion with him that, you know, if he does this, his
7 only hope of ever getting out -- his only hope of ever
8 getting out would be some sort of -- I think he said
9 something about his diabetes or something -- that he'd have
10 one of those hardship, old-man kind of things. That would
11 be his only hope of ever getting out.

12 Q Which is kind of a -- SCDC making a financial ---

13 A Yeah.

14 Q --- decision ---

15 A Yeah. Yeah.

16 Q --- not wanting ---

17 A I think that's ---

18 Q --- not wanting ---

19 A --- what it ---

20 Q -- to pay for ---

21 A --- boils down to. They're -- they're -- you know,
22 humanitarian or whatever they would call it. But I think
23 that's a financial decision. Yeah.

24 MR. WALLER: Beg the Court's indulgence, please?

25 THE COURT: Yes, sir.

1 (Off the record briefly.)

2 Q Nothing further. Thank you, Mr. Banks.

3 A Thank you.

4 THE COURT: Any redirect?

5 MR. LIMBAUGH: Just one question, Your Honor.

6 THE COURT: Yes, sir.

7 REDIRECT EXAMINATION

8 BY MR. LIMBAUGH:

9 Q Ultimately, whose decision was it to plead guilty that
10 day?

11 A Mr. Britt.

12 MR. LIMBAUGH: Thank you, Your Honor. That's all I
13 have.

14 THE COURT: All right. You may step down, Mr. Banks.

15 THE WITNESS: Thank you.

16 (Whereupon, the witness exited the witness stand.)

17 THE COURT: Any other witnesses, Mr. Limbaugh?

18 MR. LIMBAUGH: The state rests, Your Honor.

19 THE COURT: Do the parties care to give a closing? I
20 don't ---

21 MR. WALLER: I -- I don't ---

22 THE COURT: Don't think ---

23 MR. WALLER: --- know that ---

24 THE COURT: --- it's necessary.

25 MR. WALLER: --- it's necessary, Your Honor.

1 THE COURT: Just if you wanted to, I'd be happy to
2 hear it. All right.

3 (Whereupon, the proceeding was concluded at 10:44 a.m.)

4 --- END OF TRANSCRIPT OF RECORD ---

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, Official Court Reporter for the Eighth 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 hearing of the captioned cause, relative to appeal, in the Circuit Court for Calhoun County, South Carolina, on the 26th day of February, 2019.

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



Maryann S. Nevers, CVR-M-CM, RVR
Official Court Reporter

Columbia, South Carolina
January 15, 2020

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

FILED

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

2019 AUG 19 P 3:54

Edward Britt, Jr., #097580,

Case No.: 2018-CP-09-0033

Applicant,

CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

ORDER OF DIMISSAL

v.

State of South Carolina,

Respondent.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. In March 2017, the Calhoun County Grand Jury indicted Applicant for murder (2016-GS-09-0312). The charge resulted from an August 2016 incident in which Applicant fatally shot the victim in the victim's home following an apparent attempted robbery. Tr. pp. 13-16. The Honorable Martin R. Banks represented Applicant. Donald N. Sorenson, Esquire, prosecuted the case. On May 22, 2017, Applicant pleaded guilty as indicted without negotiations or recommendation before the Honorable Edgar W. Dickson. Judge Dickson sentenced Applicant to imprisonment for forty years each for murder. Applicant did not appeal from his guilty plea or sentence.

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

1. "Ineffective assistance of Plea Counsel with respect to Hill v. Lockhart."
2. "Plea counsel advised that I was not entitled to appeal."

Findings of Facts and Conclusions of Law

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented,

which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, William Brunson. Each allegation is addressed fully below.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a “‘reasonably competent attorney.’ ” 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625

(1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286, 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must 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.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U.S. at 526-527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A

reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687; Harrington, 562 U.S. 86.

“Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel’s representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is “all too tempting” to “second-guess counsel’s assistance after conviction or adverse sentence.” Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel’s performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is “reasonably likely” the result would have been different. Id. at 696. This does not require a showing that counsel’s actions “more likely than not altered the outcome,” but the difference between Strickland’s prejudice standard

and a more-probable-than-not standard is slight and matters “only in the rarest case.” Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Applicant’s allegation is addressed fully below:

Counsel Advised Applicant not Entitled to Appeal

Applicant alleges that counsel was ineffective for advising him that he was not entitled to an appeal from his guilty plea. Counsel testified that he was not concerned with Applicant’s mental competency. Counsel testified that he thoroughly investigated this case. Counsel testified that he explained Applicant’s rights to him before he entered the guilty plea. Counsel testified that he would never tell a client that they were not entitled to an appeal and did not do so in this case. Counsel testified that Applicant never asked him to file an appeal in this case. Counsel testified that he met with Applicant numerous times throughout the representation. This Court finds counsel’s testimony to be highly credible, especially regarding not advising a client that they were not entitled to an appeal. Counsel testified that he would never advise a client that way, this Court finds that testimony credible. Therefore, this Court finds that Applicant has failed to meet his burden and that counsel was not ineffective in his representation.

III. CONCLUSION


Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 9 day of Aug., 2019.


MAITE MURPHY
Presiding Judge
First Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF CALHOUN)

Edward Britt, Jr., #097580,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

**MOTION PURSUANT TO RULE 59(e)
SCRCP, TO AMEND**

Case No. 2018-CP-09-0033

YOU WILL PLEASE TAKE NOTICE that the Applicant, Edward Britt, Jr., by and through his undersigned counsel, hereby gives notice of his intent to move and does so move the Court pursuant to Rule 59(e), SCRCP, for an Order of the Court to alter or amend its prior Order filed August 15, 2019; notice of its entry being received by counsel on September 22, 2019 after an audit of counsels pending cases. No notice has been served on counsel by either the Clerk of Court or counsel for the Respondent.

The Applicant filed a timely application for post-conviction relief (PCR) on March 21, 2018. In his application, Applicant alleged instances of ineffective assistance of counsel including allegations that plea counsel was ineffective for advising Applicant that he was not entitled to appellate review of his plea. On February 25, 2019, Applicant, by and through his counsel, amended his Application to include additional allegations of ineffective assistance of counsel as to the representation rendered by Martin Banks. Specifically, Applicant alleged:

- a) Counsel was ineffective for failing to properly investigate the facts and circumstances surrounding the allegations against Applicant and his subsequent statements to law enforcement, thus rendering Applicant's plea unknowingly and involuntarily entered into; and
- b) Counsel was ineffective for failing to conduct adequate amount of meeting with Applicant to review discovery so that Applicant would know of the allegations

against him, thus rendering Applicant's plea unknowingly and involuntarily entered into.

Applicant contends that the Order of Dismissal filed in this matter is incomplete as it does not contain a full factual finding and legal conclusion on each of Applicant's allegations. Furthermore, Applicant contends that the section of the Order of Dismissal entitled "Findings of Fact and Conclusions of Law" contains only a recitation of the legal standard of review and does not apply those standards to the particular facts of the case at hand. Additionally, in the same section, the recitation of legal standard appears to refer to the legal standard applied to a Post-Conviction Relief review of a trial, not of a guilty plea as is the procedural history of Applicant's case.

For the foregoing reasons, Applicant requests that the Court withdraw its previous Order and issue a new Order with full legal and factual findings on the above-referenced arguments as well as issues addressed in the Order and granting Applicant the Post-Conviction Relief he seeks.

Respectfully submitted,

By:



Jonathan D. Waller
SC Bar No.: 76290
Waller Law Group
1116 Blanding Street, Suite 2B
Columbia, South Carolina 29201
Telephone: 803-520-7278
E-mail: jonathan@wallergroupsc.com

ATTORNEY FOR THE APPLICANT

September 26, 2019

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

FILED

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

2021 JUL 16 2:12:08

RECEIVED

Edward Britt, Jr., #097580,

Applicant

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
ST. MATTHEW, SC

Case No.: 2018-CP-09-00033

AUG 10 2021

v.

ORDER OF DIMISSAL

S.C. SUPREME COURT

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed by Edward Britt, Jr. (Applicant) on March 21, 2018, and amended February 25, 2019. Respondent made its Return and Motion to Dismiss on May 25, 2018. An evidentiary hearing into the matter was convened February 26, 2019, at the Dorchester County Courthouse before the undersigned. Jonathan D. Waller, Esquire, represented Applicant. Assistant Attorney General Benjamin H. Limbaugh represented Respondent.

At the hearing, Applicant testified on his own behalf. Respondent called Applicant's plea counsel, Martin R. Banks. This Court also had before it a copy of the Calhoun County Clerk of Court's records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application and amendments, Respondent's Return, and the plea transcript. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. In March 2017, the Calhoun County Grand Jury indicted Applicant for murder (2016-GS-09-0312). The charge resulted from

an August 2016 incident in which Applicant fatally shot the victim in the victim's home following an apparent attempted robbery. Tr. pp. 13-16. The Honorable Martin R. Banks represented Applicant. Donald N. Sorenson, Esquire, prosecuted the case. On May 22, 2017, Applicant pleaded guilty as indicted without negotiations or recommendation before the Honorable Edgar W. Dickson. Judge Dickson sentenced Applicant to imprisonment for forty years' imprisonment. Applicant did not appeal from his guilty plea or sentence.

ALLEGATIONS

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

1. "Ineffective assistance of Plea Counsel with respect to Hill v. Lockhart."
2. "Plea counsel advised that I was not entitled to appeal."

In his amended application, Applicant added the following claims:

1. "Counsel was ineffective for failing to investigate the facts and circumstances surrounding the allegations against Applicant and his subsequent statements to law enforcement, thus rendering Applicant's plea unknowingly and involuntarily entered into."
2. "Counsel was ineffective for failing to conduct an adequate amount of meeting (sic) with Applicant to review discovery so Applicant would know of the allegations against him, thus rendering Applicant's plea unknowingly and involuntarily entered into."

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

Applicant testified that he asked counsel to investigate the statements of the other people that were with him during the commission of the crime. Applicant testified that Donald Bowen and a woman were together when the crime took place. Applicant testified that the statements given to law enforcement were simply not correct and that he asked counsel to investigate them. Applicant testified that counsel did not investigate or speak with him about how his potential intoxication could have possibly influenced his statements to law enforcement. Applicant testified he asked counsel for his discovery, but that it was never provided to him. Applicant testified that

he was not aware that there were no fingerprints on the gun and he did not discuss with counsel his taking law enforcement directly to the gun. Applicant testified that he told the plea judge that he had reviewed the law and the facts with his counsel. Applicant testified that he told the plea judge that he was aware that he had a right to proceed to a jury trial and was waiving that right to enter a guilty plea. Applicant testified that he told the plea judge that he was satisfied with his counsel. Applicant testified that he recalled the solicitor reciting the facts of the case and that he agreed with those facts. Applicant testified that he told the plea judge that he was not forced into taking the plea. Applicant testified that counsel met with him twice prior to his plea. Applicant testified that he plead because he was confused and frustrated.

Counsel testified that he has a stack of letters from Applicant in his file asking questions about the case and that he would have answered all of those questions in person. Counsel testified that it is his practice to answer all questions about a case from a defendant. Counsel testified that he has notes on listening to every minute of Applicant's audio confession and notes on his confession at the scene of the crime. Counsel testified that he has pictures of Applicant at the scene showing law enforcement where the gun was to be found. Counsel testified that he does not typically give the full discovery to the defendant, as the information can be spread throughout the prison system. Counsel testified that if he did not give Applicant his discovery it is his practice to review all of the information with him. Counsel testified that he was prepared to go to trial. Counsel testified that he did not believe that Applicant had any truly viable defenses, as Applicant provided two detailed confessions to law enforcement. Finally, counsel testified that it was ultimately Applicant's decision to plead guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the evidence presented at the evidentiary hearing, observed the

witnesses, passed upon their credibility, and weighed the testimony and evidence accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, as well as the plea transcript. This Court finds the combined record of the plea transcript and the testimony and evidence presented the evidentiary hearing establishes Applicant received effective assistance of counsel, and this application should be denied. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws.

Applicant alleges he received ineffective assistance of counsel such that his guilty plea was rendered involuntary. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. 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 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)).

Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. When there has been a guilty plea, the applicant must prove counsel's representation was below the standard of reasonableness, and but for counsel's unprofessional errors, there is a reasonable probability he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his allegations, as addressed below:

Counsel Advised Applicant not Entitled to Appeal

Applicant alleges that counsel was ineffective for advising him that he was not entitled to an appeal from his guilty plea. Counsel testified that he was not concerned with Applicant's mental competency. Counsel testified that he thoroughly investigated this case. Counsel testified that he explained Applicant's rights to him before he entered the guilty plea. Counsel testified that he would never tell a client that they were not entitled to an appeal and did not do so in this case. Counsel testified that Applicant never asked him to file an appeal in this case. Counsel testified

that he met with Applicant numerous times throughout the representation. This Court finds counsel's testimony to be highly credible, especially regarding not advising a client that they were not entitled to an appeal. Counsel testified that he would never advise a client that way, this Court finds that testimony credible. Therefore, this Court finds that Applicant has failed to meet his burden and that counsel was not ineffective in his representation.

Failure to Investigate Facts of Case and Applicant's Statements

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. Strickland v. Washington, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions...." Strickland, 466 U.S. at 691, 104 S.Ct. 2052. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690, 104 S.Ct. 2052. Bagwell v. State, 410 S.C. 259, 265, 763 S.E.2d 630, 633-34 (Ct. App. 2014).

As noted above, Counsel testified that he was prepared to proceed to trial and had properly investigated the case. Counsel testified that he received discovery and reviewed the evidence with Applicant, as well as the law relating to Applicant's case. Counsel further testified that any potential defense to Applicant's charges was made very difficult considering his multiple detailed

confessions and leading law enforcement to the weapon. Significantly, Applicant never testified what evidence he wanted counsel to investigate that would help his case and how that evidence would change the result. Most significantly, Applicant never once testified that he would have proceeded to trial had counsel made some form of further unspecified investigation. Thus, this Court finds that counsel performed appropriate investigation into Applicant's case and Applicant has failed to establish he was prejudiced by any alleged deficiency. This allegation is dismissed with prejudice.

**Failure to Consult with Applicant and Failure to make aware of the Allegations
against him**

“Brevity of time spent in consultation, without more, does not establish that counsel was ineffective.” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an applicant challenging his conviction must show specific prejudice resulting from counsel's lack of time to prepare. Cronic, infra; U. S. v. LaRoache, 896 F.2d 815 (4th Cir. 1990).”

As noted above, Counsel testified that he met with Applicant on a number of occasions and would have answered all of the questions contained in Applicant's letters to him. Counsel testified that he would have reviewed all of the discovery materials with Applicant. Applicant testified that he informed the plea judge that he agree with the facts of the case as recited by the solicitor, that he was aware of the charges against, that counsel reviewed the law and facts with him, that he reviewed the evidence against him, and that he was satisfied with his counsel. Again, most significantly, Applicant never testified that he would have proceeded to trial had counsel met with him on more occasions or had he known some other unspecified information about the charges against him. Therefore, this Court dismisses this allegation with prejudice.

III. CONCLUSION

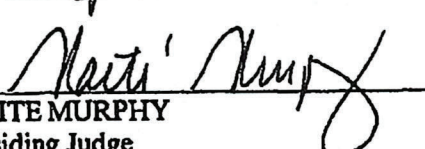
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 29 day of June, 2021.



MAITE MURPHY
Presiding Judge
First Judicial Circuit

WITNESSES

Pat Regalis

Calhoun County Sheriff

ARREST WARRANT NUMBER

2016A0910100162

Arrested: August 26, 2016

ACTION OF GRAND JURY

MAR 02 2017

Foreperson of Grand Jury
Date: March 2, 2017

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS09-0312

**The State of South Carolina
County of CALHOUN**

COURT OF GENERAL SESSIONS

March 13, 2017 TERM

**THE STATE
vs.**

Edward Britt Jr

Indictment for

Murder

SC Code: 16-3-10

ATTEST TRUE COPY

Kenneth Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

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.

FILED
2017 MAR -2 A 10:04
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH MATTHEWS, SC

STATE OF SOUTH CAROLINA

COUNTY OF CALHOUN

INDICTMENT

2016GS09-0312

As a Court of General Sessions, convened on March 2, 2017 the Grand Jurors of CALHOUN County present upon their oath:

MURDER

That in Calhoun County on or about August 25, 2016, with malice aforethought, the defendant, Edward Britt, Jr., did kill one Franklin Parker by means of shooting the victim . The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

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



Donald N. Sorenson, Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 30-15fe

COUNTY OF Calhoun
STATE VS.

INDICTMENT/CASE#: 2016GS09-0312
A/W#: 2016A0910100162
Date of Offense: 8/25/2016
S.C. Code §: 16-3-10
CDR Code #: 0116

Edward Britt Jr

AKA:
Race: WHITE Sex: M Age: 56

DOB: SS#:
Address:
City, State, Zip: Saint Matthews, SC 29135

DL#: SID#:
*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Murder

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

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

ATTEST: Sorenson, Donald N. SC Bar# 9512 Defendant
Attorney for Defendant SC Bar# 65466

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 40 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient:
*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 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$
3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75
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:
Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

ATTEST TRUE COPY
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

Clerk of Court/ Deputy Clerk Claudia M. Paulding
Court Reporter: Hilda Jordan
Presiding Judge Judge Code: 215.3
Sentence Date: 5/22/17