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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the South Carolina Supreme Court

Appeal from Lexington County
The Honorable William P. Keesley, Circuit Court Judge

Appellate Case No. 2022-000254

The State of South Carolina, Respondent,

v.

Michael Young Jr., Petitioner.

APPENDIX

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	)	COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	—)	2007-GS-32-02948
		2007-GS-32-02949

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
MICHAEL J. YOUNG, JR.	)	
DEFENDANT	—)	

April 11, 2011
Lexington, South Carolina

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

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Attorney for the State

JOHN D. DELGADO, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

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1 THE CLERK: Indictment 2007-GS-32-2948, the
2 State versus Michael James Young, Jr., indicted for
3 murder. He is pleading as charged.

4 Indictment 2007-GS-32-2949, the State versus
5 Michael James Young, Jr., indicted for assault and battery
6 with intent to kill. He is pleading as charged.

7 These have been true-billed. He's represented
8 by Mr. Delgado.

9 Raise your right hand, please.

10 MICHAEL YOUNG, JR., after being duly sworn,
11 testified as follows:

12 MS. DIXON: Your Honor, before we begin,
13 Mr. Young was evaluated both for competency and criminal
14 responsibility.

15 THE COURT: All right.

16 MS. DIXON: I'll hand those reports up to you.

17 Mr. Delgado and I have both reviewed them and
18 agree with the findings.

19 THE COURT: All right. Give me a moment if you
20 would, please, to look at these.

21 (Pause.)

22 THE COURT: All right. I have been passed the
23 forensic evaluation of Dr. Tezza.

24 And, Mr. Delgado, you've received this copy; is
25 that correct, sir?

1 MR. DELGADO: Yes, sir, I have.

2 THE COURT: And you've reviewed that?

3 MR. DELGADO: I have.

4 THE COURT: And reviewed it with Mr. Young?

5 MR. DELGADO: Yes, sir.

6 THE COURT: Okay. And any issues or questions
7 regarding that, sir?

8 MR. DELGADO: No, sir, I do not.

9 THE COURT: All right. Did the defense take any
10 issue as to the findings from the doctor on that?

11 MR. DELGADO: No, sir, we do not.

12 THE COURT: All right. I'm going to accept into
13 the record and make a part of the record as a Court's
14 exhibit this report from Dr. Tezza indicating the
15 evaluation, her findings regarding that, and her findings
16 that in her opinion, Mr. Young does in fact have the
17 capacity to understand the proceedings against him and to
18 assist his counsel in his defense, and we'll make that a
19 part of the record.

20 MS. DIXON: Your Honor, he was also evaluated
21 and I think I handed up -- it should be two separate
22 evaluations, Your Honor.

23 THE COURT: Oh, are they separate ones?

24 MS. DIXON: Yes, sir, one for competency and one
25 for criminal responsibility.

1 THE COURT: Got you.

2 MS. DIXON: I think they're both ten pages but
3 are separate reports.

4 THE COURT: All right. And, Mr. Delgado, you've
5 reviewed these as well?

6 MR. DELGADO: I have, Your Honor, yes, sir.

7 THE COURT: I'll make both these a part of the
8 record.

9 It does appear that Dr. Tezza's opinions are
10 that he did in fact have the capacity to conform his
11 conduct to the law at the time, and we'll make this a part
12 of the record as well. I'll mark these as a Court's
13 exhibit.

14 (WHEREUPON, The Court's Exhibit No. 1 was marked
15 for purposes of the record.)

16 THE COURT: All right. Sir, you are Michael
17 Young, Jr.?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Young, Indictment
20 2007-GS-32-2948 is a true-billed indictment charging you
21 with the offense of murder. That charge carries a penalty
22 of not less than 30 years, up to life in prison, and would
23 be classified under our laws as a violent and I'm assuming
24 most serious offense. It's marked "serious" on here.

25 MS. DIXON: I apologize, Your Honor.

1 THE COURT: But it would be classified as a most
2 serious offense.

3 Do you understand that, sir?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. And Indictment
6 2007-GS-32-2949 is an indictment, a true-billed
7 indictment, charging you with the offense of assault and
8 battery with intent to kill. That also is classified as a
9 violent and most serious offense under our laws and would
10 carry a maximum penalty of up to 30 years.

11 Do you understand that, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right.

14 MS. DIXON: I'm sorry, Your Honor, and I might
15 be confused, but I believe that ABWIK carries up to 20
16 years.

17 THE COURT: ABWIK is up to 20?

18 MS. DIXON: Yes, sir.

19 THE COURT: Okay.

20 MS. DIXON: When I looked it up, that's what I
21 saw. I don't know.

22 THE COURT: And I'm mistaken on that.

23 Mr. Young, that carries a maximum penalty of 20
24 years, the assault and battery with intent to kill.

25 Do you understand that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now, let me ask you before I
3 go further to inquire as to what your plea is to those
4 charges, you understand that these offenses -- and correct
5 me if I'm wrong on this -- my understanding is -- and
6 we're going to get into the facts -- but both of these
7 charges arose out of this same fact pattern and situation
8 that we're dealing with here; is that correct?

9 MS. DIXON: That's correct, Your Honor.

10 THE COURT: And so therefore -- and I don't know
11 if you have any prior history, but for purposes of the
12 South Carolina strike rule, both of these most serious
13 offenses for purposes of your plea here today I believe
14 would count as one strike.

15 Under South Carolina law, if a person receives
16 two most serious offenses, two different separate offenses
17 that are classified as most serious, on that second
18 offense the State could seek life without the possibility
19 of parole. And, in other words, the Court would be bound
20 to sentence you to that sentence if that were the
21 situation.

22 And for purposes of your plea here today, even
23 though both of these are considered most serious, because
24 they arose out of the same fact pattern that you're before
25 the Court on, your plea here today, these would be

1 considered as one strike.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So that in the future were you to
5 receive another most serious offense, that second most
6 serious offense could in fact trigger the mandatory life
7 without parole.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right, sir. Now, understanding
11 the charges that you're before the Court on, the nature of
12 those charges and the possible penalties that are
13 associated with those offenses, how do you plead to those
14 two indictments, sir, guilty or not guilty?

15 THE DEFENDANT: Guilty, sir.

16 THE COURT: All right, sir.

17 Mr. Delgado, you represent Mr. Young?

18 MR. DELGADO: I do, Your Honor, yes.

19 THE COURT: Have you gone over with him the
20 charges that he is pleading to, his understanding of the
21 strike rule in South Carolina and how this affects that as
22 well as his constitutional rights to a trial, sir?

23 MR. DELGADO: Yes, sir, I have.

24 THE COURT: All right. Now, Mr. Young, am I
25 correct that you are 25 years of age?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Prior to being locked up on these
3 charges, what type of work did you do, sir?

4 THE DEFENDANT: Well, sir, recently right before
5 my incarceration I was working for a restaurant. I was a
6 cook. I also did freelance music work. I dabbled into
7 real estate, brokering promissory notes.

8 THE COURT: All right.

9 THE DEFENDANT: My specialty mostly is, other
10 than music, would be computer support, technical support.

11 THE COURT: All right. And let me say this,
12 Mr. Young. I'm asking you some questions that I kind of
13 know the answer to because I read your letter, but I want
14 to make the record clear and so that's why I'm asking them
15 now on the record here today.

16 And, for example, from the letter I know that --
17 are you still married or have you all been divorced?

18 THE DEFENDANT: Divorced, sir.

19 THE COURT: Okay. And how many children do you
20 have?

21 THE DEFENDANT: None.

22 THE COURT: Okay. And you've been incarcerated
23 on these charges since when?

24 THE DEFENDANT: Since June 14th, 2007.

25 THE COURT: All right, sir.

1 Now, I went over the constitutional rights
2 earlier. I'm going to go over those with you again with
3 your attorney standing with you because I want to make
4 sure that if you have any question about any of this, that
5 they're available to you so that you could ask them any
6 questions. All right, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you do have a question about
9 anything I bring up, please do not hesitate to stop me and
10 ask to speak to your lawyers, because I'm happy to do
11 that.

12 I noticed earlier when I misspoke on the
13 sentence involving assault and battery with intent to
14 kill, you kind of looked a little questioning at me
15 because you knew better than I did what that carried, and
16 so don't hesitate to say, Excuse me, Judge, can I speak to
17 Mr. Delgado, or whatever, okay?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, as you recall from my earlier
20 conversation, everyone in this country has these
21 constitutional rights, but when you come before the Court
22 and you plead guilty you give them up for purposes of the
23 plea; you waive these rights as they relate to this plea.

24 We all have the right to remain silent. We all
25 have the right to a jury trial. But, of course, by

1 entering this plea here today, for purposes of this plea,
2 you would be waiving those two important constitutional
3 rights.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: If you were to have a jury trial,
7 obviously there are numerous other rights that are
8 associated with that right.

9 For example, if you were to have a jury trial,
10 you would be presumed innocent of these charges and that
11 presumption of innocence places the burden of proof on the
12 State to prove guilt and they must prove your guilt beyond
13 a reasonable doubt.

14 The way they would attempt to do that is they
15 would call witnesses into court. Those witnesses would
16 come into court and testify, as well as any other evidence
17 that they had.

18 The Constitution of the United States provides
19 that any person charged with a criminal offense has the
20 right to face or to confront their accusers and to
21 confront the evidence against them.

22 And what that means is that through your
23 attorney, Mr. Delgado, you would have the opportunity to
24 cross-examine the State's witnesses, question them about
25 their testimony and any other evidence that the State

1 would attempt to admit into the trial.

2 Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: When you plead guilty, you give up
5 or you waive that presumption of innocence and you relieve
6 the State of their burden of proof. Since they're no
7 longer required to prove your case, they're not required
8 to bring in their evidence, so therefore you give up the
9 right to confront that evidence or to question those
10 witnesses.

11 Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, the State is not the only one
14 that can call witnesses or present evidence in a trial.
15 You yourself could call witnesses in your defense or you
16 could take the witness stand yourself and testify. You're
17 not required to do either one of those things, but you
18 certainly have the right to do either one of those, or to
19 do them both.

20 But in this country, a person charged with a
21 criminal offense is never required to prove him or herself
22 innocent. The burden of proof is on the State. So
23 therefore you're not required to put up a defense at all.

24 You can exercise your constitutional right to
25 remain silent. And if you did that, I would instruct the

1 jury that the fact that you chose to remain silent could
2 not in any way be used against you. I would instruct the
3 jury that the burden of proof is on the State and that as
4 a defendant in a criminal case, you do not have to prove
5 your innocence. You don't have to prove anything. I
6 would instruct them that the fact that you chose to remain
7 silent could not even be discussed in the jury room at
8 all.

9 Now, as I indicated, the State has the burden of
10 proof and so they would have to prove your guilt, as I
11 said earlier, beyond a reasonable doubt and they would
12 have to do it to a unanimous decision. In other words,
13 all 12 members of the jury would have to agree that you
14 were guilty of these offenses or they could not convict
15 you of these charges.

16 If you did have a jury trial and if you were
17 convicted, you could appeal that conviction to a higher
18 court if you felt that was appropriate.

19 Do you understand, Mr. Young?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And then finally with regards to
22 this hearing or these proceedings here today, if you at
23 the conclusion of this proceeding here today wish to
24 appeal the decision of this Court, you may do so, but you
25 must file that notice of intent to appeal by the end of

1 ten days. In other words, you have ten days in which to
2 file that notice of intent to appeal if you wish to appeal
3 the decision of this Court here today.

4 Do you understand, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, understanding that you have
7 these rights and that you will not have a jury trial by
8 entering this plea, do you still wish to go forward with
9 your pleas?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did you understand these rights as I
12 went over them with you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you have any questions that you
15 need to talk about with Mr. Delgado or anyone?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right, sir. Now, has anybody
18 promised you anything, held out any hope of reward, or
19 threatened you in any way to get you to enter into these
20 pleas?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you satisfied with the
23 representation and the advice that Mr. Delgado has
24 provided?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any complaints against
2 him, any member of his office?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you shared with him everything
5 that you know about the facts and circumstances
6 surrounding this case, any potential witnesses, anything
7 that you know so that he would be in a position then to
8 better help and defend you in this matter?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. As you stand before the
11 Court here today, are you under the influence of any
12 substance that would affect your ability to understand
13 what you're doing here today?

14 THE DEFENDANT: No, sir.

15 THE COURT: Do you have or are you aware of any
16 physical or mental defect that would cause you to not
17 understand what you're doing here today?

18 THE DEFENDANT: No, sir.

19 THE COURT: And you reviewed those forensic
20 reports with Mr. Delgado regarding your competency?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, your entering of these pleas
23 here today, is this of your own freewill, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And are you, in fact, guilty of

1 these charges, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. What I'm going to do is
4 I'm going to ask the solicitor to give me the fact pattern
5 to support this plea. I ask that you listen carefully and
6 I'll be back with you in just a moment, sir.

7 Solicitor.

8 MS. DIXON: Thank you, Your Honor. May it
9 please the Court.

10 THE COURT: Yes, ma'am.

11 MS. DIXON: The incident occurred on June 13th,
12 2007. It happened at the Columbiana Center Mall, which is
13 located partially in Lexington County and partially in
14 Richland County, Your Honor. It happened in the parking
15 lot in what the mall calls zone one, which is near the
16 fountain at that mall. It was in the city of Columbia but
17 it was in the Lexington County portion of the parking lot
18 of the mall.

19 On that day, Your Honor, the defendant went to
20 the mall to have a conversation with his estranged wife.
21 Her name is [REDACTED]. At that point, Your Honor, the
22 defendant and the victim were separated. And I can get
23 more into what led up to the incident at a later time,
24 Your Honor, but on that day he went to the mall, attempted
25 to speak with Ms. Bell.

1 Because of some incidents that had happened
2 prior to this, Ms. Bell's father, [REDACTED], was picking
3 her up from work, walked into the mall to get her to get
4 ready and walked out of the mall with Ms. Bell and the
5 defendant.

6 When they got to Mr. [REDACTED]'s car, Mr. [REDACTED]
7 instructed his daughter to get inside the car. He was
8 still standing at the back of the car speaking with the
9 defendant.

10 At some point, Your Honor, the defendant pulled
11 a weapon out of his pocket, a gun, and shot Mr. Bell three
12 times. That resulted in Mr. [REDACTED] death.

13 He then, Your Honor, went around the car and
14 shot at [REDACTED] through the window, striking her
15 twice. Fortunately Ms [REDACTED] did not succumb to her wounds
16 and was able to recover from those.

17 So he is pleading guilty to the murder as to the
18 shooting of [REDACTED] and assault and battery with
19 intent to kill as to the shooting of [REDACTED].

20 THE COURT: All right. Any prior record?

21 MS. DIXON: He does have a small prior record,
22 Your Honor.

23 From 2004, a simple possession of marijuana and
24 an unlawful possession of a weapon for which he received
25 probation.

1 In 2005, he was charged with public disorderly
2 conduct and failure to stop for a blue light. He received
3 a time-served sentence on those.

4 For the record, Your Honor, he does have a
5 number of other charges in our office both relating to
6 this incident and not relating to this incident. We are
7 intending as a result of this plea to dismiss those
8 charges.

9 He has three counts of stealing dogs, Your
10 Honor. Those warrants are J-060955, J-060956, J-060957.

11 He also has one charge of stalking, that warrant
12 is K-266582; one charge of harassment, that is K-266750;
13 one count of forgery, Your Honor, Warrant No. I-206346;
14 and another charge from this incident, Your Honor,
15 possession of a weapon during the commission of a violent
16 crime, that is Warrant K-266768.

17 Those are the warrants that will be dismissed in
18 exchange for his plea.

19 THE COURT: All right. Thank you, ma'am.

20 Mr. Young, the facts that the solicitor gave the
21 Court as well as the understanding of the dismissal of
22 those other charges, is all that correct, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. And let me just mention
25 this. I didn't mention it earlier.

1 Mr. Young, I don't know if anyone has made any
2 comments to you or assertions to you regarding how much
3 time you would have to serve depending on what sentences
4 the Court hands down. You understand that no one is
5 really in a position to tell you anything regarding when
6 you would be released from any sentence the Court imposes.
7 You understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So that if anyone has made any
10 comments to you or assertions to you about how much time
11 you would have to serve, you understand that no one speaks
12 to you about that with any authority, that no one can do
13 that. I could not even do that. In other words, that is
14 a matter for the law and for the Department of Corrections
15 to determine. And so I just want to make sure that you're
16 not entering this plea with some understanding about
17 parole or release dates or anything like that.

18 In other words, I would tell you that the best
19 way to not be disappointed, no matter what someone may
20 have said to you, is to just believe that whatever
21 sentence is imposed at the conclusion of this thing, that
22 you would serve every day of that sentence. Whether you
23 do or not, you should be prepared for that. You
24 understand that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. And is that your
2 understanding, that no one can tell you what parole dates
3 or release dates or anything of that nature? You
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. I find that there has been a
7 factual basis, a substantial factual basis that has been
8 presented to the Court to support the charges that
9 Mr. Young is before the Court on.

10 I find that his decision to enter these pleas
11 has been done freely, voluntarily, and intelligently.

12 Mr. Young is a very well spoken, intelligent
13 young man who I believe has understood the questions that
14 this Court has imposed upon him.

15 He has had the advice and counsel of an
16 outstanding attorney in Mr. Delgado and his staff, and I
17 have discussed with Mr. Young his satisfaction with that
18 representation and he has indicated to me that he is
19 satisfied with the representation and the advice that
20 Mr. Delgado has provided, and I'm going to accept his
21 plea.

22 We'll take just a moment, Solicitor, and then
23 I'll be happy to hear from Mr. Delgado, Mr. Young, or
24 anyone else.

25 MS. DIXON: Thank you, Your Honor.

1 (Pause.)

2 THE COURT: All right. Ready to proceed?

3 MS. DIXON: Yes, Your Honor.

4 THE COURT: Mr. Delgado, I'll be happy to hear
5 from you, sir.

6 MR. DELGADO: Your Honor, as the Court has
7 noted, I passed up to the Court for its review as well as
8 sent a copy to the solicitor of a letter written by
9 Michael to the Court that I think succinctly and
10 reasonably lays out some of the mitigating factors in
11 Michael's involvement and his presence here before you
12 today.

13 First of all, I found the letter to be so
14 atypical that my paralegal noted that for me, and we hear
15 from a dozen individuals a week. She said, "He sounds
16 very different than some of the things that we've seen in
17 our file," and I said, "That's because he's a very
18 intelligent fellow." And, Your Honor, notwithstanding the
19 extraordinary egregiousness and the trauma that these good
20 folks have had inflicted on them, there might be some
21 harbingers of insight in that letter.

22 When I have an individual talk about "I
23 understand now about anger management, I understand about
24 my drinking, I know that I had to get medication to help
25 me calm down," very rarely have I ever seen an individual

1 in a situation like this in which marital counseling is
2 one of the things that he along with Ms. Bell, his wife,
3 ex-wife had engaged in prior to this incident. That's
4 just atypical for those of us on this side of the bar.

5 I say that not to excuse any responsibility, and
6 one of the things Michael said in the very last part of
7 the letter to you was in no way does any of this excuse
8 what happened. Nothing.

9 Your Honor, when this happened he was 21 years
10 old, and like he said in the letter to you, probably in
11 over his head as a result of marrying too young. I think
12 that is, in fact, exactly the case.

13 But what also the letter seemed to point out
14 very clearly is that [REDACTED] -- his relationship with
15 her focused around his desire for a child. When that was
16 removed, I think that was the last solid little block
17 Michael may have had in a personality that really presents
18 with a real lack of self-esteem and a real lack of
19 self-acknowledgment at least at that stage.

20 As big an individual as he is and presents to
21 you, what you have inside is a very -- is an individual
22 that has really in his own self, at least when he was 21,
23 that didn't value what he had and was seeking it in some
24 ways with [REDACTED] that even [REDACTED] may not have even
25 been able to have provided.

1 Your Honor, in the letter he said some
2 extraordinarily positive, beneficial things relating to
3 [REDACTED] In some ways, although this family may not be
4 able to feel this or accept it, in some ways [REDACTED] was
5 a strong maternal figure that Michael may have lacked in
6 his life. He said in the letter M [REDACTED] was a good man.
7 I think that's in truth the case, because [REDACTED] was
8 looking out for his daughter in what was a very volatile
9 emotional relationship between Michael and [REDACTED] his
10 ex-wife. No excuses, no justification.

11 Michael does stand in front of you today
12 accepting his actions and accepting the responsibility for
13 his actions, but knowing that in his heart of hearts,
14 whether the family can understand that now in their
15 grieving, that he is genuinely remorseful for what
16 occurred. No one can ever say that as heartfelt as I
17 think I can for Michael because I've been knowing him for
18 three years.

19 With that, Your Honor, there is nothing more
20 that I can say to the Court that expands your
21 understanding or knowledge of the individual that stands
22 before you today. He's outlined his education, his work
23 history, and probably more than anything else his desire
24 for acceptance and love that he hoped he could find with
25 [REDACTED] and with the [REDACTED] family. But that was not to be

1 and for that he stands accused and convicted now of the
2 charges against him.

3 We simply ask the Court to sentence him in
4 consideration of his acceptance of what he's done and how
5 he expressed it to the Court.

6 Thank you.

7 THE COURT: Thank you, Mr. Delgado.

8 Mr. Young, is there anything you wish to tell
9 the Court, sir?

10 THE DEFENDANT: Yes, sir.

11 It pains me to know that I caused the atrocities
12 which I caused. It hurts even more to know that I caused
13 those atrocities to individuals I had unconditional love
14 for.

15 I've learned that I can't bring that back. If I
16 could, I would, but I can't.

17 It kind of reminds me of this prayer my mother
18 taught me. It goes: Lord, grant me the serenity to
19 accept the things I cannot change, the courage to change
20 the things I can, and the wisdom to know the difference.

21 I'm wise enough to know that I can't take what I
22 did back. All I can do is change myself, grow as a man,
23 change the impact that I can have on society if I do and
24 I'm granted the opportunity.

25 I know that time is just like the life which

1 I've taken: It can't be brought back.

2 Your Honor, when I became incarcerated I had a
3 lot of emotional issues going on with me. I knew what I'd
4 done, but I was so emotionally attached that I couldn't
5 see everything for what it was. It took sometime to step
6 back and view things for what they really are.

7 Regardless of what went on up to that point, I
8 still caused two tragedies.

9 To the family, I want them to know that I'm
10 sincerely sorry. I would do anything to take it back. I
11 hope that one day they can forgive me as a person. I know
12 they'll never forget the act, but I hope they forgive me
13 as a person.

14 Your Honor, I just hope they have peace and I
15 hope me doing this today is one step towards that peace
16 for them.

17 That's all, Your Honor.

18 THE COURT: Thank you, Mr. Young.

19 Anything further, Mr. Delgado?

20 MR. DELGADO: No, Your Honor.

21 THE COURT: Solicitor?

22 MS. DIXON: Thank you, Your Honor.

23 First I'd like to recognize the family members
24 that were able to make it today.

25 THE COURT: All right.

1 MS. DIXON: [REDACTED]'s brother and
2 sister-in-law, [REDACTED] are here as well
3 as three of his nieces, [REDACTED]
4 Two friends of M [REDACTED]'s are here with her
5 today. [REDACTED] is here, Your Honor. Ms. [REDACTED]
6 [REDACTED] is here as well as her son, [REDACTED] We have members
7 of SisterCare and the South Carolina Victims Assistance
8 Network who have all been involved in this case and are
9 here showing their support for the family today.

10 Some of the family does wish to speak, Your
11 Honor, but before we do that, I'd like to give the Court a
12 little bit more background about this case just so we have
13 a full picture on the record of how the events on that day
14 happened.

15 The defendant and [REDACTED] were married
16 in October of 2006. By May of 2007 they had separated.
17 [REDACTED] had reported to Investigator Dow of the Columbia
18 Police Department who is here, Your Honor, she had filed a
19 report for stalking against the defendant. That is
20 basically when the chain of events began.

21 [REDACTED] worked at the Dell kiosk at the
22 Columbiana Center Mall and part of the stalking charges
23 that she had filed, Your Honor, were that the defendant
24 continued to come up to the kiosk, continued to call her,
25 continued to call her cell phone after he was told that

1 she did not want contact with him. So the initial report
2 on the stalking charges, Your Honor, was taken May 15th of
3 2007.

4 June 4th of 2007, [REDACTED] visited
5 SisterCare accompanied by her father to file for an Order
6 of Protection against the defendant. At this point she
7 was living with her parents, she'd continued to have
8 problems with the defendant, and so her father took her up
9 to SisterCare to start the paperwork to get an Order of
10 Protection, and they filed that petition on June 4th.

11 On June 5th, Your Honor, the defendant was again
12 back up at Columbiana Center where [REDACTED] was working
13 and he was arrested on those pending stalking charges from
14 the incidents in May. So he again was up at her work,
15 continued to call her on the phone, continued to seek
16 contact with her, and the Columbia Police Department
17 arrested him on June 5th of 2007 on those stalking
18 charges.

19 He was also given a trespass notice for
20 Columbiana Mall, that he was not to be on the property
21 there because of the incidents with Shaunna.

22 He was released either the next day or I think
23 it was June 7th, Your Honor, on those stalking charges,
24 made bond -- those charges -- had made bond on those
25 charges and once he got out on June 7th, continued to

1 attempt to contact [REDACTED] These incidents occurred less
2 than a week later, Your Honor.

3 On June 13th, [REDACTED] was again at work.
4 Because of everything that had happened, Investigator Dow
5 of the Columbia Police Department had told her, "You need
6 to ask your father instead of just coming to pick you up
7 like he was doing, he needs to come inside. He needs to
8 come inside the mall and he needs to walk you out to make
9 sure that nothing happens, to make sure that the defendant
10 doesn't come up there and doesn't attempt to contact you."

11 On that day, Your Honor, it was about 6 o'clock
12 when [REDACTED] got off from work. Her dad was coming to
13 pick her up from work just like he had been doing, but the
14 defendant had been up at the mall that day.

15 He had sent some friends of his to go see if
16 [REDACTED] was working. At one point she was speaking with a
17 police officer, his friends reported that back to him. So
18 he had been at the mall that day even though he was on
19 trespass notice, was not supposed to be there, was not
20 supposed to be having contact with [REDACTED] at all.

21 He approached [REDACTED] shortly after 6 o'clock
22 and said he wanted to speak with her. She informed him,
23 you know, you're not supposed to be here, I don't want to
24 talk to you, and it was at that point, Your Honor, that
25 her father, [REDACTED] arrived. He came into the mall

1 and got [REDACTED] and said, you know, it's time for us to
2 leave. The defendant asked if he could speak with
3 [REDACTED] They all three walked out of the mall together.

4 As I said in my earlier recitation of the facts,
5 Your Honor, [REDACTED] told [REDACTED] "Get in the car." She
6 got into the passenger seat of their Monte Carlo vehicle
7 and got on the phone with her mother, "What am I supposed
8 to do, he's up here again, he's talking to Dad, I don't
9 know what's going on."

10 After some conversation, Your Honor -- and
11 obviously nobody but the defendant and Mr. Bell know what
12 the conversation was -- the defendant pulled out of his
13 pocket a .38-caliber handgun. It carried five shots. He
14 shot Mr. Bell three times: once in the neck, once in his
15 right arm that proceeded into his chest, and once in the
16 back. Mr. Bell died relatively quickly, bleeding out
17 internally because of the organs that those bullets had
18 struck.

19 After he shot Mr. Bell, he ran around the car
20 and fired twice through the window of the seat that
21 Shaunna was sitting in, striking her once in the neck and
22 once in the shoulder.

23 People at the mall immediately heard the
24 gunshots, everyone's coming to help. The defendant left
25 in a car driven by a friend of his that had driven him up

1 to the mall that day.

2 Your Honor, he was identified by [REDACTED]
3 immediately, you know, that's who it was. Officers with
4 the Columbia Police Department started looking for him.
5 Officers Thomas and Reese who are here today, Your Honor,
6 were in charge of the homicide investigation.

7 Mr. Young had family members contact Columbia
8 Police Department to say, "I want to turn myself in."
9 This was the next day on the 14th. They arranged a time
10 to meet and a place to meet, and on the way there
11 apparently Mr. Young changed his mind, got out of the car
12 he was driving in, but he was picked up by a Richland
13 County Sheriff's officer not far from there.

14 He did give a full confession to the
15 investigators in this case. He told them where the gun
16 was located. It was at a house in Cayce.

17 Officers with Columbia were able to get with
18 officers from Cayce, did recover that .38 weapon, Your
19 Honor, which was sent to SLED and was matched with the
20 bullets recovered both from the car and from Mr. [REDACTED]'s
21 autopsy.

22 Your Honor, members of the family do wish to
23 speak and I'd ask them to come up at this time.

24 [REDACTED]: My name is [REDACTED]. I'm
25 Robert Bell's daughter.

1 Michael through his cowardly act took away from
2 my family someone who we'll never get back. He took away
3 a devoted husband, a wonderful father, a loving brother, a
4 caring uncle, and a great friend and mentor.

5 My father, [REDACTED] loved life and
6 took advantage of every opportunity that he was given. He
7 was very passionate about his family and what he could to
8 help those in need, including the person who took his
9 life.

10 My father did not deserve to leave the earth the
11 way he did. And while Michael will have the ability to
12 communicate with his family, we are only left with
13 memories and the pain of our loved one not being here
14 because of a cowardly decision.

15 My father was funny, smart, and talented.
16 Anything he set his mind to do, he was going to do it.

17 He was just 49 years old when he died. He
18 retired from the Air Force and started his own business.

19 He loved and protected his family. He died
20 trying to protect me from Michael.

21 Because of my father's murder, I graduated
22 college and started my career without him there to witness
23 it. I could not call him for advice on different things
24 that I've encountered in life.

25 I think about getting married and not having

1 anybody to walk me down the aisle. My father died and was
2 taken from me.

3 My dad was the first person I went to when I
4 finally decided to leave the abuse of Michael. My father
5 was upset to hear what I had been going through because he
6 had no idea. Because Michael was threatening my family, I
7 was concerned for their well-being if I moved back home.
8 My dad told me, "It's not your job to protect our family,
9 it's mine."

10 I could also rely on him to accept and love me
11 unconditionally.

12 My mom and dad were married for almost 28 years.
13 They were like the perfect couple. Out of all my close
14 friends, my parents were the only ones that were still
15 together.

16 They never argued in front of us, if they did at
17 all. They never had anything negative or bad to say about
18 one another. I relied on both of them to help me survive
19 what I was going through.

20 When my mom's birthday or Mother's Day comes
21 around, I don't have anyone to secretly call for details
22 on what she's been wanting.

23 I get sad everytime I think about my mom not
24 growing old with the man she fell in love with. My mom's
25 lost her best friend and loving husband. She will never

1 hear the words, "I love you, [REDACTED]."

2 My older brother [REDACTED] will no longer be able
3 to confide in his dad about life and love. My younger
4 brother [REDACTED] will never be able to look up in the stands
5 and hear cheers from a proud father as he turns his tassel
6 to the other side on his graduation day. And I will never
7 have the opportunity to be daddy's girl ever again.

8 As a result of being shot by Michael I'm forever
9 scarred. I have scars on my neck, back, shoulder, and my
10 hands, and I have been in pain every day since, not to
11 mention living with the fragments that supposedly still
12 linger in my body.

13 I recently had to undergo shoulder surgery in an
14 attempt to remove the bullet fragments. I have been doing
15 physical therapy since my surgery and I do not know how
16 long I will need to continue to regain strength in my arm
17 or if that will ever be possible. I also have pain in my
18 neck that I'll have to live with for the rest of my life.

19 Emotionally I'm reminded every day of what
20 happened to me. I have not been able to sleep very well
21 at night and I still have nightmares.

22 My father's murder, he was murdered four days
23 before Father's Day and everytime the anniversary of my
24 father's death comes around, not only do I have to deal
25 with that, I have been trying to handle things that all

1 the people eager to celebrate Father's Day have with their
2 fathers and it makes me cry every year. Along with that,
3 I'll never be able to celebrate any family holiday or
4 attend vacations with my family with him.

5 I thought I was in love, but I was only filled
6 with fear. All the abuse I took almost destroyed me.
7 Michael James Young, Jr. took my father's life and tried
8 to take mine.

9 I have such a loving and understanding family
10 and I was able to find myself again and get a better
11 understanding of what I was created and destined to be. I
12 truly appreciate things that matter and will forever keep
13 my father's memory in my heart.

14 MS. DIXON: This is [REDACTED] Your Honor.

15 MRS. [REDACTED] I don't wish to speak at this
16 time.

17 MR. D [REDACTED] My name is [REDACTED]
18 [REDACTED] was my big brother. And even though we
19 were only a year and a half apart in years, he was my role
20 model. He was a good man for society, you know.

21 He was a coach for Little League. So he was not
22 only responsible for his kid, he was responsible for other
23 people's kids, you know, and other people entrusted him,
24 you know, with their children.

25 And he mean a lot to me, he mean a lot to my

1 family. He was not just an uncle to my kids, he was more
2 like a father to my kids and he treated them like they
3 were his own.

4 I miss him very much, Your Honor. He's a great
5 man and there's going to always be a void in my heart
6 because I no longer have my big brother.

7 Thank you.

8 MS. DIXON: Your Honor, that's all the State has
9 at this time.

10 THE COURT: I want to thank the members of
11 [REDACTED] family and friends for coming here today and
12 the comments that were made.

13 I can't say that I understand how you feel
14 because I've lost loved ones, but I've never lost loved
15 ones to this type of a tragedy. And so I'm not going to
16 say I understand, I'm just going to say that you have my
17 prayers and certainly my sympathy as I'm so sorry for your
18 loss.

19 But I appreciate you taking the time and the
20 effort to come today because it helps the Court to see and
21 it gives more insight into the things that we deal with,
22 and I know that it was not easy to be here.

23 I hope that what goes through the process today
24 will help you in some way to deal in some respect with the
25 grief that you carry. I don't expect it will end, I don't

1 expect it will ever end, but I do appreciate your being
2 here.

3 I have not been in your shoes exactly, but I do
4 understand something about human nature. And I say this
5 to you not to -- I don't say this on behalf of Mr. Young,
6 I say this on behalf of you, those of you who loved
7 [REDACTED], and that you find it in your heart somehow to
8 forgive. I know you'll never forget, but to forgive.

9 And again, I don't say that for Mr. Young. I
10 say that because I've been in the position before where
11 I've allowed anger and hate to rest in me, and I found out
12 that it didn't hurt the person that I was angry at or that
13 I hated, it hurt me.

14 If you can find a way to forgive this young man
15 for what he's done, it will help bring you healing. And
16 that's my concern, is for your healing.

17 And so I realize that nothing that occurs here
18 today will make much of a difference for you in your loss,
19 but I do very much appreciate your taking the time to be
20 here and how difficult it is to be here.

21 Mr. Young, I appreciate your standing here and
22 taking responsibility for your actions. It's a tragedy
23 obviously on several levels. This world lost what
24 appeared to be from all counts, even from your own account
25 to me, an outstanding citizen and an outstanding person.

1 And it's also losing a person who has the potential and
2 the ability to also be that. And so it's just a tragedy
3 that really words can't describe.

4 I appreciate your words. I appreciate what you
5 have written. It shows a lot of insight, it shows a lot
6 of maturity, and I'm going to give you some consideration
7 from the fact that you're accepting responsibility for
8 what has occurred.

9 However, in doing that, it's still -- you know,
10 in our courtroom in Florence we have -- and I realize that
11 all we read about nowadays is trying to take God out of
12 government and trying to take the Lord out of everything.
13 And there's some levels of that that is appropriate; the
14 separation of church and state is an appropriate
15 separation.

16 But we have out of the book of Micah in our
17 courtroom where it says to love justly -- to do mercy, to
18 love justly and to walk humbly with God. And I think
19 justice requires some level of punishment, obviously, to
20 show nothing but mercy and to not -- I guess the best way
21 to put it is that mercy without punishment is not just,
22 just as punishment with no mercy is not just. So I think
23 to do justice, you have to temper justice with mercy.

24 And having said that, I'm not going to sentence
25 you to life in prison. And it may appear that to you that

1 this is a life sentence, but it's not.

2 I hope you take the things that you have written
3 and spoken and hold those close as you do whatever time
4 you're going to have to do here.

5 Prison can make you worse than you went in or
6 you can come out of it better than you went in, and I hope
7 that you will cling to whatever's positive as you do this
8 sentence.

9 On Indictment 2007-GS-32-2948, the count of
10 murder, the sentence of the Court is that you be committed
11 to the State Department of Corrections for a period of 50
12 years.

13 On Indictment 2007-GS-32-2949, assault and
14 battery with intent to kill, the sentence of the Court is
15 that you be committed to the South Carolina Department of
16 Corrections for a period of 20 years.

17 Those sentences are to run concurrent and you
18 are to be given credit for any time that you have served
19 to this point.

20 Good luck to you, sir.

21 MR. DELGADO: Thank you, Your Honor.

22 MS. DIXON: Thank you, Your Honor.

23 (The proceedings were concluded.)

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

25

1 CERTIFICATE OF REPORTER

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3

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STATE OF SOUTH CAROLINA)

5

COUNTY OF LEXINGTON)

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I, CAROL M. THUEME, RPR, Official Court Reporter for
the 11th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned
case, relative to appeal, in the Court of General Sessions
for Lexington County, South Carolina, on the 11th day of
April, 2011.

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

May 19, 2014



CAROL M. THUEME, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

2012 NOV 21 A 10:19

MICHAEL JAMES YOUNG, JR., #00345614

Full name and prison number (if any) of Applicant

v.

ALAN WILSON, ATTORNEY GENERAL
State of South Carolina, RESPONDENT.

APPLICATION FOR

POST-CONVICTION RELIEF

2012 CP 3204648

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION, 4460 BROAD RIVER ROAD, COLUMBIA, SOUTH CAROLINA- MOULTRIE UNIT #
2. Name and location of Court which imposed sentence LEXINGTON COUNTY COURT OF GENERAL SESSION, 11TH JUDICIAL CIRCUIT 205 E, MAIN STREET, LEXINGTON, S.C. 29072
3. Name(s) of co-defendant(s) (if any) BRIAN LEAGONES
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-32-2948; 2959; 2950

(b) MURDER AND ASSAULT & BATTERY WITH INTENT TO KILL

(c) _____

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

(a) 50 years (murder) - concurrent

(b) 20 years (ABWIK) - concurrent

(c) On or around April 8, 2011

6. Check whether a finding of guilty was made:

(a) after a plea of guilty GUILTY PLEA

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

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

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

i. SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

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

i. AFFIRMED CONVICTION & SENTENCE

ii. _____

iii. _____

(c) the date of each such result:

i. FEBRUARY 10, 2012

ii. _____

iii. _____

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

i. SEE ATTACHMENT ORDER OF REMITTITUR

ii. _____

iii. _____

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

(a) N/A

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- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT
- (b) SEE ATTACHMENT
- (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. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

FILED
2012 NOV 21 A 10:20
CLERK OF COURT
JULIA CAMPBELL

2012CP3204648

ATTACHMENT TO PAGE (3) 10 (a) & 11 (a).

THE APPLICANT RECEIVED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN COUNSEL FAINED TO DO A COMPLETE INVESTIGATION OF THE FACTS IN RELATION TO THE LAW. WHEREBY, RENDERING COUNSEL'S ASSISTANCE INEFFECTIVE.

1. TRIAL COUNSEL FAILURE TO INTERVIEW THE FORENSIC PATHOLOGIST, WHICH WOULD HAVE PROVIDED A DEFENSE INDICATING THE VICTIM'S WOUNDS COULD NOT BE DETERMINED BY A MEDICAL CERTAINTY THE ORDER OF ENTRY OF THE BULLET AND AS A RESULT COULD HAVE REQUIRED THE CHARGE OF VOLUNTARY MANSLAUGHTER OR OTHER DEFENSE'S.
2. TRIAL COUNSEL FAILURE TO INTERVIEW THE APPLICANT'S EX-WIFE RENDER COUNSEL'S ASSISTANCE INEFFECTIVE. APPLICANT'S EX-WIFE COULD HAVE PROVIDED TESTIMONY INDICATING THE APPLICANT POSSIBLY ENGAGED IN A SELF-DEFENSE STRUGGLE WITH THE VICTIM AND AS SUCH HAD TO PROTECT HIS PERSON, REQUIRING A SELF-DEFENCE INSTRUCTION AT A TRIAL.

COUNSEL'S DEFICIENT REPRESENTATION WAS OBJECTIVELY UNREASONABLE UNDER THE CIRCUMSTANCES AND THE PROCEEDINGS PREJUDICED THE APPLICANT'S DEFENCE AND AS A RESULT IT IS REASONABLY POSSIBLE THE OUTCOME WOULD HAVE BEEN DIFFERENT HAD COUNSEL'S PERFORMANCE NOT BEEN DEFICIENT. SEE: STRICKLAND V. WASHINGTON, 466 U.S. AT 694 (1984).

THE APPLICANT HEREIN PRESERVE'S HIS RIGHT TO AMEND AND/OR SUPPLEMENT HIS APPLICATION PRIOR TO ANY HEARINGS IN THE ABOVE REGARD.

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DELLA CARRIO
CLERK OF COURT
1100 1000

ATTACHMENT TO PAGE (3) 10 (b) & 11 (b).

THE APPLICANT RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN COUNSEL FAILED TO ALLOW THE APPLICANT TO FULLY PARTICIPATE IN THE APPEAL PROCESS.

THE RIGHT TO COUNSEL EXTENDS TO APPEALS. A DEFENDANT IN A CRIMINAL CASE HAS A SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL. SEE DOUGLAS V. CALIFORNIA, 469 U.S. 387, 406, 83 L. ED. 2D 821, 105 S. CT. 830 (1985); DOUGLAS V. CALIFORNIA, 372 U.S. 353, 83 S. CT. 814 (1963) (AN ACCUSED IS ENTITLED TO ASSISTANCE OF COUNSEL ON AN APPEAL AS A MATTER OF RIGHT); SOUTHERLAND V. STATE, 337 S.C. 610, 615, 524 S.E. 2D 833, 836 (1999). THE TEST TO ESTABLISH A CLAIM THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO PURSUE A CLAIM ON DIRECT APPEAL IS THE SAME STRICKLAND STANDARD. STRICKLAND, 466 U.S. AT 688, 694; SEE ALSO SMITH V. ROBBINS, 528 U.S. 259, 120 S. CT. 746 764, 145 L. ED. 2D 756 (2000) (HOLDING THAT A HABEAS APPLICANT MUST DEMONSTRATE THAT "COUNSEL WAS OBJECTIVELY UNREASONABLE" IN FAILING TO FILE A MERITS BRIEF ADDRESSING A NONFRIVOLOUS ISSUE AND THAT THERE IS "A REASONABLE PROBABILITY THAT, BUT FOR HIS COUNSEL'S UNREASONABLE FAILURE, HE WOULD HAVE PREVAILED ON HIS APPEAL."); TISDALE V. STATE, 357 S.C. 474, 594 S.E. 2D 166 (2004).

IN APPLYING THIS TEST TO CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL, REVIEWING COURTS MUST ACCORD APPELLATE COUNSEL THE PRESUMPTION THAT HE DECIDED WHICH ISSUES WERE MOST LIKELY TO AFFORD RELIEF ON APPEAL. PRUETT V. THOMPSON, 996 F. 2D 1560, 1568 (4TH CIR. 1993). COUNSEL IS NOT OBLIGATED TO ASSERT ALL NON-FRIVOLOUS ISSUES ON APPEAL, AS "THERE HARDLY BE ANY QUESTION ABOUT THE IMPORTANCE OF HAVING THE APPELLATE ADVOCATE EXAMINE THE RECORD WITH A VIEW TO SELECTING THE MOST PROMISING ISSUES FOR REVIEW." JONES V. BARNES, 463 U.S. 745, 752, 77 L. ED. 2D 987, 103 S. CT. 3308 (1983); SEE ALSO THRIFT V. STATE, 302 S.C. 535, 539, 397 S.E. 2D 523, 526 (1990). INDEED, "WINNOWING OUT WEAKER ARGUMENTS ON APPEAL AND FOCUSING ON THOSE MORE LIKELY TO PREVAIL, FAR FROM BEING EVIDENCE OF INCOMPETENCE, IS THE HALLMARK OF EFFECTIVE APPELLATE ADVOCACY." SMITH V. MURRAY, 477 U.S. 527, 536, 91 L. ED. 2D 434, 106 S. CT. 2661 (1986) (QUOTING JONES, 463 U.S. AT 751).

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DETHA CARRING
CLERK OF COURT

ALTHOUGH RECOGNIZING THAT "notwithstanding BARNES, IT IS STILL POSSIBLE TO BRING A STRICKLAND CLAIM BASED ON COUNSEL'S FAILURE TO RAISE A PARTICULAR CLAIM" ON DIRECT APPEAL, THE SUPREME COURT HAS RECENTLY REITERATED THAT "WHEN IGNORED ISSUES ARE CLEARLY STRONGER THAN THOSE PRESENTED, WILL THE PRESUMPTION OF EFFECTIVE ASSISTANCE OF COUNSEL BE OVERCOME." ROBBINS, 120 S. CT. AT 765.

IN THE INSTANT CASE, APPELLATE COUNSEL NEVER COMMUNICATED TO APPLICANT YOUNG WHAT ACTION WAS TAKEN ON HIS BEHALF. APPLICANT NEVER RECEIVED ANY COPIES NOR LETTERS OF ANY FILINGS, DESPITE THE FACT THAT SUCH ISSUES WERE EVIDENT FROM THE RECORD. IN DOING SO, APPELLATE COUNSEL IGNORED CLEARLY MERITORIOUS ISSUES AND SUCH CONDUCT RENDERS COUNSEL'S ASSISTANCE BELOW ANY OBJECTIVE STANDARD OF REASONABLENESS. THIS POOR CONDUCT PREJUDICED THE APPLICANT IN THAT THE APPLICANT FORFEIT THE RIGHT TO PRESENT SUCH ISSUES IN ANY FORMAT, INSTEAD SUFFERING INCARCERATION AS A RESULT OF A CONVICTION OBTAINED IN VIOLATION OF THE APPLICANT'S SIXTH AMENDMENT RIGHT. APPLICANT'S CONVICTION SHOULD BE VACATED ON THIS ISSUE.

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BETH A. CARRIS
CLERK OF COURT
CLERK OF COURT

iv. N/A

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i. N/A

ii.

iii.

iv.

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

i. N/A

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. NONE

ii.

iii.

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

i. NONE

ii.

iii.

2012 NOV 21 A 0:20

FILED

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) PCR IS THE AVENUE TO RAISE THESE ISSUES

(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? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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. J. TODD RUTHERFORD, ATTORNEY AT LAW 2113 PARK STREET
COLUMBIA, S.C. ; JOHN DENNIS DELGADO, ATTORNEY AT LAW

ii. COLUMBIA, S.C.

ROBERT M. DUDEK, CHIEF APPELLATE DEFENDER

iii. COLUMBIA, S.C. / Attorney Pachek

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

i. TRIAL (FIRED)

TRIAL

ii. APPEAL

iii. _____

FILED
2012 NOV 21 A 10:20
CLERK OF COURT
JUDICIAL DISTRICT OF CLATSOP COUNTY

FILED

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

CONVICTION VACATED

FILED

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

NO

2012 NOV 21 A 0:20

BETHA CARRIGS
CLERK OF COURT
JULY 2012

2012 CP 3204648

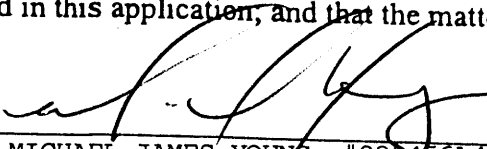
Revised 3/2003

STATE OF SOUTH CAROLINA)

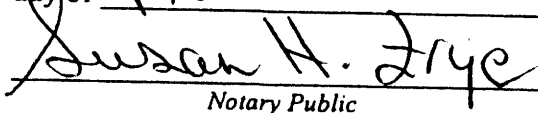
County of LEXINGTON)

VERIFICATION

I, MICHAEL JAMES YOUNG, 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.


MICHAEL JAMES YOUNG, #00345614

SWORN to and subscribed before me this 14th day of November, 2012.

 (L.S.)
Notary Public

My Commission Expires: March 5, 2018

FILED

2012 NOV 21 A 0:20

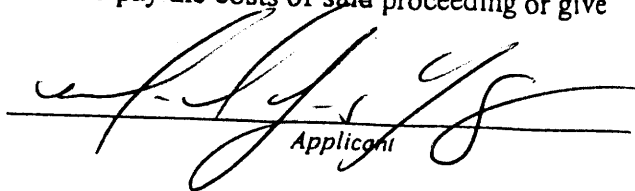
BETHA CARRIGS
CLERK OF COURT
JULY 2012

2012CP3204648

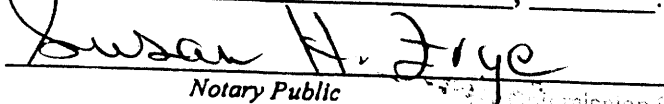
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, MICHAEL JAMES YOUNG, #00345614, 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.


Applicant

SWORN or affirmed to and subscribed before me this
14th day of November, 2012.


Notary Public

My Commission Expires
11/15/2016

My Commission Expires: _____

FILED

2012 NOV 21 A 0:20

DETHA CARRIO
CLERK OF COURT

The South Carolina Court of Appeals

The State,

Respondent

v.

Michael Young,

Appellant.

The Honorable Thomas A. Russo
Lexington County
Trial Court Case No. 2007-GS-32-02948
2007-GS-32-02949

REMITTITUR

FILED
2012 NOV 21 A 10:20
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON COUNTY

No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order filed February 10, 2012,

IT IS SO ORDERED that the above appeal be and hereby is remitted to the Clerk of Court for Lexington County.

JOHN CANNON FEW, CHIEF JUDGE

BY V. Claire Allen, Deputy
Clerk

Columbia, South Carolina

Original to: The Honorable Beth Carrigg

cc: Chief Appellate Defender Robert M. Dudek

John Dennis Delgado, Esquire

Michael Young #345614

Assistant Deputy Attorney General Salley W. Elliott

The Honorable Beth Carrigg

NOVEMBER 16, 2012

CLERK OF COURT
LEXINGTON COUNTY COURTHOUSE
205 E. MAIN STREET
LEXINGTON, SOUTH CAROLINA 29072

2012CP3204648

RE: POST-CONVICTION RELIEF APPLICATION
STATE V. YOUNG

DEAR CLERK:

PLEASE FIND ENCLOSED MY APPLICATION FOR POST-CONVICTION RELIEF. ALSO, A COPY OF ONE FACE SHEET OF THE APPLICATION. WOULD YOU PLEASE FILE SAME AND STAMP FILE THE COVER SHEET FOR MY FILES AND RETURN TO ME IN THE ENCLOSED ENVELOPE. THANK YOU FOR ALL YOUR EFFORTS IN THIS RESPECT AND I LOOK FOR YOUR REPLY.

RESPECTFULLY YOURS,

S/

MICHAEL J. YOUNG, #345614
BRCI-MOULTRIE #2082
4460 BROAD RIVER ROAD
COLUMBIA, S.C. 29210

ENCLOSURE

cc: FILE

BETH A. CARRICO
CLERK OF COURT
11/16/2012

2012 NOV 21 A 10:20

FILED

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Michael James Young,	)	Case No. 2012-CP-32-4648
S.C.D.C. No. 345614,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2012 APR -4 A 11:53

FILED

Respondent, making its Return to the application for post-conviction relief November 21, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the October 2007 term of the Lexington County Grand Jury for murder (2007-GS-32-2948), assault and battery with intent to kill (ABWIK) (2007-GS-32-2949), and possession of firearm during commission of violent crime (2007-GS-32-2950). Applicant was represented by John Delgado, Esquire. On April 11, 2011, Applicant pled guilty to murder and ABWIK as indicted before the Honorable Judge Thomas A. Russo. The firearm charge was nolle prossed. Judge Russo sentenced Applicant to a term of fifty years for murder and a concurrent term of twenty years for ABWIK. Applicant timely filed a notice of intent to appeal his guilty plea and sentence. In an unpublished order filed February 10, 2012, the South Carolina Court of Appeals dismissed the appeal, finding no preserved issues for appellate review.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction, the applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend this Return upon receipt of any relevant materials.¹

II.

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

1. Ineffective Assistance of Plea Counsel, in that:
 - a. "Trial Counsel failure to interview the forensic pathologist, which would have provided a defense indicating the victim's wounds could not be determined by a medical certainty the order of entry of the bullet and as a result could have required the charge of voluntary manslaughter or other defenses"
 - b. "Trial counsel failure to interview the applicant's ex-wife render counsel's assistance ineffective. Applicant's ex-wife could have provided testimony indicating the applicant possibly engaged in a self-defense struggle with the victim and as such had to protect his person, requiring a self-defense instruction at trial."
2. Ineffective Assistance of Appellate Counsel, in that:
 - a. "Appellate counsel never communicated to Applicant Young what action was taken on his behalf. Applicant never received any copies nor letters of any filings, despite the fact that such issues were evident from the record. In doing so, appellate counsel ignored clearly meritorious issues. . ."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing pursuant to S.C. Code § 17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record pursuant to Rule 11, SCRCP.

¹ Respondent is currently awaiting receipt of the Applicant's guilty plea transcript.

III.

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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel’s performance was deficient. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel’s alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

IV.

Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). “However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine “whether appellate counsel failed to present significant and obvious issues on appeal.” Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent submits that this allegation is without merit. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Therefore, Respondent requests an evidentiary hearing on this allegation also.

V.

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

VI.

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

[signature on following page]

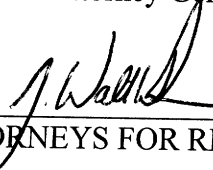
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 3rd, 2014

FORM 5

STATE OF SOUTH CAROLINA

County of LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

2012 NOV 21 A 0:19

MICHAEL JAMES YOUNG, JR., #00345614

Full name and prison number (if any) of Applicant

v.

ALAN WILSON, ATTORNEY GENERAL
State of South Carolina, RESPONDENT.

APPLICATION FOR

POST-CONVICTION RELIEF

2012 CP 3204648

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION, 4460 BROAD RIVER ROAD, COLUMBIA, SOUTH CAROLINA- MOULTRIE UNIT #
2. Name and location of Court which imposed sentence LEXINGTON COUNTY COURT OF GENERAL SESSION, 11TH JUDICIAL CIRCUIT 205 E, MAIN STREET, LEXINGTON, S.C. 29072
3. Name(s) of co-defendant(s) (if any) BRIAN LEAGONES
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-32-2948; 2959; 2950

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & E.C.

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

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

(a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL(b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

(c) _____

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

(a) SEE ATTACHMENT(b) SEE ATTACHMENT

(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. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

FILED

NOV 21 A 10:20

ATTACHMENT TO PAGE (3) 10 (b) & 11 (b).

THE APPLICANT RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION WHEN COUNSEL FAILED TO ALLOW THE APPLICANT TO FULLY PARTICIPATE IN THE APPEAL PROCESS.

THE RIGHT TO COUNSEL EXTENDS TO APPEALS. A DEFENDANT IN A CRIMINAL CASE HAS A SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON DIRECT APPEAL. SEE DOUGLAS V. CALIFORNIA, 469 U.S. 387, 406, 83 L. ED. 2D 821, 105 S. CT. 830 (1985); DOUGLAS V. CALIFORNIA, 372 U.S. 353, 83 S. CT. 814 (1963) (AN ACCUSED IS ENTITLED TO ASSISTANCE OF COUNSEL ON AN APPEAL AS A MATTER OF RIGHT); SOUTHERLAND V. STATE, 337 S.C. 610, 615, 524 S.E. 2D 833, 836 (1999). THE TEST TO ESTABLISH A CLAIM THAT APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO PURSUE A CLAIM ON DIRECT APPEAL IS THE SAME STRICKLAND STANDARD. STRICKLAND, 466 U.S. AT 688, 694; SEE ALSO SMITH V. ROBBINS, 528 U.S. 259, 120 S. CT. 746 764, 145 L. ED. 2D 756 (2000) (HOLDING THAT A HABEAS APPLICANT MUST DEMONSTRATE THAT "COUNSEL WAS OBJECTIVELY UNREASONABLE" IN FAILING TO FILE A MERITS BRIEF ADDRESSING A NONFRIVOLOUS ISSUE AND THAT THERE IS "A REASONABLE PROBABILITY THAT, BUT FOR HIS COUNSEL'S UNREASONABLE FAILURE, HE WOULD HAVE PREVAILED ON HIS APPEAL."); TISDALE V. STATE, 357 S.C. 474, 594 S.E. 2D 166 (2004).

IN APPLYING THIS TEST TO CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL, REVIEWING COURTS MUST ACCORD APPELLATE COUNSEL THE PRESUMPTION THAT HE DECIDED WHICH ISSUES WERE MOST LIKELY TO AFFORD RELIEF ON APPEAL. PRUETT V. THOMPSON, 996 F. 2D 1560, 1568 (4TH CIR. 1993). COUNSEL IS NOT OBLIGATED TO ASSERT-ALL NON-FRIVOLOUS ISSUES ON APPEAL, AS "THERE HARDLY BE ANY QUESTION ABOUT THE IMPORTANCE OF HAVING THE APPELLATE ADVOCATE EXAMINE THE RECORD WITH A VIEW TO SELECTING THE MOST PROMISING ISSUES FOR REVIEW." JONES V. BARNES, 463 U.S. 745, 752, 77 L. ED. 2D 987, 103 S. CT. 3308 (1983); SEE ALSO THRIFT V. STATE, 302 S.C. 535, 539, 397 S.E. 2D 523, 526 (1990). INDEED, "WINNOWING OUT WEAKER ARGUMENTS ON APPEAL AND FOCUSING ON THOSE MORE LIKELY TO PREVAIL, FAR FROM BEING EVIDENCE OF INCOMPETENCE, IS THE HALLMARK OF EFFECTIVE APPELLATE ADVOCACY." SMITH V. MURRAY, 477 U.S. 527, 536, 91 L. ED. 2D 434, 106 S. CT. 2661 (1986) (QUOTING JONES, 463 U.S. AT 751).

FILED
2012 NOV 21 A 02
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

iv. N/A

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i. N/A

ii.

iii.

iv.

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

i. N/A

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. NONE

ii.

iii.

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

i. NONE

ii.

iii.

2017 NOV 21 A 10 20

FILED

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

CONVICTION VACATED

FILED

20. Are you now under sentence from any other court that you have not challenged?
NO

2012 NOV 21 A 0:20

BETHA CARRICE

2012 CP 3204648

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of LEXINGTON)

VERIFICATION

I, MICHAEL JAMES YOUNG, 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.

MICHAEL JAMES YOUNG, #00345614

SWORN to and subscribed before me this 14th day of November, 2012.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires: March 5, 2019

FILED

2012 NOV 21 A 0:20

BETHA CARRICE

EXHIBIT # 1 OF 1

The South Carolina Court of Appeals

The State,

Respondent

v.

Michael Young,

Appellant.

The Honorable Thomas A. Russo
 Lexington County
 Trial Court Case No. 2007-GS-32-02948
 2007-GS-32-02949

 REMITTITUR

 2012 NOV 21 A 10:20
 BETH A. CARRIGG
 CLERK

FILED

No Petition for Reinstatement having been filed in the above matter since issuance of this
 Court's Order filed February 10, 2012,

IT IS SO ORDERED that the above appeal be and hereby is remitted to the Clerk of Court for
 Lexington County.

JOHN CANNON FEW, CHIEF JUDGE

 BY V. Claire Allen, Deputy
 Clerk

Columbia, South Carolina

Original to: The Honorable Beth Carrigg

cc: Chief Appellate Defender Robert M. Dudek

John Dennis Delgado, Esquire

Michael Young #345614

Assistant Deputy Attorney General Salley W. Elliott

The Honorable Beth Carrigg

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
STATE

VS.
Michael Young Jr.

AKA: _____
Race: _____ Sex: M Age: 25
DOB: 03-04-1986 SS#: 000-00-0000
Address: 105 Hill Pine Road
City, State, Zip: Columbia, SC 29212
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/Murder

In violation of 16-03-0010; 16-03-0020

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☒ MOST SERIOUS

The charge is: ☒ As indicted, ☐ Lesser Included Offense,
The plea is: ☒ Without Negotiations or Recommendation, ☐ Defendant Waives Presentment to Grand Jury.

ATTEST:

Colin
Solicitor

73731
SC Bar #

Defendant

WHEREFORE, the Defendant is committed to the

for a determinate term of 50 days/months/years or

and/or to pay a fine of \$ _____; provided that upon the service of

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-24-125.

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

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

TOTAL

Clerk of Court/Deputy Clerk

Court Reporter:
SCCA/217 (03/2011)

Beeth A. Carey
Carol Shreve

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007-GS-32-2948

AW#: K266766

Date of Offense: 9/26/2007

S.C. Code §: 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Mandatory GPS

(CSC w/minor 1st or Lawd Act)

Defendant Waives Presentment to Grand Jury.

Negotiated Sentence,

☐ Recommendation by the State.

(def.'s initials)

John Delgado
Attorney for Defendant

☐ County Detention Center,

not to exceed

days/months/years and or payment

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

2007-65-32-2949

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date

2141
4-11-2011

BAIL set by

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

90
91

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

Beih A. Carrigg
Clerk of Court
Lexington, SC

2007 JUN 26 PM 1:06

Filed

WITNESSES

Columbia Police Department

L. Reese

DVM

ARREST WARRANT NUMBER

K266766

ACTION OF GRAND JURY

TRUE BILL

Foreman

Foreperson of Grand Jury

Date: 10-1-07

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-32-2948

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

OCTOBER TERM 2007

THE STATE

vs.

Michael James Young, Jr.

CDR #: 0116

Indictment for

Murder

§ 16-03-0010

DONALD V. MYERS, SOLICITOR

ARREST WARRANT

K-266767 0719229

STATE OF SOUTH CAROLINA

County/ Municipality of
COLUMBIATHE STATE
against ORIGINAL

MICHAEL JAMES YOUNG JR

Address: 100 HILL PINE RD APT E-7
COLUMBIA SC 29202

Phone: SSN:

Sex: Race: Height: Weight: 180

DL State: DL#:

DOB: 05/04/1986

Agency ORI#: SC0400100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: K E REESE

Offense: ABIK

Offense Code: ABR

Code/Ordinance Sec: 16-3-620

This Warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

COLUMBIA

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on 06-14-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA

MUNICIPAL COURT

P.O. BOX 544

COLUMBIA, SC 29202

STATE OF SOUTH CAROLINA

County/ Municipality of

COLUMBIA

Personally appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on 05/13/2007

State of South Carolina (or ordinance of County/ Municipality of

in the following particulars: ABIK

DESCRIPTION OF OFFENSE: ABIK

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

ON 05/13/07 AT APPROX 6:40 PM A SHOOTING OCCURRED AT 100 COLUMBIA

CIRCLE IN THE CITY LIMITS OF COLUMBIA, SC, LEXINGTON COUNTY. VICTIM

ROBERT LYNN BELL 49, AND HIS DAUGHTER SHAUNNA LYNN BELL 21, WERE

SHOT MULTIPLE TIMES ABOUT THE BODY WITH AN UNKNOWN CALIBER HAND GUN.

ROBERT BELL WAS PRONOUNCED DEAD AT THE SCENE. SHAUNNA BELL WAS

TRANSPORTED TO A LOCAL HOSPITAL. SHAUNNA BELL GAVE INVESTIGATORS A

STATEMENT THAT PRIOR TO THE SHOOTING SHE ALONG WITH HER FATHER WAS

APPROACHED BY THE DEF WHO IS HER ESTRANGED HUSBAND. SHE STATED THAT

Signature of Affiant

STATE OF SOUTH CAROLINA

County/ Municipality of

COLUMBIA

Affiant's Address

COLUMBIA, SC 29202

Affiant's Telephone

272-2000

ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/13/2007 defendant MICHAEL JAMES YOUNG JR

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of COLUMBIA

DESCRIPTION OF OFFENSE: ABIK

) as set forth below:

16-3-620

A TRUE COPY

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said

defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to

the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/14/2007

Signature of Issuing Judge (L.S.)

Signature of Constable/Law Enforcement Officer

Judge's Address

Judge's Telephone

Issuing Court: ☐ Magistrate ☐ Municipal ☐ CircuitForm Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

067

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Assault and Battery with Intent to Kill

§ 16-03-0620

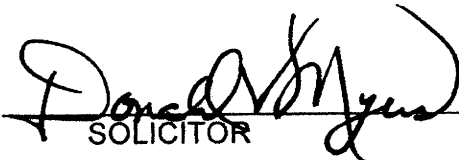
At a Court of General Sessions, convened on October 2007, the Grand Jurors of Lexington County present upon their oath:

That **Michael James Young, Jr.** did in Lexington County, on or about June 13, 2007, unlawfully, willfully and with malice aforethought, commit an assault and battery with intent to kill the said victim, **Shaunna Lynn Bell**, in that the defendant Michael James Young, Jr. fire a pistol at the victim seated in a car striking her in the leg and body resulting in serious bodily injuries and causing her to seek medical attention and hospitalization, in violation of the 16-3-620 of the South Carolina Code of Laws, 1976, as amended.

A TRUE COPY

 Lex. Co. C.C.C.P., O.S. & F.C.

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


 SOLICITOR

LEXINGTON

ARREST WARRANT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

K- 266768

STATE OF SOUTH CAROLINA

County/ Municipality of

THE STATE

against

ORIGINAL

MICHAEL JAMES YOUNG JR.

Address: 142 WILL PINE RD APT C 7

COLUMBIA SC 29206

Phone: SSN:

Sex: Race: Height: Weight: 180

DL State: DL#:

DOB: Agency ORI#:

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: K L REESE

Offense: POSSESSION OF FIREARM

Offense Code: 14-23-400

Code/Ordinance Sec: 14-23-400

This Warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to

Defendant

on 06-14-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CITY OF COLUMBIA

MUNICIPAL COURT

P. O. BOX 844

LEXINGTON, SC 29050

STATE OF SOUTH CAROLINA

County/ Municipality of

AFFIDAVIT

Personally appeared before me the affiant INV K L REESE being duly sworn deposes and says that defendant MICHAEL JAMES YOUNG JR did within this county and state on 06/13/2007

State of South Carolina (or ordinance of County/ Municipality of) violate the criminal laws of the in the following particulars:

DESCRIPTION OF OFFENSE: POSSESSION OF FIREARM

14-23-400

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON 06/13/07 AT APPROX 6:40 PM A SHOOTING OCCURRED AT 120 COLUMBIAN CIRCLE IN THE CITY LIMITS OF COLUMBIA, SC, LEXINGTON COUNTY. VICTIM ROBERT LYNN BELL 49, AND HIS DAUGHTER SHAUNNA LYNN BELL 21, WERE SHOT MULTIPLE TIMES ABOUT THE BODY WITH AN UNKNOWN CALIBER HAND GUN. ROBERT BELL WAS PRONOUNCED DEAD AT THE SCENE. SHAUNNA BELL WAS TRANSPORTED TO A LOCAL HOSPITAL. SHAUNNA BELL GAVE INVESTIGATORS A STATEMENT THAT PRIOR TO THE SHOOTING SHE ALONG WITH HER FATHER WAS APPROACHED BY THE DEF WHO IS HER ESTRANGED HUSBAND. SHE STATED THAT

Signature of Affiant

Kevin Reese

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

County/ Municipality of

COLUMBIA

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 06/13/2007 defendant MICHAEL JAMES YOUNG JR did violate the criminal laws of the State of South Carolina (or ordinance of

County/ Municipality of COLUMBIA

) as set forth below:

DESCRIPTION OF OFFENSE: POSSESSION OF FIREARM

14-23-400

A TRUE COPY

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/14/2007

Russell Spencer (L.S.)

Judge's Address

CITY OF COLUMBIA, SC

Judge's Telephone

Issuing Court:

Magistrate

Municipal

Circuit

Ministerial Recorder

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

)
)
)
)INDICTMENT FOR
Possession of Firearm During Commission of
Violent Crime

§ 16-23-0490

At a Court of General Sessions, convened on October 2007, the Grand Jurors of Lexington County present upon their oath:

That **Michael James Young, Jr.** did in Lexington County on or about June 13, 2007, possess a firearm, or visibly display what appeared to be a firearm, during the commission of violent crimes or attempt to commit a violent crime, to wit: the defendant possessed and fired a pistol at **Robert Lynn Bell and Shaunna Lynn Bell** striking the victims and committing the violent crimes of Murder and Assault and Battery with Intent to Kill, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY

Lex. Co. Clerk U.S. & H.C.

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


SOLICITOR

CMTI330D
 OMCOMITA
 SCDC# > 00345614
 YOUNG JR, MICHAEL -
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SCDC OFFENDER MANAGEMENT SYSTEM
 RELEASE DATE SCREEN

01/10/13
 C051123
 LOC: BROAD RIVER

SCDC CLASSIFICATION...: VIOLENT
 SEXUAL REGISTRY...: N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION...:

CURRENT SENTENCE: 050-00-000
 050-00-000
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 06/01/2057
 YOA SIX YEAR DATE: / /
 INITIAL PAROLE DATE: 00/00/0000

CONSECUTIVE SENTENCE ...: N
 CURRENT SENT START DATE: 06/14/2007
 CURRENT EWC ..: 3 F 5
 CURRENT EEC ..: B5
 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000
 TOTAL EARNED WORK CREDITS ...: 000477
 TOTAL EDUCATION CREDITS: 000171
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ...: 002006

LABOR CREW/WORK PROG DATE: 99/99/9999
 LABOR CREW DISQ REASON:
 CATEGORY 4 OR 5 OFFENSE
 SUPERVISED REENTRY DATE...: 00/00/00
 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

4-© 1 Sess-1 167.7.50.33 SCDC1251 3/11

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE

VS.

Michael Young Jr.

AKA:

Race:

Sex:

M

Age:

25

DOB:

03-04-1986

SS#:

000-00-0000

Address:

105 Hill Pine Road

City, State, Zip:

Columbia, SC 29212

DL# *

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Assault and battery with Intent to Kill (ABWIK)

In violation of § 16-03-0620

of the S.C. Code of Laws, bearing CDR Code # 0014

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:



Solicitor

73731
SC Bar #

Defendant



Attorney for Defendant

1641
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections☐ County Detention Center,for a determinate term of 20~~days/months/years~~☐ 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: 2007-65-32-2948☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: \$ _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

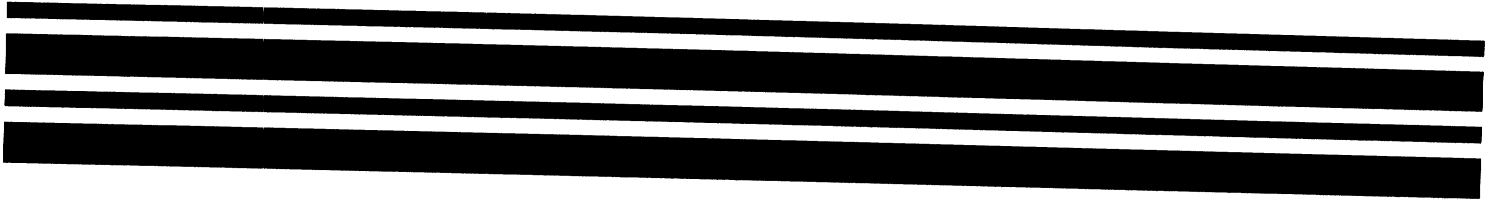
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

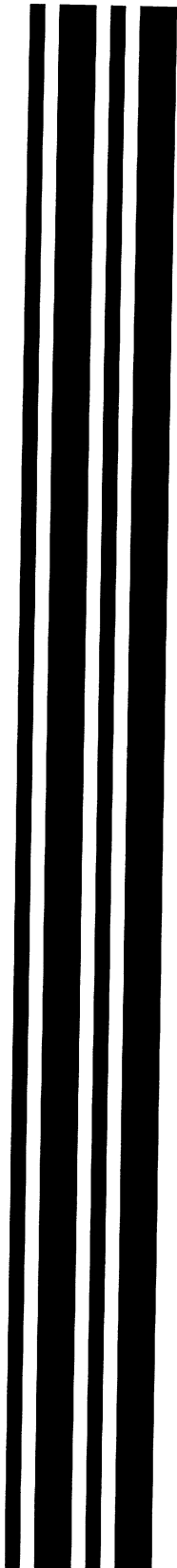
3% to County (if paid in installments) \$ _____

TOTAL \$ 130☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probationPresiding Judge Judge Code: 2141Sentence Date 4-11-2011Clerk of Court/Deputy Clerk Court Reporter: 

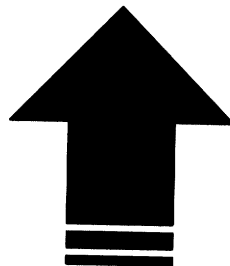
SCCA/217 (03/2011)



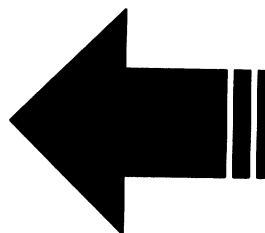
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Landscape Feed
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Printed on 12/22/2008 9:23:17 AM

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

MICHAEL JAMES YOUNG)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent)

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH CIRCUIT

2012-CP-32-4648

AFFIDAVIT OF SERVICE BY MAIL

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2014 APR -4 A 11: 53

FILED

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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Robert Cook, Esq.
Post Office Box 3575
Batesburg-Leesville, SC

DATED this 3rd day of April, 2014

Troyeshi Brailey
 Troyeshi Brailey, Legal Assistant
 For Respondent

State of South Carolina
 County of Lexington

Court of Common Pleas

Michael James Young	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2012-CP-32-04648
	)	
State of South Carolina	)	
	)	
<u>Respondent.</u>	)	

November 9, 2018
 Lexington, South Carolina

B E F O R E:

The Honorable Walton J. McLeod, IV, Judge.

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

Robert Mills, Esquire
 Attorney for the Applicant

Kelly Oppenheimer, Assistant Attorney General
 Attorney for the Respondent

Bethanie K. Creppon
 Circuit Court Reporter

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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	<u>APPLICANT'S</u>			
4	EXH. NO. 1	Autopsy Report	7	7
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7				
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1 P R O C E E D I N G S

2 * * *

3 MS. OPPENHEIMER: May it please the Court, Your
4 Honor?

5 THE COURT: Yes, ma'am.

6 MS. OPPENHEIMER: This is Michael James Young,
7 Jr. vs. The State of South Carolina,
8 Docket No. 2012-CP-32-04648. During its October
9 2007 term, the Lexington County Grand Jury indicted
10 Applicant for murder, assault and battery with
11 intent to kill, and possession of a firearm during
12 the commission of a violent crime. John D. Delgado
13 represented him on these charges.

14 On April 11th, 2011, Applicant appeared before
15 the Honorable Thomas A. Russo and pled guilty to the
16 lesser included offense -- oh, I apologize. He pled
17 guilty as indicted. He also pled guilty as indicted
18 to ABWIK. The weapons charge was nol-prossed.

19 Judge Russo accepted the plea and sentenced
20 Applicant to a term of imprisonment of 50 years for
21 murder and 20 years for ABWIK. The sentences were
22 to run concurrently.

23 Applicant filed a timely Notice of Appeal. On
24 February 10th, 2012, the South Carolina Court of
25 Appeals issued an order dismissing Applicant's

1 appeal for failing to show how any issue was
2 preserved for review pursuant to 203(d)(1)(b)(4) of
3 the Appellate Court Rules. The remittitur was
4 issued on March 7th, 2012.

5 On November 21st, 2012, Applicant filed an
6 Application For Postconviction Relief, alleging
7 ineffective assistance of counsel for failing to
8 interview the forensic pathologist and his ex-wife,
9 who was one of the victims, Shawna Bell. Applicant
10 also alleged ineffective assistance of appellate
11 counsel.

12 On March 3rd, 2014, Respondent made its return,
13 requesting an evidentiary hearing be held.
14 Thereafter, through his counsel, on November 1st,
15 2018, Applicant amended his application to include
16 the following grounds of ineffective assistance of
17 counsel: Failure to fully inform him of all of the
18 facts of the case, failure to review all of the
19 evidence with Applicant before the court date,
20 failure to fully investigate the facts, failure to
21 investigate the medical and forensic records of the
22 alleged victims, failure to file a motion for
23 reconsideration of sentence, failure to investigate
24 the forensic evidence, failure to investigate the
25 forensic pathology or interview the forensic

1 pathologist, failure to accurately advise Applicant
2 when trial counsel communicated to Applicant that he
3 was facing a possible death sentence, failure to
4 interview Applicant's ex-wife, failure to
5 investigate and advise Applicant correctly on the
6 forensic evidence including the gunshot residue and,
7 also, failure of appellate counsel -- or ineffective
8 assistance of appellate counsel, I apologize, for
9 failing to consult with Applicant.

10 Applicant is present today and is was
11 represented by Robert Mills.

12 THE COURT: Is there an amended application in
13 this?

14 MR. MILLS: Yes, sir. I have a copy of it, if
15 you need it. It was filed November 1st.

16 THE COURT: All right. I'd like a copy. Thank
17 you.

18 MR. MILLS: And, Your Honor, as far as the
19 allegations of ineffective assistance of appellate
20 counsel, we're withdrawing that. I have talked to
21 the State about that. We are withdrawing that
22 allegation.

23 THE COURT: All right. So noted. The
24 Applicant is withdrawing his allegation of
25 ineffective assistance of appellate counsel.

1 MR. MILLS: That's correct, Your Honor.

2 THE COURT: Is that correct, sir?

3 THE APPLICANT: Yes, sir.

4 MR. MILLS: And, Your Honor, I have had the
5 Court Reporter mark a document, which was the
6 autopsy in this case, Your Honor. The State and I
7 have agreed that -- to stipulate to its admission
8 into evidence --

9 THE COURT: Okay.

10 MR. MILLS: -- and also that -- we'd also
11 stipulate that Dr. Ross, who I relieved from her
12 subpoena, would testify, relevant to this document,
13 that distant, which she uses as the type of gunshot
14 wound -- the "distant" refers to 18 to 24 inches or
15 greater.

16 MS. OPPENHEIMER: That's correct, Your Honor.

17 MR. MILLS: I'd like to move this into evidence
18 at this time. We'll be referring to it later.

19 THE COURT: Plaintiff's Exhibit 1 admitted
20 without objection, joint stipulation.

21 (Applicant's Exhibit No. 1 marked for
22 identification and admitted into evidence.)

23 MR. MILLS: Thank you, Your Honor.

24 If Your Honor is ready, the Applicant would
25 call Michael Young to the stand.

1 THE COURT: Very well, sir.

2 MICHAEL YOUNG

3 being first duly sworn, testified as follows:

4 THE APPLICANT: Yes, ma'am.

5 DIRECT EXAMINATION

6 BY MR. MILLS:

7 Q. Mr. Young, how are you this morning?

8 A. Good. How about yourself?

9 Q. Good.

10 Where are you currently living?

11 A. Lee County Correctional.

12 Q. How long have you been at Lee?

13 A. About two months.

14 Q. Okay. Where were you before that?

15 A. Lieber.

16 Q. Lieber.

17 Have you been incarcerated continuously since
18 you were arrested for these charges?

19 A. Yes, sir.

20 Q. Okay. And what were the charges you were
21 arrested for?

22 A. Murder and assault and battery with intent to
23 kill --

24 Q. Okay.

25 A. -- and possession of a firearm during the

1 commission of a crime, I believe.

2 Q. Okay. And you understand that by filing a
3 postconviction relief application, that if you are
4 successful, that all the charges that were pending,
5 as well as any charges that were nol-prossed due to
6 a plea agreement, could be brought back up?

7 A. Yes.

8 Q. Okay.

9 THE COURT: Counsel, thank you for putting that
10 in your direct.

11 MR. MILLS: Yes, sir.

12 BY MR. MILLS:

13 Q. So do you remember the date that you were
14 arrested, approximately?

15 A. I believe I turned myself in June 14th of '07.

16 Q. Okay. And, at that point, did you have a
17 conversation with law enforcement?

18 A. Yes.

19 Q. How long after you were arrested?

20 A. A few hours later, maybe.

21 Q. Okay.

22 A. Maybe an hour later -- an hour later.

23 Q. What was your state of mind at that time?

24 A. Oh, emotionally, you know, going through some
25 things. I know I was also intoxicated from that

1 morning and the night before.

2 Q. Okay. And let's go to -- so, at that point,
3 you were incarcerated. Did you have a bond hearing?

4 A. Yes. Down the line, I did.

5 Q. Did you get a bond?

6 A. No.

7 Q. Okay. And who represented you? And when did
8 that representation begin first, the first lawyer
9 who represented you?

10 A. Todd Rutherford. He represented me, I believe,
11 within a month or two of me being incarcerated.

12 Q. Okay.

13 A. I had him up until September or October of
14 2008.

15 Q. Okay. So over a year?

16 A. Yes.

17 Q. Okay. And during that time period, did he get
18 an order for competency?

19 A. Yes.

20 Q. Okay. And were you -- did you get an
21 evaluation?

22 A. Yes.

23 Q. Okay. And that evaluation was that you were
24 competent?

25 A. Yes.

1 Q. Okay. So Mr. Rutherford did not represent you
2 during the actual plea in this case?

3 A. No.

4 Q. Who represented you for that?

5 A. John Delgado.

6 Q. And when did you first hire Mr. Delgado?

7 A. Between September and October of 2008.

8 Q. Okay. And, at that point, when did he come to
9 see you?

10 A. He came to see me prior to me, you know,
11 retaining him --

12 Q. Okay.

13 A. -- as far as, you know, like, an introduction.
14 That's when he came.

15 Q. How many times did he talk to you between the
16 time of the first initial conversation and then, I
17 assume, after your family retained him? How many
18 times did he talk to you before the guilty plea?

19 A. Numerous times. Numerous times. He came up
20 there a few times. But a lot of letters -- he
21 definitely wrote letters.

22 Q. Okay. And did he show you the discovery in the
23 case?

24 A. Well, actually, when I asked him to bring
25 discovery up there, he brought it up there and I

1 looked through it myself.

2 Q. Okay. Did he leave you copies or did he allow
3 you to look at it while he was there and then take
4 it back with him?

5 A. I can't recall if he gave me a copy or Todd
6 Rutherford did. But I had a copy to take back.

7 Q. Okay. What did you have copies of?

8 A. Statements, forensic -- forensic evidence.

9 Q. Did you have a copy of the autopsy --

10 A. Yes.

11 Q. -- which is Plaintiff's Exhibit No. 1?

12 A. Yes. Yes. Yes.

13 Q. Okay. And did you have a copy of the
14 chemical -- any chemical analysis of the blood of
15 Mr. Bell --

16 A. Yes.

17 Q. -- Robert Bell --

18 A. Yes.

19 Q. -- who was the victim --

20 A. Yes.

21 Q. -- one of the victims in the case?

22 A. Yes. I believe we got that later on. I think
23 it was later on. Yes.

24 Q. So you had that in your possession?

25 A. Yes.

1 Q. And that showed that he had cocaine in his
2 system?

3 A. Yes.

4 Q. Okay. Did you and Mr. Delgado talk about that
5 fact, that the person who is deceased had cocaine in
6 his system?

7 A. Yes.

8 Q. Okay. And what relationship was the deceased
9 to you?

10 A. My father-in-law.

11 Q. Okay. Did you and Mr. Delgado talk about
12 the -- any potential defenses based on the fact that
13 he had cocaine in his system and the fact that he
14 was your father-in-law?

15 A. No.

16 Q. Did he talk to you about any defenses, such as
17 self-defense, given the nature of the incident that
18 occurred out at the parking lot where this occurred?

19 A. No.

20 Q. Y'all never talked about self-defense?

21 A. No.

22 Q. Did he talk about the elements of self-defense?

23 A. I just remember the -- something about
24 sufficient provocation. But nothing in --

25 Q. Okay. Was that self-defense or was that on

1 voluntary manslaughter?

2 A. It may have been manslaughter. I'm sorry.

3 Q. Okay. What I'm asking, though, is did he ever
4 go through the defense of self-defense and the
5 elements that are necessary to have that defense?

6 A. No.

7 Q. Okay. So he did talk to you about voluntary
8 manslaughter?

9 A. Yes.

10 Q. Did he explain what that was?

11 A. Yes. The, you know -- I guess, the legal
12 definition, as far as sufficient legal provocation
13 or something like that.

14 Q. Okay. Is that all he said is -- what's your
15 memory of what he said?

16 A. I mean, that's it, killing with sudden heat of
17 passion with sufficient --

18 Q. Okay.

19 A. Something like that.

20 Q. So you did talk about voluntary manslaughter?

21 A. Yes.

22 Q. Did you -- did he, I'm sorry, Mr. Delgado, go
23 into any details about using that as a defense in a
24 trial?

25 A. No. No. If I recall, he didn't think a jury

1 would give me a manslaughter charge.

2 Q. You mean, a judge would not give you --

3 A. Yeah. Excuse me. Judge. I'm sorry.

4 Q. Okay.

5 A. Yes.

6 Q. So -- but did y'all talk about your state of
7 mind as well as any actions by the victim in the
8 case that would necessitate a potentiality of
9 voluntary manslaughter?

10 A. No.

11 Q. Okay. So you didn't go through the factual
12 scenario about that?

13 A. No.

14 Q. And as far as the autopsy, did Mr. Delgado, to
15 your knowledge, talk to the pathologist to determine
16 what she meant by distant?

17 A. No.

18 Q. Okay. Because there were distant shots. But
19 did he ever tell you that he had talked to the
20 forensic pathologist about the fact that that was 18
21 to 24 inches or greater?

22 A. Not at all.

23 Q. Okay. Would that have -- if you had known
24 that, would you have pursued a different course of
25 action?

1 A. Yes. I would have went to trial.

2 Q. Would you have pled guilty?

3 A. No.

4 Q. Okay. If you had known that there was a
5 potentiality for self-defense due to that fact,

6 would you have pled guilty?

7 A. No.

8 Q. All right. And would you have pled guilty if
9 you had been told the details, factually, of
10 voluntary manslaughter -- how voluntary manslaughter
11 would apply to the facts as you related them to
12 Mr. Delgado?

13 Would you have pled guilty if you had known how
14 voluntary manslaughter could be applied to the
15 facts --

16 A. No.

17 Q. -- as you -- as you perceived them?

18 A. No.

19 Q. Okay.

20 A. I wouldn't.

21 Q. So you would not have pled guilty?

22 A. No, sir.

23 Q. Okay. All right. So did you have any other
24 conversations with Mr. Delgado concerning any other
25 defenses?

1 A. No. No. No.

2 Q. And you stated that you did not have any
3 conversations concerning self-defense?

4 A. No.

5 Q. Okay. And any other conversation concerning
6 any other lesser offenses -- you said you didn't get
7 into -- he told you what voluntary manslaughter was,
8 but he didn't apply the facts as you related it to
9 him, the law of voluntary manslaughter, correct?

10 A. Correct.

11 Q. And you made a statement to the police,
12 correct?

13 A. Yes.

14 Q. And in that statement, you told them you were
15 very emotional?

16 A. Yes.

17 Q. Okay. And Mr. Delgado had a copy of the
18 statement?

19 A. I would assume so. Yes.

20 Q. Okay. Well, he provided it to you --

21 A. Oh, okay. Either --

22 Q. Either him --

23 A. Either him or Todd. Yeah.

24 Q. Okay. Okay. And you stated that you did not
25 talk about, with him, the distance of the shots

1 fired --

2 A. No.

3 Q. -- either towards Ms. Bell or Mr. Bell?

4 A. No.

5 Q. Okay. Ms. Bell is Shawna Bell?

6 A. Yes.

7 Q. And what relationship are you to her?

8 A. That's my ex-wife.

9 Q. Okay. And what about -- were you shown any
10 report concerning gunshot residue?

11 A. Yes.

12 Q. Okay. And what's your -- do you still have
13 that report?

14 A. See, my property is all scattered --

15 Q. Right. Right.

16 A. -- from being moved around --

17 Q. Right.

18 A. -- but it was in my discovery.

19 Q. Okay. And what was -- what's your memory of
20 what that was?

21 A. On one hand --

22 MS. OPPENHEIMER: Objection, Your Honor;
23 hearsay. We don't have the GSR report.

24 THE COURT: Well, he's asking his memory --

25 MR. MILLS: His memory of a report. And I

1 think we can ask Mr. Delgado about that as well.

2 THE COURT: You can cross him on it.

3 But what do you remember about the report?

4 THE APPLICANT: Okay. I remember one hand of
5 the victim had gunshot residue on the inside and the
6 outside, and the opposite hand, just outside.

7 BY MR. MILLS:

8 Q. Okay. Did you and Mr. Delgado talk about that?

9 A. We spoke on the gunshot residue, but not how we
10 could, you know, potentially --

11 Q. Okay. If you had talked about how this was a
12 potential defense and it was a defense either to --
13 as a self-defense or voluntary manslaughter, would
14 you have pled guilty, knowing that?

15 A. No.

16 Q. All right. Let's talk about the consideration
17 of the death penalty.

18 A. Uh-huh.

19 Q. So you -- did you and Mr. Delgado talk about
20 the death penalty?

21 A. He just told me that my case was eligible for
22 the death penalty or that the prosecutor told him
23 that they were seeking it.

24 Q. Okay. Did he tell you -- and, specifically,
25 why it was eligible -- that your case was -- that

1 you were eligible to potentially receive the death
2 penalty?

3 A. Yeah. He gave me the aggravating -- the
4 aggravating factor.

5 Q. Okay. All right.

6 A. But as far as how exactly it could be used in
7 my case, no.

8 Q. And what -- do you remember what that
9 aggravating factor was?

10 A. I knowingly created a great risk of death to
11 more than one person in a public place using a
12 weapon that may be dangerous to more than one person
13 or as to more than one person.

14 Q. Okay.

15 A. I don't remember the exact wording.

16 Q. Okay. Did y'all talk about what factual
17 condition in your case would either make that
18 appropriate or not appropriate in your case?

19 A. No.

20 Q. And he knew that it was a pistol, correct --

21 A. Yes.

22 Q. -- that was used?

23 A. Correct.

24 Q. And did you talk about any case law that was
25 involved in that?

1 A. He mentioned cases in different counties, but I
2 never seen any.

3 Q. Okay. And did he talk about the factual
4 scenarios of those cases --

5 A. No, not at all.

6 Q. -- to see if you could distinguish your factual
7 scenario from the factual scenarios of those cases?

8 A. Not at all.

9 Q. Okay. And he wrote you a letter about that?

10 A. Yes. Yes.

11 Q. Okay.

12 MR. MILLS: Your Honor, this is a letter dated
13 March 10th, 2010, from Mr. Delgado to Michael Young.
14 I would ask that it be marked as Plaintiff's
15 Exhibit No. 2 --

16 MS. OPPENHEIMER: No objection, Your Honor.

17 THE COURT: So admitted, without objection.

18 MR. MILLS: -- and admitted into evidence.

19 Thank you, Your Honor.

20 (Applicant's Exhibit No. 2 marked for
21 identification and admitted into evidence.)

22 BY MR. MILLS:

23 Q. To your knowledge, was there ever a death
24 warrant issued against you?

25 A. No.

1 Q. So prior to you pleading guilty, they never
2 actually filed any death warrant?

3 A. No. I never saw one of those. No.

4 Q. All right.

5 MR. MILLS: And while we're talking about
6 letters, this is the other letter I wanted to enter
7 into evidence.

8 Your Honor, there's another letter that I would
9 like to have marked as Plaintiff's No. 3. I don't
10 believe the State has an objection to its admission.

11 MS. OPPENHEIMER: No objection, Your Honor.

12 THE COURT: Exhibit 3 admitted without
13 objection.

14 (Applicant's Exhibit No. 3 marked for
15 identification and admitted into evidence.)

16 BY MR. MILLS:

17 Q. Mr. Young, did he also send you a letter about
18 a month and a half maybe before your plea, stating
19 that the alternative to going to trial is to have
20 you plead guilty to voluntary manslaughter and have
21 the judge sentence you to anywhere from 30 years to
22 life?

23 A. Correct. Yes.

24 Q. Does this look familiar?

25 A. Yes.

1 Q. Okay. And so what was your interpretation of
2 that letter?

3 A. Well, my interpretation was I was going to
4 plead to voluntary manslaughter. And I believe that
5 has, like, 85 percent or something like that.

6 Q. Okay. So you did not know that that was
7 incorrect --

8 A. No.

9 Q. -- as far as the sentence?

10 A. No. As far as what he -- no.

11 (Brief interruption.)

12 BY MR. MILLS:

13 Q. Okay. So did you talk to Mr. Delgado about
14 that afterwards, after this letter, before the
15 plea -- before the guilty plea?

16 A. No. No.

17 Q. Okay. So when you went to court, the judge
18 asked you about murder. But what did you think the
19 difference was, or did you know, as far as
20 sentencing goes, after you received the --

21 A. No. I mean, I heard the same thing, 30 years
22 to life. So I honestly just really thought it was
23 85, you know, whatever they call it. I think it's
24 85 percent.

25 Q. 85 percent instead of day-for-day?

1 A. Yes. Correct. Correct.

2 Q. Okay. So at time of your sentencing, you still
3 thought you were going to get 85 percent --

4 A. Correct.

5 Q. -- as opposed to day-for-day?

6 A. Correct.

7 Q. Okay. And have you later found out that
8 voluntary manslaughter does not carry 30 years to
9 life?

10 A. Correct. Yes.

11 Q. It carries up to 30 years.

12 A. Yeah. Zero to 30 or something like that.

13 Q. But no more than 30?

14 A. Correct. And it's not the whole day-for-day.

15 Q. Okay. But you were under the impression of a
16 different scenario, as far as the sentencing for
17 voluntary manslaughter?

18 A. Correct.

19 Q. Okay. Would you have pled guilty to the charge
20 you pled guilty to, knowing that it was not 85
21 percent, but day-for-day?

22 A. No.

23 Q. Okay. And would you have pled guilty, going
24 back to the other letter, if you had known that you
25 had a potential for a different factual scenario

1 which may have a different outcome as far as the
2 nature of the element of aggravation that
3 Mr. Delgado told you about as far as whether or not
4 you were -- they could seek the death penalty?

5 A. I'm sorry. Could you rephrase --

6 Q. Yeah. That was a --

7 A. Yeah.

8 Q. -- very long and twisting question.

9 Would you have pled guilty knowing that the
10 aggravating circumstance for -- that could
11 potentially give you the death penalty could have
12 been factually distinguished from the case law?

13 A. Would I what now?

14 Q. Would you have pled guilty knowing that you may
15 not have been facing the death penalty --

16 A. Oh, no. No.

17 Q. -- depending upon the factual scenario?

18 A. No. No.

19 Q. Okay. You would not have pled guilty?

20 A. No.

21 Q. Okay. And back to the letter, Plaintiff's
22 Exhibit No. 3, were you confused by this letter or
23 you just thought it was -- the one about the
24 voluntary manslaughter carried 30 years to life?

25 A. I mean --

1 Q. Plaintiff's Exhibit No. 3.

2 A. As far as confused?

3 Q. You just thought that was the correct law?

4 A. I mean, yeah. I thought, hey --

5 Q. Okay.

6 A. -- I mean, good job.

7 Q. Okay. So did Mr. Delgado ever clarify that --

8 A. No.

9 Q. -- in your mind, to you?

10 A. No.

11 Q. Okay.

12 A. We may have not even talked about that because,
13 you know, I thought that's what it was.

14 Q. Okay. So you thought you were going to have
15 a -- the worst case scenario, 85 percent --

16 A. Yes.

17 Q. -- due to the fact that you thought you were
18 pleading under that scenario as related in
19 Plaintiff's Exhibit No. 3?

20 A. Correct.

21 Q. Okay. And back to Plaintiff's Exhibit No. 1,
22 as far as the autopsy report, you were able to
23 review this with Mr. Delgado, correct, the
24 Plaintiff's Exhibit No. 1, which is the autopsy?

25 A. I know we've spoke about it. As far as going

1 over it in detail, I don't believe so. But we spoke
2 about it from there.

3 Q. Okay. And, again, you were not told the
4 definition of distant, as Dr. Ross would have
5 defined it?

6 A. Correct.

7 Q. And do you know whether Mr. Delgado ever talked
8 with Dr. Ross?

9 A. I don't believe so. I'm not sure. I don't
10 think so.

11 Q. Okay. Did he ever tell you that he talked to
12 Dr. Ross?

13 A. No.

14 Q. Okay. And was there anything about the --
15 anything else about the autopsy that concerned you?

16 A. Yes. Yes. I just recall Mr. Delgado saying --
17 I don't know if it was just his opinion or
18 whatever -- but because the victim was shot in the
19 back one of the times, that he didn't believe a jury
20 or judge would give me a manslaughter charge.

21 Q. Okay.

22 A. So...

23 Q. Was there -- is there any way to tell from that
24 autopsy, that you could tell, what the order of the
25 shots were?

1 A. No.

2 Q. Okay. I believe the autopsy probably --

3 A. They're labeled 1, 2, and 3. But I don't think
4 that means the exact order.

5 Q. Right. In fact, I believe on page -- okay. On
6 page 3, isn't it true that they -- well, I'm sorry.

7 Starting on page 2 -- well, at least GSW No. 2
8 and GSW No. 3, which are the gunshot wounds, number
9 2 says it is arbitrarily designated as the gunshot
10 wound, correct, arbitrarily designated as the
11 gunshot wound that enters the left back?

12 A. Okay.

13 Q. And then GSW No. 3 is arbitrarily designated as
14 the gunshot wound that enters the right side?

15 A. Uh-huh.

16 Q. Okay. And so the autopsy performer, which is
17 Janice Ross, M.D., she basically is saying, from
18 this, that that's just arbitrary, whether it's 1, 2,
19 or 3 --

20 A. Oh, yes.

21 MS. OPPENHEIMER: Your Honor, the report speaks
22 for itself. Your Honor can review it. I don't
23 believe Mr. Young is a doctor, so I don't think he
24 can testify --

25 MR. MILLS: I was just asking -- sorry.

1 MS. OPPENHEIMER: It's okay. Go ahead.

2 MR. MILLS: I was just asking him. It's in
3 evidence. He can -- he can read --

4 THE COURT: The Court will note it's in
5 evidence.

6 MS. OPPENHEIMER: Thank you.

7 THE COURT: But you also -- I mean --

8 MR. MILLS: Thank you, Your Honor.

9 THE COURT: Okay.

10 BY MR. MILLS:

11 Q. So just to clarify that it's not -- the fact
12 that the doctor listed it as 1, 2, 3 has nothing to
13 do with the order --

14 A. Correct.

15 Q. -- that the gunshot wounds would have occurred?

16 A. Correct.

17 Q. Okay. Did you talk with Mr. Delgado about that
18 fact?

19 A. No. That didn't come up until after I pled
20 guilty.

21 Q. Okay. And would you have pled guilty if you'd
22 known that arbitrary designation as to the order?

23 A. No, I wouldn't.

24 Q. Okay. And the -- and did y'all talk about the
25 fact that someone's hit in the back does not mean

1 that they were moving away, but it could have been
2 a -- just a defensive --

3 MS. OPPENHEIMER: Objection, Your Honor; calls
4 for speculation.

5 MR. MILLS: I'm asking if they talked about it.

6 MS. OPPENHEIMER: Oh.

7 BY MR. MILLS:

8 Q. Did you talk to Mr. Delgado about the fact that
9 someone being shot in the back could be a defensive
10 move --

11 A. No.

12 Q. -- and not the fact that they were running
13 away?

14 A. No.

15 Q. Okay. And would you have pled guilty if you
16 had known that it could have been a defensive move?

17 A. No.

18 Q. Okay. All right. Did you -- one of the
19 allegations is that you asked Mr. Delgado to file a
20 motion for reconsideration.

21 A. Correct.

22 Q. Okay. And when was that done?

23 A. When did I ask him?

24 Q. When did you ask him?

25 A. Leaving the courtroom.

1 Q. Okay. So within ten days?

2 A. Oh, yeah.

3 Q. Yeah. Okay. So --

4 A. I asked him to file a Notice of Appeal and
5 reconsideration.

6 Q. Okay. Do you know whether or not he filed a
7 motion for reconsideration of sentence?

8 A. No. I don't believe he had.

9 Q. Okay. And would you -- do you think that it
10 would -- you wanted a reconsideration of the
11 sentence, correct?

12 A. Correct.

13 Q. Okay. Did you explain why?

14 A. I don't believe I had time to explain why
15 because we was just leaving the courtroom.

16 Q. Okay.

17 A. But, you know, it was my understanding that the
18 judge would know certain facts. And I don't believe
19 the judge was aware of those.

20 Q. You don't believe the judge was aware of all
21 the facts?

22 A. Of all the facts, that's correct.

23 Q. Okay. And some of the facts that we have
24 mentioned today --

25 A. Correct.

1 Q. -- the judge was not aware of?

2 A. Correct.

3 Q. Okay. And did you hear anything back from
4 Mr. Delgado concerning the motion for
5 reconsideration?

6 A. No. He sent me a letter regarding the Notice
7 of Appeal.

8 Q. Okay. Is there any -- okay.

9 Did you tell Mr. Delgado that you were involved
10 in an argument at the time --

11 A. Yes.

12 Q. -- with the deceased?

13 A. Correct.

14 Q. Okay. And when did you tell him that?

15 A. Exactly when, I'm not sure. More than likely,
16 when we first started talking, you know, within the
17 first few months of him being retained.

18 Q. Okay. And did he explain to you that the
19 application of voluntary manslaughter to that fact,
20 that it could have been sufficient he -- I mean --
21 I'm sorry -- it could have been a sufficient legal
22 provocation combined with the heat of passion?

23 A. No.

24 Q. He didn't explain.

25 So y'all did not go through how that could

1 potentially be a factor in determining whether to go
2 to trial?

3 A. Yeah. No.

4 Q. Okay. Would you have pled guilty if you had
5 known that there were those factors -- factual
6 factors that could be applied to voluntary
7 manslaughter?

8 A. Yes, I would have -- I would not have. Sorry.

9 Q. Would not have. Okay.

10 And you were -- you gave a statement also
11 stating that you were very emotional at the time,
12 correct?

13 A. Yes.

14 Q. Okay. And during the investigation, did you
15 find out where the gun was found that was used in
16 the --

17 A. Yes.

18 Q. -- incident?

19 A. Yes.

20 Q. Okay. Where was it found?

21 A. It was found at my best friend's house.

22 Q. Okay. And were there other guns found there as
23 well?

24 A. Yes.

25 Q. Were they taken into evidence as well?

1 A. Yes.

2 Q. Okay.

3 MR. MILLS: Beg the Court's indulgence.

4 BY MR. MILLS:

5 Q. And, again, as far as the cocaine found in the
6 system of the victim of the murder, did you and
7 Mr. Delgado talk about that?

8 A. We spoke about the cocaine in the system.

9 Q. Okay. Did you talk about that as a potential
10 factor in determining whether or not you go to trial
11 on voluntary manslaughter?

12 A. Oh, no.

13 Q. Okay. If you had known that it was a potential
14 factor in going to trial on voluntary manslaughter,
15 would you have pled guilty?

16 A. No.

17 Q. Okay. Do you know if he had an investigator or
18 anyone talk to your ex-wife?

19 A. No, not at all.

20 Q. Okay. And she made several statements?

21 A. Yeah. That's correct.

22 Q. Okay. And one of the statements was that y'all
23 were arguing; is that your memory?

24 A. Yes. Yes. That was, I believe, during the
25 lawsuit after my plea.

1 Q. Okay.

2 A. They said we were arguing. Yes. The wrongful
3 death, excuse me.

4 Q. Okay. Is there anything else you'd like to
5 tell the Judge concerning this case?

6 A. No. No. Just that if I would have had, you
7 know, all the facts as I got them now, I wouldn't
8 have pled guilty.

9 Q. Would you have pled guilty if you had known
10 that she said that you were arguing as well with
11 Mr. Bell?

12 A. Oh, no. No, not at all.

13 Q. Okay. Please answer any questions that the
14 attorney general has.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MS. OPPENHEIMER:

18 Q. You and Ms. Bell had a tumultuous relationship,
19 correct?

20 A. Yes.

21 Q. You yelled at her a lot, correct?

22 A. We yelled at each other. But, yes, I did yell.

23 Q. You got into lots of fights with her, correct?

24 A. Yes, ma'am.

25 Q. And some of those even got physical, correct?

1 A. Yes.

2 Q. You threw her against a wall once, correct?

3 A. No.

4 Q. If there's testimony in some of the transcripts
5 that would contradict that, would you agree?

6 A. I mean, that's not me saying that.

7 Q. Did you ever hit her in the eye --

8 A. Yes, I --

9 MR. MILLS: Your Honor --

10 Q. -- such that she had a --

11 MR. MILLS: -- I object to --

12 Q. -- black eye?

13 MR. MILLS: -- relevance. This has nothing to
14 do with the case at hand.

15 MS. OPPENHEIMER: Your Honor, he said that the
16 plea court didn't have all the facts. And these are
17 some of the underlying facts of their relationship.

18 THE COURT: Are they in the transcript of the
19 plea?

20 MS. OPPENHEIMER: They're in depositions that I
21 was provided copies of by Mr. Mills. I can move on.

22 MR. MILLS: Yeah. I just don't think that's
23 relevant.

24 THE COURT: Well, if they weren't presented to
25 the court in the plea hearing, let's move past that.

1 BY MS. OPPENHEIMER:

2 Q. So on the day of this incident, you showed up
3 at Ms. Bell's place of work, correct?

4 A. Correct.

5 Q. You wanted to talk to her, correct?

6 A. Correct.

7 Q. And her father walked in because he was told to
8 escort her out of the building, correct?

9 A. I assume so.

10 Q. And you followed them, correct?

11 A. No, I didn't follow them. We talked and then
12 we left together.

13 Q. So you went with them --

14 A. Yes.

15 Q. -- to the parking lot --

16 A. Correct.

17 Q. -- of the Columbiana Mall, correct?

18 A. Yes, ma'am.

19 Q. And then Ms. Bell got into the car, correct?

20 A. Yes.

21 Q. And you were having a conversation with
22 Mr. Bell outside of the car, correct?

23 A. Correct.

24 Q. And then you shot him three times, correct?

25 A. There was some things in between but, yes, that

1 did happen.

2 Q. You shot him three times, correct?

3 A. Yes.

4 Q. And you killed him, correct?

5 A. Yes.

6 Q. And the autopsy report said that those shots
7 came from a distance, correct?

8 A. Yes.

9 Q. And then you proceeded to the passenger's side
10 of the car, in which Ms. Bell was sitting, correct?

11 A. Yes.

12 Q. And you shot several times into the window of
13 the car, correct?

14 A. Correct.

15 Q. At Ms. Bell, correct?

16 A. Correct.

17 Q. And you shot her in the neck and leg, I
18 believe?

19 A. I'm not exactly sure. But she was shot.

20 Q. But you shot her multiple times, correct?

21 A. Yes, ma'am.

22 Q. And do you recall pleading guilty?

23 A. Do I recall pleading guilty? Yes.

24 Q. And do you recall telling Judge Russo that you
25 were satisfied with the advice and representation of

1 Mr. Delgado?

2 A. Yes.

3 Q. And that you had no complaints of Mr. Delgado?

4 A. Yes.

5 Q. And that you shared with Mr. Delgado everything
6 you knew about the facts and circumstances of this
7 case, potential witnesses, and anything you knew
8 that could potentially help Mr. Delgado defend you,
9 correct?

10 A. Sounds correct. Yes.

11 Q. And you recall the State reviewing the facts of
12 this case, correct?

13 A. As far as --

14 Q. Just as you and I went through. The State, at
15 your plea, went through the facts of this case,
16 correct?

17 A. Yes.

18 Q. And you agreed with those facts, correct?

19 A. Yes.

20 Q. And you told Judge Russo that you didn't need
21 to add anything to the State's presentation of the
22 facts, correct?

23 A. I don't recall, but it's possible.

24 Q. And you told Judge Russo that you were pleading
25 guilty of your own free will, correct?

1 A. Correct.

2 Q. And that you were pleading guilty because you
3 are, in fact, guilty?

4 A. Correct.

5 Q. And you told him that no one had promised you
6 anything or held out any hope of reward or
7 threatened you in order to get you to plead guilty,
8 correct?

9 A. Sounds possible. Yes.

10 Q. And do you recall Judge Russo going over each
11 of your rights at trial with you?

12 A. Yes, I do.

13 Q. And you told him you understood each of those
14 rights, correct?

15 A. Yes.

16 Q. And you understood that you were waiving those
17 rights by pleading guilty, correct?

18 A. Correct. Yes.

19 Q. And you understood you were waiving the
20 presumption of innocence by pleading guilty,
21 correct?

22 A. Yes.

23 Q. And you were relieving the State of its burden,
24 correct?

25 A. Yes.

1 Q. And you understood you had a right to present a
2 defense to these charges and you also understood
3 that you had the right to testify on your own
4 behalf, correct?

5 A. Correct. Yes.

6 Q. And you again told Judge Russo, understanding
7 all of your rights, you wanted to go forward with
8 the plea, correct?

9 A. I believe so. Yes.

10 Q. And do you recall, at the very beginning of
11 your plea, Judge Russo told you that this was an
12 indictment that had been true-billed for murder, and
13 it was a most-serious offense, carrying 30 years up
14 to life in prison, correct?

15 A. That's possible. Yes.

16 Q. And you told him you understood that, correct?

17 A. Correct.

18 Q. And the Court also told you that if anyone had
19 made any comments to you or assertions to you about
20 how much time you would have to serve, you
21 understood that no one could speak to you about that
22 with authority, correct?

23 A. Yes.

24 Q. So he told you that you would have to be
25 prepared to serve every single day of any sentence

1 he gave you, correct?

2 A. Yeah. I mean, yes. I think so.

3 Q. And you testified that you reviewed the autopsy
4 report with Mr. Delgado, correct?

5 A. Well, I -- we spoke about it. As far as going
6 into in detail, you know, page through page, I can't
7 say we did it.

8 Q. And you also told the Court that you had
9 reviewed everything with Mr. Delgado, correct?

10 A. That we reviewed -- no, I didn't. I don't
11 believe I said that.

12 Oh, you're talking about as far as the plea.
13 I'm sorry. I thought you meant during Mr. Mills' --

14 Q. No; at the plea.

15 A. I'm sorry. I believe so. Yes. I believe so.
16 I'm sorry.

17 Q. And at the plea, you were aware that you were
18 pleading guilty to murder, correct?

19 A. Yes. At -- yeah. I -- yes.

20 Q. And you turned yourself in, in June of 2007,
21 correct?

22 A. That's -- yes.

23 Q. Because you wanted to take responsibility for
24 these crimes, correct?

25 A. I just wanted to turn myself in.

1 MS. OPPENHEIMER: Beg the Court's indulgence.

2 BY MS. OPPENHEIMER:

3 Q. And do you recall if Mr. Bell ever had a gun
4 that day?

5 A. He did.

6 Q. Did he have a knife?

7 A. No. I don't think so.

8 Q. Did he ever pull a weapon on you?

9 A. I believe -- I believe he -- I believe he was
10 trying to scare me. But he did have a weapon and, I
11 believe, he was going for it.

12 Q. Was a weapon ever found on him?

13 A. No, it wasn't.

14 Q. And what about Ms. Bell? Did she ever have a
15 weapon?

16 A. On her? I don't believe so.

17 Q. Did she ever pull a weapon on you?

18 A. No.

19 Q. And Mr. Bell was in the parking lot at the time
20 of the shots, correct?

21 A. Correct.

22 Q. And then you fled in a friend's car, correct?

23 A. Correct.

24 MS. OPPENHEIMER: No further questions, Your
25 Honor.

1 THE COURT: Redirect?

2 MR. MILLS: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. MILLS:

5 Q. Ms. Oppenheimer asked you about the autopsy
6 report saying distance.

7 A. Uh-huh.

8 Q. I think we've gone through this, but I just
9 want to make sure it's clear that distant was not
10 defined for you by Mr. Delgado, was it?

11 A. No.

12 Q. Okay. So distant being 18 to 24 inches or
13 greater, so up to 18 inches away --

14 A. Correct.

15 Q. -- that close --

16 A. Yes.

17 Q. -- basically, is distant, according to the
18 pathologist?

19 A. Correct.

20 Q. And, to your knowledge, Mr. Delgado never
21 talked to the pathologist to relay that information
22 to you?

23 A. Correct.

24 Q. And would you have pled guilty if you had known
25 that?

1 A. No.

2 Q. Okay. And did you talk about Mr. Bell having a
3 gun as well?

4 A. I don't recall. I'm not sure.

5 Q. Okay.

6 A. I know that -- oh, go ahead. I'm sorry.

7 Q. No. That's all right. Go ahead.

8 A. Oh, no. I was just saying I know that the
9 police actually found the firearm, but I don't know
10 if they ever tested it. They found that at my
11 partner's house as well.

12 Q. Okay. Okay. And -- now, when you received a
13 letter saying that you were -- about voluntary
14 manslaughter, I know Judge Russo told you it was
15 murder, and also told you that you may have to serve
16 every day. But did you have a conception of the 85
17 percent, due to that letter Mr. Delgado sent you?

18 A. Oh, yeah. I thought that was just law. I
19 mean, I thought that was the law.

20 Q. Okay. All right. And would you have pled
21 guilty if you had known that it was day-for-day?

22 A. No.

23 Q. Okay. And as far as the facts go that you
24 agreed with, if you had -- if Mr. Delgado had done
25 all the things that we've mentioned before that we

1 said you would not have pled to these charges but
2 for the fact that there were failures and
3 deficiencies by Mr. Delgado, would you have agreed
4 with the facts, if you'd known all these other
5 aspects of the case that we've talked about here
6 today?

7 A. Not at all.

8 Q. Okay. And when you said you were, in fact,
9 guilty during the plea hearing -- I'm sorry, the
10 plea and sentencing hearing, did you -- would you
11 have said that if not for deficiencies of trial
12 counsel?

13 A. No, I wouldn't have.

14 Q. Okay. I believe that's all I have. Is there
15 any other comment that you have about those
16 questions or what Ms. Oppenheimer asked you?

17 A. No. No. No.

18 Q. Okay.

19 MR. MILLS: That's all the questions I have on
20 that, Your Honor. Thank you.

21 MS. OPPENHEIMER: Very briefly, Your Honor.

22 THE COURT: Yes, ma'am.

23 RE CROSS-EXAMINATION

24 BY MS. OPPENHEIMER:

25 Q. You're aware that 18 inches is a foot and a

1 half, correct?

2 A. Last time I went to school, yes, ma'am.

3 Q. Okay. And you testified a little bit
4 contradictory. You said there wasn't a gun found on
5 Mr. Bell, but it was found at your own best friend's
6 house. Correct? How did that gun get there if he
7 died in the parking lot?

8 A. Someone took it.

9 MS. OPPENHEIMER: No further questions, Your
10 Honor.

11 THE COURT: You may step down, sir.

12 Any other witnesses for the Applicant?

13 MR. MILLS: The Applicant rests, Your Honor.

14 THE COURT: Any witnesses for the State?

15 MS. OPPENHEIMER: The State calls John Delgado.

16 JOHN DELGADO

17 being first duly sworn, testified as follows:

18 THE WITNESS: I do.

19 DIRECT EXAMINATION

20 BY MS. OPPENHEIMER:

21 Q. Good morning, Mr. Delgado. Will you please
22 state your name for the record.

23 A. Sure. John Delgado.

24 Q. How long have you been practicing law?

25 A. Too long; 43 or 44 years this month.

1 Q. All right. And where are you employed?

2 A. I presently work at a law partnership with Bill
3 Nettles. I've been there a year. Prior to that
4 time, I worked in a firm in Columbia, Bluestein,
5 Nichols, Thompson, & Delgado. Before that, I worked
6 in my own firm.

7 Q. All right. And what percentage of your
8 practice is criminal law?

9 A. 95 percent.

10 Q. Okay. And were you appointed or retained in
11 this case?

12 A. I was retained -- retained.

13 Q. Do you recall when?

14 A. No, ma'am. I'm sorry. I don't.

15 Q. And how many times did you meet with Mr. Young
16 prior to his plea?

17 A. I probably met with Michael 25 or 30 times.

18 Q. And what would y'all discuss in these meetings?

19 A. Michael was a very bright individual. Michael
20 also has some emotional and psychological issues
21 that keep him from acting in his own best interest.
22 Michael hears what he wants to hear and sees what he
23 wants to see.

24 We talked about the possibility of obtaining a
25 voluntary manslaughter plea from the Solicitor's

1 Office. I pursued that with the Solicitor's Office.
2 They declined to offer that, eventually. And in
3 reading some case law, it came to mind that we may
4 not even -- if we had gone to trial, may not have
5 even gotten a charge on voluntary manslaughter under
6 the facts of this case.

7 Q. And why not?

8 A. Michael was in a state of mind where
9 Ms. Shawna Bell, his wife, was the source of all his
10 discontent. And Mr. Bell, her father, Mr. Robert
11 Bell, added to that because, according to Michael,
12 he was interfering in their marriage.

13 The facts, as related that day, came out during
14 the discovery process. And my review of it with
15 Michael was Michael was probably at the rear of
16 Mr. Bell's car. Mr. Bell was in the position of
17 standing with his back to an open door.

18 As Michael said in his statement to the City of
19 Columbia police officers, they asked him, why did he
20 shoot him? And Michael said nothing to do with
21 self-defense, nothing to do with words that Bell had
22 used to him.

23 Michael said that he had either disrespected
24 him or that he had -- well, let me just -- the
25 police officer asked him: What reason did you shoot

1 him? Answer: Because he hurt me emotionally. That
2 isn't going to make it for a voluntary manslaughter
3 plea, if that came out.

4 There was no indication of sufficient leave of
5 provocation. Michael was present with that gun,
6 very probably improperly and unlawfully.
7 Self-defense was not going to be something we could
8 have raised. I did not see that voluntary
9 manslaughter was a reasonable alternative; that
10 possibly even a judge would not allow us to argue to
11 a jury. So then we're left with guilty or not
12 guilty on a charge of murder.

13 Your Honor, may I just say this with all due
14 respect to you? Mr. Young and I are the only two
15 people in this room that have heard the 911 tape.
16 In the 43 or 44 years that I've practiced law, I'm
17 not certain that I have heard anything more
18 evocative than that 911 tape. It would reduce the
19 individuals in this courtroom to a silence that
20 would be --

21 MR. MILLS: Your Honor, I have to object. I
22 don't see the relevance of this to the issues.

23 MS. OPPENHEIMER: I believe it goes into his
24 investigation in preparing this case for a plea or
25 for a trial, Your Honor, and the decisions that he

1 made, as Mr. Young's lawyer, and relaying
2 information to Mr. Young in deciding whether or not
3 to proceed to trial or plead guilty.

4 THE COURT: The objection is overruled.

5 BY MS. OPPENHEIMER:

6 Q. You can --

7 A. In addition to all the other factual
8 information that we had, the Solicitor's Office gave
9 me a copy of the 911 tape. The 911 tape is to the
10 Columbia City Police dispatcher. Probably, the 911
11 tape occurs within 15 to 20 seconds after Ms. Shawna
12 Bell is shot in the passenger's seat. It's Ms. Bell
13 on the 911 call sobbing, crying, "Daddy, Daddy
14 Daddy."

15 I remember listening to it right here on this
16 floor in Mr. Samellas' office, right here on the
17 third floor. Chris and I, who was one of the
18 solicitors involved in this case, he was -- he and I
19 just realized the nature of that telephone call,
20 what that would mean in the context of a jury trial.

21 I had been telling Michael that that was a key
22 element of the prosecution in this matter. I
23 remember writing a letter to his mother saying, but
24 I don't want to have to have him hear it because he
25 is in a very fragile frame of mind.

1 Michael kept wanting to hear it, kept wanting
2 to hear it. One night, I went to the Lexington
3 County Detention Center and played it for him. His
4 words to me, and I recorded it in my time log, was,
5 I see what you mean now.

6 Yeah. What he realized and what he realized by
7 possible introduction of that 911 call, which I
8 think would be constitutionally admissible under
9 Crawford vs. Washington, I think that would have so
10 impacted the jury, that they would have found him
11 guilty of murder, very clearly and very easily.

12 There were lots of things that -- I mean,
13 Michael and I went through everything:
14 Self-defense, whether or not we could even get a
15 charge on voluntary manslaughter. At one point --
16 and you have to remember, this is Lexington County,
17 South Carolina, and Mr. Myers was the prosecutor at
18 that time for the 11th Circuit.

19 Capital cases in Lexington County are frequent.
20 Mr. Myers, through Mr. Samellas, said to me that if
21 he doesn't plead guilty, we will try this as a
22 capital case. That's a very serious matter that I
23 had to take to Michael. I think they had -- I don't
24 know whether they would have ever done that.

25 We did not get a letter of intent to seek it as

1 a capital offense, but that was something that the
2 solicitor has an opportunity to offer because, as I
3 said to Michael, the death of an individual,
4 accompanied by great concern for physical safety, or
5 whatever the aggravating circumstance is, of others
6 is something that a jury in Lexington County could
7 very easily have found.

8 Michael now is just crystal clear about what I
9 did or I didn't do. He just doesn't remember
10 everything else that we worked on and talked about
11 and explored.

12 Your Honor, as an additional example, I know
13 that one of the things I attempted to find out was
14 whether or not Shawna Bell, his wife, and Michael,
15 were they actually trying to remedy their marital
16 problems? Were they trying to work their marriage
17 back together? Could they have done that?

18 They went to see a psychologist at Lutheran
19 Family Services over on Broad River Road, a fellow
20 by the name of Greg Bissell. I learned of that from
21 Michael. I thought that would be information that
22 would be necessary; that maybe they were trying to
23 work their relationship back, and that this incident
24 at the mall had occurred spontaneously or on
25 sufficient legal provocation.

1 Mr. Bissell said to me in a telephone call to
2 my office, he said, Mr. Delgado, you'll have to get
3 a release from your client and, even then, I'm not
4 certain that I want to release my notes to you.
5 But, hypothetically, you don't want me to testify;
6 you don't want to see my notes.

7 It seemed to me, at that time, that
8 Mr. Bissell -- he was a social worker/counselor --
9 was saying to me that he had cautioned Ms. Bell that
10 her life was in danger and that there was no
11 remedying this relationship and that Michael would
12 act on that aggression.

13 When you add all those things up, to me, it
14 seems like, to me, that a plea to murder was
15 something that, if I could get it to a certain
16 amount of years, would be in Michael's best
17 interest. I tried to get the solicitor -- let me
18 back up and just say this.

19 The letter that Mr. Mills had put into
20 evidence, that's just a mistype on my part and I
21 didn't edit it. 30 years to life is a murder
22 sentence, not a manslaughter sentence.

23 Q. And did you explain that to Mr. Young, that
24 that was a typo in your letter?

25 A. I can't recall that. In fact, I may have.

1 But, I mean, we had talked about it so many times.
2 Michael knew that 2 to 30 or 3 to 30 is
3 manslaughter, murder is 30 to life day-for-day. But
4 I kept saying to Michael: Michael, maybe I can get
5 a number of years, that if you have to do
6 day-for-day, at least at your age, you may still
7 have some life at the end of a prison sentence.

8 The solicitor, I won't say he was intrigued by
9 that. But he was trying to forego a jury trial that
10 would add such emotional impact to his victim and
11 their family. Mr. Bell is a very decent individual.
12 And the rest of the family was very much impacted by
13 the taking of their husband and their father.

14 I think Mr. Myers and Mr. Samellas were
15 attempting to -- if they could forego a trial, they
16 would be willing to offer something. Finally, I
17 started at 30 years. I remember talking to Michael.
18 Michael, if we could get 30 years day-for-day, I'm
19 not saying that's a victory, none of this is a
20 victory, but that certainly isn't life in prison
21 without the chance of parole. We dickered back and
22 forth.

23 Finally, they said that they would not oppose a
24 sentence of 50 years. I remember being -- talking
25 with the solicitor and Judge Russo the week or so

1 before the trial where Judge Russo said, well, under
2 the circumstances both you and the solicitor have
3 presented to me, I think that's a reasonable
4 conservation of our time and resources and safe for
5 the family. It is a serious sentence.

6 I remember going to Michael after that and
7 saying 50 years. And he knew, and I was very clear
8 with him in saying, this is not parolable. He
9 always wanted a parolable offense; he's always
10 wanted to plead guilty, if he could get a certain
11 amount of time and if it could be 85 percent.

12 Michael, as with a lot of folks, wants to be
13 able to control how much time he has to serve. But
14 he knew very well that my mistype was in reference
15 to murder and not to manslaughter. I'm sorry I
16 rambled on.

17 Q. That's all right. I want to go back to a
18 couple of things that you said. You said that this
19 was a potential for a capital case. Why was that?

20 A. Well, because it was a possible aggravating --
21 well, first, this is Lexington County, South
22 Carolina. Mr. Myers was nationally known as not
23 just an advocate of the death penalty, but as a
24 prosecutor who was able to obtain death penalty
25 verdicts in a number of death penalty cases. He's

1 done that with five clients that I've tried here in
2 Lexington County.

3 That's the reason that, as opposed to possibly
4 another judicial circuit, is a material
5 consideration. Michael's use of a gun where a
6 threat to others -- this is a crowded parking lot.
7 There were cars back and forth, there were people
8 walking into the mall. The threat to others --
9 Mr. Mills gave the statutory definition of it. I'm
10 sorry I don't have it off the top of my head. But
11 that was the aggravating circumstance that Mr. Myers
12 would have used.

13 Michael -- I think they would have -- oh,
14 there's another -- another -- one of the things that
15 the Solicitor's Office found out about was one of
16 Michael's running buddies, a fellow named Drea, as I
17 recall it, D-R-E-A, I think, is phonetically how he
18 spelled it -- that Michael had offered Drea up to
19 \$15,000 if he would kick Shawna's ass in an attempt
20 to keep her with him and to keep her in a marital
21 relationship with him. Depending on how well Drea
22 kicked her ass, he would pay up to 15 --

23 MR. MILLS: Your Honor, I have to object. This
24 is not relevant to the --

25 THE COURT: Well, Mr. Delgado is testifying

1 about his investigation and what decisions went into
2 the plea itself. But, to the extent that we're
3 going on and on about matters that aren't
4 specifically in the transcript of record, I'd ask
5 that we close that end, please.

6 MS. OPPENHEIMER: Yes, Your Honor.

7 BY MS. OPPENHEIMER:

8 Q. Would it have mattered if the victim had any
9 cocaine in his system?

10 A. You got to play that very delicately. Blaming
11 victims is a very dicy proposition. As I recall,
12 Mr. Bell, he was an Army vet and had served the
13 country and various places around the world. Very
14 difficult to play that.

15 I'm not certain if there were any convictions
16 of Mr. Bell for possession or distrubution. I would
17 have had to have touched on that gingerly. But I
18 would have tried to use that, if we'd had to go to
19 trial.

20 Q. And did you explain that to Mr. Young?

21 A. I'm sorry?

22 Q. Did you explain that to Mr. Young?

23 A. I'm certain that I did. But I have no specific
24 recollection about that. But I -- Michael and I
25 knew what the autopsy reports showed. Yes.

1 Q. And did you discuss the distance of the
2 gunshots to Mr. Bell in discussing the autopsy
3 report?

4 A. I'm certain I did. The word distant, as used
5 by forensic pathologists, is a bit of a misnomer in
6 the common parlance. What they mean by distance is
7 a much shorter period -- I mean, a much shorter
8 space. It's a not a contact wound or it's not a
9 near-contact wound where the muzzle of the gun is
10 pressed against the body that leaves a serration
11 around the entrance wound. That's a contact wound.

12 A near-contact wound would be a couple inches
13 from that where burned gunpowder would penetrate the
14 skin or the body. A distant wound is 18 to 24
15 inches or more that may not leave gunpowder residue.
16 But, yes, we talked about that.

17 Q. All right.

18 MS. OPPENHEIMER: Beg the Court's indulgence.

19 BY MS. OPPENHEIMER:

20 Q. Did Mr. Young ever ask you to move for
21 reconsideration of the sentence?

22 A. I don't recall that at all. I mean, I would
23 have said to Michael, under what basis could we have
24 asked for reconsideration? Michael is -- through
25 his evaluation at the state hospital, Michael is

1 given an evaluation of borderline personality
2 disorder. Michael always wants to be able to do
3 something else that he may or may not -- or that he
4 thinks is in his best interest.

5 There was no reason I would have said to him --
6 I have to have some sort of meritorious reason to be
7 able to ask for a resentencing. And, if that's the
8 case, I was afraid that the solicitor would -- now,
9 I feel very certain that the solicitor would have
10 contested that, because that would mean that the
11 family of the victim would have to stay in, had to
12 reconvene here in the courtroom, and he didn't want
13 that.

14 And I didn't see any reason, if Mr. Bell --
15 excuse me. If Michael said that to me, I simply
16 don't recall that and would have cautioned him
17 against it and would have said to myself,
18 professionally, I don't see any basis for being able
19 to ask for it.

20 Q. Did you ever get an indication that he didn't
21 understand something you were telling him?

22 A. No, ma'am. Michael is a very bright
23 individual. No, ma'am.

24 Q. And whose decision was it to plead guilty?

25 A. It was his decision.

1 Q. And he made that decision knowing all of his
2 constitutional rights?

3 A. Oh, yes, ma'am. I went over with him, as I
4 tried to explain earlier, what a trial would mean,
5 what types of evidence would be introduced against
6 him, how this was Lexington County; that the
7 defendant and her father and their family would make
8 very good witnesses.

9 There was real history of assaultive behavior
10 between the two in the marriage coming from Michael.
11 All that indicated to me, and with the facts of this
12 case, with Mr. Bell being shot not once, not twice,
13 but three times, there was no gun or weapon found on
14 him, self-defense was not a possibility.

15 Michael, at one time, tried to say to me how
16 the two of them had grappled over the gun. Not only
17 did no one see that, he says in his own statement --
18 you know, he doesn't say anything about that, a
19 physical confrontation. I thought, under all those
20 circumstances, a plea was better than life in prison
21 without parole.

22 MS. OPPENHEIMER: Nothing further, Your Honor.

23 THE COURT: Cross?

24 MR. MILLS: Thank you, Your Honor. May it
25 please the Court?

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. MILLS:

4 Q. Hey, Mr. Delgado. How are you today?

5 A. How are you, Mr. Mills?

6 Q. Good.

7 Just a few questions. So you're saying that
8 you did talk to Mr. Young about self-defense?

9 A. Well, he probably raised it with me. Yeah.
10 And I tried to say to him, Michael, the first
11 element of self-defense is you have to be without
12 fault in bringing on the incident.

13 Michael, at that time, was under a restraining
14 order, as I recall it. Michael didn't have a right
15 to have a gun at the mall and out in the parking
16 lot. I thought that -- there was no indication,
17 from the words of Mr. Bell or the actions of
18 Mr. Bell, that would have put Michael in a position
19 of fearing for his life or reasonably fearing for
20 his life. I didn't see self-defense at all. I
21 didn't think we'd get a charge on that. But, yes,
22 we did discuss it.

23 Q. Okay. But the part about -- you just said that
24 Mr. Young mentioned grappling over the gun.

25 A. Yeah.

1 Q. Some kind of physical --

2 A. Sure.

3 Q. -- action between the two of them --

4 A. Yes, sir.

5 Q. -- over the gun.

6 A. That's what he said. And when you juxtapose
7 that against other things he said, I thought the
8 impeachment of that, if he were to get on the stand,
9 would have made him out to be somebody who wasn't
10 telling the truth about that.

11 Q. Okay. But are you -- his testimony about the
12 gunshot residue, that there was gunshot residue on
13 Mr. Bell, is that -- does that sound right?

14 A. Right. And, see, that's -- right. That's
15 possible. But it may -- the elements of gunshot
16 residue, barium lead and antimony, could have come
17 from the gun or the firing of the gun or it could
18 have come from any other metallic -- or, sometimes,
19 any other metallic-touching by Bell within a period
20 of half an hour, an hour, before that period of
21 time.

22 I thought that the -- that -- that was an
23 interesting fact. But I didn't think that was a
24 fact worth going to trial over, based on the fellow
25 who brought Michael to the mall that day. His last

1 name starts -- I'm sorry, I can't recall it -- says
2 that he was in the car that was eventually driven
3 away, and that he didn't see any scuffle. I mean,
4 they were separated by almost the distance of the
5 car. He didn't see any scuffling. Michael doesn't
6 mention any scuffling.

7 I don't know how those elements got on
8 Mr. Bell's hands. But the solicitor would have --
9 could have had expert testimony as to how that --
10 how, otherwise, that could have been on his hands.
11 So I didn't think that was --

12 Q. Well, did you explain that to Mr. Young or you
13 just assumed that --

14 A. I'm sorry. I don't remember whether I
15 explained --

16 Q. Okay.

17 A. -- that to Michael.

18 Q. Okay. So you don't remember if you explained
19 to him the negative consequences of some of the
20 factual scenario concerning self-defense? You don't
21 remember whether you did or not?

22 A. No. I mean, I'm certain we talked about
23 self-defense. Sometimes in my practice, clients'
24 testimony changes. And, you know, while that may
25 have been said at one time, I would have said to

1 him, Michael, while you're saying you were grappling
2 over the gun, nobody sees that; you immediately, in
3 your statement to the police the next day or that
4 same day, don't say anything about grappling over a
5 gun. I think that's something that could go against
6 us.

7 If a jury thinks you had a gun and you took the
8 life of somebody else, whether intentionally or in
9 self-defense, if they show you to be a liar about
10 how that happened, that's not going to be a
11 favorable consideration for the jury.

12 Q. But do you remember specifically saying that to
13 him?

14 A. Well, Bobby, no, I don't recall that
15 specifically. But I didn't try to dissuade him from
16 thinking that self-defense was a viable defense.

17 Q. Okay. And as far as voluntary manslaughter,
18 which has -- you testified about that as well,
19 that -- do you remember specifically talking to him
20 about whether there was sufficient legal
21 provocation?

22 A. Yeah. I -- during the period -- and, of
23 course, my conduct -- the South Carolina Supreme
24 Court came out with a case that originated from here
25 in Lexington County, State vs. Starnes, that

1 deprecated the sufficient legal provocation status
2 that I thought could be interpreted in such a way in
3 Michael's case that we may not even get a charge on
4 voluntary manslaughter.

5 I specifically talked to Michael about that and
6 told him how that was not a good development in the
7 case law. That was within six months of my --
8 probably three months of my talking to him.

9 Q. Okay. So -- and do you remember his -- what
10 his comment to you was as far as seeking a trial on
11 voluntary manslaughter?

12 A. Michael was always wanting to see the very best
13 deal that he could get. Not uncommon. He wanted to
14 serve as little -- he knew he was going to serve
15 time. He wanted as little as possible, and wanted
16 to use either a possibility of a voluntary
17 manslaughter attempt or, possibly, if we weren't
18 able to get that, maybe self-defense. But I thought
19 that, under the circumstances of a possibility of a
20 capital prosecution, that wasn't a good decision for
21 Michael.

22 Q. Okay. So you had a copy of the autopsy,
23 correct?

24 A. I'm certain I did. Yes.

25 Q. Okay. And you were talking about, during

1 direct examination, the distant; fatal,
2 medium-caliber, perforating gunshot wound.

3 A. Right.

4 Q. And all three are considered distant. Did you
5 talk to Dr. Ross about what her terminology of
6 distant or her definition of distant was, or any
7 pathologist?

8 A. Yeah. Bob, I'll be candid with you. I met
9 with Dr. Ross and cross-examined Dr. Ross on a
10 number of occasions in other homicide cases. I
11 can't tell you specifically if I did that in this
12 case. I knew what she would say and how she would
13 say it, based on my other experience with her.

14 Q. Okay. So did you explain that to Mr. Young,
15 that distant means as little as 18 inches, which is
16 only a foot and a half?

17 A. I'm certain I did. But I also tried to explain
18 to him that their medical use of that is not what
19 you and I would think. Distant is the distance of
20 this courtroom or a football field. They're very
21 specific about that. But I can't tell you --

22 Q. Okay. So you don't know whether you told him
23 or not? So he could be right, that you did not tell
24 him that it was as little as 18 inches away?

25 MS. OPPENHEIMER: Objection, Your Honor;

1 pitting the witnesses.

2 THE COURT: Ask the question again.

3 MR. MILLS: Okay. I'll rephrase it.

4 BY MR. MILLS:

5 Q. Do you remember telling Mr. Young that it could
6 be as little as 18 inches away, the definition of
7 distant?

8 A. Bob, let me ask you this: Does the -- does the
9 autopsy indicate that in the -- does it say inches
10 or it just says near distance or --

11 Q. It just says distant. And we've stipulated
12 that distant -- because Dr. Ross --

13 A. Yes, sir.

14 Q. -- determined from Dr. Ross that distant means
15 as little as 18 inches or 18 to 24 inches or
16 greater, so as little as 18 inches.

17 A. I can't -- to answer your specific questions, I
18 can't recall saying that to him. But I know we went
19 over the autopsy specifically.

20 Q. Okay. Okay.

21 A. I can't recall, Bob.

22 Q. So if you can't recall that, then you wouldn't
23 know -- then you probably couldn't recall whether or
24 not you conglomerated that fact of as little as 18
25 inches with his statement about grappling over the

1 gun that you testified to?

2 A. No. I just -- the problem with it is, is
3 immediately after the case, when he gives his
4 statement to the Columbia Police Department officer,
5 he doesn't say anything about grappling; he doesn't
6 say anything about an altercation. He just says,
7 like I testified earlier, that Bell had -- you know,
8 had emotionally harmed him, not physically harmed
9 him. So I thought that that was going to be a big
10 deal because the police officer is very probably
11 going to be believed more often than not.

12 The fellow who was driving Michael to the mall
13 and who drove away with Michael after the shooting
14 didn't see any grappling, didn't see any close
15 physical contact. So, I mean, it could have been as
16 little as 18 to 24 inches; it could have been five
17 feet, too.

18 Q. But my question is whether or not you spoke to
19 Mr. Young about that in conjunction with his factual
20 scenario, which potentially could be self-defense,
21 in determining whether or not he should go to trial.

22 A. Well, yes. I can't recall that. But, again, I
23 would have also said to him, but, Michael, there's
24 four elements that we have to -- that have to be
25 proven or that have to be disproven beyond a

1 reasonable doubt; that is, that you were without
2 fault in bringing on the incident. I think that
3 would have been a very difficult hurdle to overcome.
4 So I didn't think self-defense was viable.

5 Q. So you have an independent recollection of or
6 you have a note saying that you did talk to him
7 about the elements of self-defense?

8 A. Any time that I will discuss with a client -- I
9 mean, because it's a very -- not convoluted, but
10 it's something that has some specifics to it, that
11 we have to be able to outline that for clients. And
12 I'm certain I did that.

13 I don't have any independent sufficient
14 knowledge that I placed in my file saying I
15 specifically discussed the four elements with him
16 tonight. But I would have -- it's my very real
17 belief that I explained all four of those to him.

18 Q. Okay. Let me move on to a different issue. As
19 far as the plea itself, you stated that there was
20 a -- that 50 years were on the table, or something
21 to that effect.

22 A. I can't recall how that was described. I
23 haven't seen the transcript of the plea. It is my
24 recollection -- I mean, I know that I was on a
25 telephone call with Judge Russo and Mr. Samellas and

1 Mr. Myers where that range -- excuse me, not
2 range -- where that 50 years was discussed.

3 And it's my recollection that the Solicitor's
4 Office said, we won't contest that or we don't think
5 that's improper, a backhanded way of saying to the
6 Court that that would be sufficient to the State. I
7 don't know how that was stated at the plea.

8 Q. Okay. That was never in the record, that I
9 could tell. And, in fact, the plea was without
10 negotiations.

11 A. Okay.

12 Q. I'll show you. The sentencing sheet was
13 without negotiations or recommendation. And I don't
14 believe there was any negotiations or recommendation
15 put on the record as well. So -- and Mr. Young was
16 not aware of any -- or did you make any statement to
17 Mr. Young that he was going to get 50?

18 A. I'm certain that after that telephone
19 conversation that I had with Judge Russo and the
20 Solicitor's Office, I went to Michael to tell him:
21 It's my very clear feeling that you will be
22 sentenced to 50 years if we plead, yes. I wouldn't
23 have walked Michael, or any other client, into a
24 courtroom without explaining that to him.

25 Q. Okay. But there's nothing on the record --

1 A. No. I'm certain.

2 Q. -- that says 50 years.

3 All right. And, again, I don't know if you
4 need to see the sentencing sheet. But it was
5 without negotiations or a recommendation?

6 A. If you say so, sure.

7 Q. All right. And it's in the record already --
8 the sentencing sheet is already in the record, the
9 court's record.

10 All right. So when Mr. Young -- do you recall
11 Mr. Young asking you for a reconsideration?

12 A. No, sir, I don't.

13 Q. Okay. Would it be unusual for someone to ask
14 for reconsideration when they get 50 years?

15 A. That's -- that's a difficult question to
16 answer. I mean, I don't -- I can't answer that,
17 Bob, without --

18 Q. Okay.

19 A. May be usual, may not be. I can't tell you
20 that. All I would have said in response to that --
21 my first response to that would be, well, there's
22 going to have to be some basis. Michael -- again,
23 Bob, didn't Michael address the Court and talk about
24 his background, his coming to South Carolina, how --
25 his relationship with his wife, the business about

1 her having an abortion? I'm certain that was
2 explained. I don't know what else he could have
3 explained or said to the Court to have had any
4 significant impact on it.

5 Q. From what I can see, Mr. Young basically said,
6 on pages 24 and 25, which is in the Court's record:
7 It pains me to know that I caused these atrocities
8 which I caused. It hurts me even more to know that
9 I caused those atrocities to individuals I have
10 unconditional love for. I learned that I can't take
11 that back. If I could, I would, but I can't.

12 It kind of reminds me of this prayer my mother
13 taught me. It goes: Lord, grant me the serenity to
14 accept the things I cannot change, the courage to
15 change the things I can, and the wisdom to know the
16 difference. I'm wise enough to know that I can't
17 take what I did back, other than just change myself,
18 grow as a man, change the impact that I had --
19 have -- can have on society.

20 And if I do and I'm granted the opportunity, I
21 know that the time is just like the life which I've
22 taken; that can't be brought back, Your Honor, when
23 I'm incarcerated. I have a lot of emotional issues
24 going on with me. I knew what I'd done, but I was
25 so emotionally attached that I couldn't see

1 everything for what it was. It took some time to
2 step back and view things for what they really are.

3 Regardless of that, what went on up to that
4 point, I still caused two tragedies. The family, I
5 want to say that I'm sincerely sorry. I would do
6 anything to take it back. I hope that one day they
7 can forgive me as a person. I know they'll never
8 forget the act, but I hope they forgive me as a
9 person. Your Honor, as I said, I have peace. And I
10 hope me doing this today is one step towards the
11 peace for them.

12 And that's all -- that was it, I believe, that
13 he said.

14 A. I remember Michael's family being present here
15 in this courtroom. I just don't know anything else
16 that I could have or he could have said that would
17 have supplemented what was already said.

18 Q. But you just don't remember whether he did or
19 did not ask --

20 A. No, I do not.

21 Q. -- for a reconsideration?

22 A. Yes, sir. I do not recall that.

23 Q. Okay. And you stated that you did know there
24 was cocaine in the system of --

25 A. Yes, sir.

1 Q. -- the -- Mr. Bell?

2 A. Mr. Bell. Yes.

3 Q. Okay. And this, you stated, State's Exhibit
4 No. 3 about voluntary manslaughter. Was there any
5 follow-up letter, to your knowledge, to clarify
6 this?

7 A. Bob, I do not know. I'm sorry.

8 Q. Okay. So you're saying it was a mistake. But
9 it has the wrong sentencing --

10 A. Yep.

11 Q. -- structure for voluntary manslaughter.

12 A. Sure. Mr. Mills, one other thing about the
13 self-defense for just one second, in reviewing the
14 notes that were given over to Rule 5 investigators
15 from the City of Columbia Police Department,
16 Mr. Reese and Mr. Thomas, in their typed-out notes,
17 they said: Young said he was standing with the
18 Bells outside their car. He said he was never
19 attacked or struck by Robert Bell.

20 You know, that -- I'm certain I would have said
21 to Michael, in any consideration of self-defense,
22 that's -- that's going to be important. And
23 there's -- again, I just don't think we would have
24 gotten the self-defense charge.

25 Q. But he was -- but you talked to him about him

1 potentially testifying --

2 A. Sure.

3 Q. -- to the facts that he told you --

4 A. Absolutely.

5 Q. -- that may be in contradiction with that --

6 A. Yeah. Sure.

7 Q. -- but would be --

8 A. Absolutely.

9 Q. -- enough, potentially, to get --

10 A. Yes.

11 Q. -- to a jury?

12 A. Absolutely.

13 Q. And then it would be up to a jury to determine
14 what witnesses they believed --

15 A. Yes, sir.

16 Q. Okay. You did tell him that?

17 A. I told him he has an absolute right to take the
18 stand and to present evidence of self-defense,
19 certainly. Sure.

20 Q. Okay.

21 A. But I also have to say to him -- Mr. Myers
22 would have crucified him with statements like that.

23 Q. Okay. I think I'm about through at this point.

24 I think I did ask you about -- there was no
25 negotiation of any specific number of years,

1 correct?

2 A. Well, again, the way, sometimes, this is done,
3 is that prosecutors will say -- they'll never say,
4 50 years is acceptable to us. But it can also be
5 said, Your Honor, I think that -- anything the Court
6 wants to consider -- and I recall Judge Russo
7 saying, I would reasonably consider that. And I
8 took that as an absolute go that 50 years was what
9 the judge would sentence him to and the Solicitor's
10 Office would not --

11 Q. Now, was this not on the record?

12 A. No, it was not on the record.

13 Q. Not on the record. This is in a --

14 A. Telephone conversation.

15 Q. Okay.

16 A. Yes.

17 Q. And Mr. Young was not privy to that, to the
18 conversation itself?

19 A. No. But I'm certain -- there's something -- I
20 know where I was: At the Cracker Barrel in
21 Ridgeland, South Carolina, when I called Judge Russo
22 about that, with Donnie and Chris Samellas on the
23 phone.

24 It's my very clear remembrance that I went to
25 see Michael, either that same night as I came back

1 to Columbia or the next day, about that; what I took
2 to be a way out of non-negotiated plea for 30 to
3 life, that I thought was as fair as he was going to
4 get.

5 Q. But the plea itself on the record was
6 non-negotiated?

7 A. I agree with that.

8 Q. Okay.

9 MR. MILLS: Beg the Court's indulgence.
10 That's all the questions I have.

11 THE COURT: Redirect?

12 MS. OPPENHEIMER: Very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. OPPENHEIMER:

15 Q. Judge Russo followed through with your
16 telephone conversation, correct?

17 A. Well, he followed through in following what I
18 had suggested to him in the telephone conversation
19 as a reasonable sentence, yes, ma'am.

20 Q. So he sentenced Mr. Young to 50 years?

21 A. Yes.

22 Q. And, again, you relayed that 50 years was a
23 very real possibility to Mr. Young prior to the
24 plea, correct?

25 A. Yes, ma'am.

1 MS. OPPENHEIMER: No further questions, Your
2 Honor.

3 MR. MILLS: Nothing further than that, Your
4 Honor.

5 THE COURT: Mr. Delgado, you may step down,
6 sir.

7 MR. DELGADO: Thank you, sir.

8 MS. OPPENHEIMER: May Mr. Delgado be excused
9 from his subpoena?

10 THE COURT: Yes, ma'am.

11 Any other witnesses from the State?

12 MS. OPPENHEIMER: No further witnesses, Your
13 Honor.

14 THE COURT: All right.

15 MR. MILLS: We would have rebuttal, just a
16 quick rebuttal, Your Honor, from the Applicant,
17 based on the State's testimony.

18 THE COURT: Very brief.

19 MR. MILLS: Your Honor, I would call Mr. Young
20 back to the stand.

21 THE COURT: Mr. Young, I remind you, you're
22 still under oath, sir.

23 THE APPLICANT: Yes, sir.

24 MICHAEL YOUNG

25 having been previously sworn, testified as follows:

1 REBUTTAL EXAMINATION

2 BY MR. MILLS:

3 Q. Mr. Young, you were present here today and
4 heard Mr. Delgado testify?

5 A. Yes, sir.

6 Q. And you heard the -- his answering of the
7 State's question about you agreeing with the plea
8 and agreeing with the facts.

9 Would you have done that if you had known the
10 things that we had talked about earlier concerning
11 the distance from the autopsy, the potentiality of
12 self-defense, and the potentiality of a voluntary
13 manslaughter plea; the fact that there was GSR on
14 the victim, and the other factors that you stated
15 you would not have pled guilty to if you would have
16 known?

17 A. Correct. I would not have pled guilty.

18 Q. Okay. And you would not have answered the
19 questions the way you did if you had had that
20 knowledge at the time?

21 A. Correct.

22 Q. Okay. And had been properly advised -- you
23 would not have pled guilty if you had been properly
24 advised at the time?

25 A. Correct.

1 Q. Okay. Now let me ask you about this 50-year
2 sentence. Were you aware of any negotiations
3 outside the record that would have meant that you
4 would have gotten 50 years?

5 A. No, not at all.

6 Q. Okay. When you answered the judge about
7 whether or not you had been promised anything, would
8 you have said that if you had known that?

9 A. No. No.

10 Q. Okay. But would you -- wouldn't you have said
11 that you had been promised 50 years, if you were
12 promised that?

13 A. Oh, correct. Correct. Correct.

14 Q. Okay. So the fact that you thought you were
15 pleading without negotiations and without any
16 recommendations, did you think you could get less
17 than 50 years?

18 A. Oh, yeah.

19 Q. Okay. Did you think you could get 30 years?

20 A. Yeah.

21 Q. Okay. The least amount was 30 --

22 A. Correct.

23 Q. -- but you could potentially get 30 years?

24 A. Right.

25 Q. Okay. So when you signed the sentencing sheet

1 and the judge also stated that there were no
2 negotiations and no recommendations, you thought
3 that was the case?

4 A. Correct.

5 Q. Okay. And let me ask you about the request for
6 reconsideration. When did that happen? When did
7 you talk to Mr. Delgado about reconsideration?

8 A. In the courtroom.

9 Q. Okay. In the courtroom while --

10 A. Yeah. Right before I left.

11 Q. Okay. And how did you approach that?

12 A. I remember walking past and asked him to file a
13 Notice of Appeal and reconsideration. Yeah.

14 Q. Okay. And did he have any response to that?

15 A. I can't recall the exact response. I just know
16 he filed the Notice of Appeal and not the
17 reconsideration.

18 Q. And no motion for reconsideration?

19 A. Correct.

20 Q. Okay. And, at some point, did you tell him
21 about grappling with the gun or some kind of
22 struggle over the weapon?

23 A. Yes.

24 Q. And did y'all talk any further about the
25 factual scenario that would support that?

1 A. I don't believe so. I don't believe so.

2 Q. Okay. And what about the elements of
3 self-defense? Did y'all talk about that?

4 A. No.

5 Q. Okay. But you said you did talk about
6 voluntary manslaughter, the elements of that, but
7 not specifically as it applies to your case?

8 A. Exactly. We spoke about it. But I remember --
9 he spoke about the four -- four elements. That's
10 the first time I had heard that, today.

11 Q. All right.

12 MR. MILLS: That's all the questions I have,
13 Your Honor.

14 MS. OPPENHEIMER: Nothing on cross.

15 THE COURT: All right. Thank you.

16 You may step down, sir.

17 MR. MILLS: That's all I have, Your Honor.

18 THE COURT: All right. Thank you. Both
19 lawyers are certainly entitled to make a summation,
20 if they'd like. The Court doesn't believe it's
21 necessary. But I'll afford you the opportunity, if
22 you'd like.

23 MR. MILLS: You want us to just provide you
24 with proposed orders?

25 THE COURT: I'll review everything and I'll

1 make a decision.

2 MR. MILLS: Okay.

3 THE COURT: All right. Court has it under
4 advisement. Thank you.

5 MS. OPPENHEIMER: Thank you, Your Honor.

6 MR. MILLS: Thank you, Your Honor.

7 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 9th of November, 2018.

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

August 7, 2020

s/ *Bethanie K. Creppon*

Bethanie K. Creppon
Circuit Court Reporter

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT
2018 DEC -5 PM 4:08)
Michael James Young, Jr., #345614, LISA M. COMPTON)
Clerk of Court)
Applicant, LEXINGTON SC)
v.) **ORDER OF DISMISSAL**
State of South Carolina,)
Respondent.)

This matter comes before this Court by way of an application for post-conviction relief filed November 21, 2012, by Michael James Young, Jr. (Applicant). The State (Respondent) made its return on March 3, 2014, requesting an evidentiary hearing be held. Thereafter, on November 1, 2018, Applicant, through his counsel, filed an amendment to the application for post-conviction relief. An evidentiary hearing into the matter was convened on November 9, 2018, at the Lexington County Courthouse before the Honorable Walton J. McLeod, IV. Applicant was present at the hearing and represented by Robert W. Mills, Esquire. Assistant Attorney General Kelly Oppenheimer of the South Carolina Attorney General's Office represented Respondent.

Following a thorough review of the record in its entirety, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations and denies this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its October 2007 term, the Lexington County Grand Jury indicted

Applicant for murder (2007-GS-32-2948), assault and battery with intent to kill (ABWIK) (2007-GS-32-2949), and possession of a firearm during the commission of a violent crime (2007-GS-32-2950). John D. Delgado, Esquire, represented Applicant on these charges. On April 11, 2011, Applicant appeared before the Honorable Thomas A. Russo and pled guilty as indicted to murder and ABWIK. The weapons charge was dismissed. Judge Russo accepted the pleas, finding they were entered freely, voluntarily, and intelligently, and sentenced Applicant to a term of imprisonment of fifty years for murder and twenty years for ABWIK. The sentences were to be served concurrently.

Applicant filed a timely notice of appeal. Thereafter, by written order dated February 10, 2012, the Court of Appeals dismissed Applicant's appeal for failing to show how any issue was preserved for appellate review as required by Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on March 7, 2012.

STATEMENT OF FACTS

Applicant and Shauna Bell were married in October 2006, but were separated by May 2007. Tr. 26. In that time they were separated, Ms. Bell filed a report for stalking against Applicant with the Columbia Police Department. Tr. 26. The report specifically alleged Applicant would continue to come to the Dell kiosk at Columbiana Mall, where Ms. Bell worked, and would continuously call her. Tr. 26-27. On June 4, 2007, Ms. Bell along with her father, Robert Bell, visited SisterCare so that Ms. Bell could file for an order of protection against Applicant. Tr. 27. The next day, Applicant again arrived at the Columbiana Mall, where he was arrested for stalking and also given a trespass notice. Tr. 27. Applicant made bond on those charges on June 7, 2007. Tr. 27. Because of these incidents, law enforcement advised Ms.

Bell that when Mr. Bell came to pick her up from work, he needed to come inside the mall and walk her out to the car. Tr. 28.

On June 13, 2007, Applicant sent some of his friends to the mall to see if Ms. Bell was working. Tr. 28. Applicant then arrived at the mall around six in the evening to speak with Ms. Bell. Tr. 16, 28. Mr. Bell arrived around the same time. Tr. 17, 28. Then, Applicant, Ms. Bell, and Mr. Bell walked to the car. Tr. 29. When they got to the car, Mr. Bell told Ms. Bell to get inside the car. Tr. 17, 29. After speaking with Mr. Bell for a while, Applicant then pulled a .8-caliber handgun and shot Mr. Bell three times: once in the neck, once in his right arm, and once in the back. Tr. 17, 29. Applicant then walked around the car and fired twice through the window at Ms. Bell. Tr. 17, 29. Applicant shot Ms. Bell once in the neck and once in the shoulder. Tr. 29. Applicant then immediately fled in a car driven by one of his friends. Tr. 29.

CURRENT APPLICATION

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

1. Ineffective Assistance of Trial Counsel[; and]
 - a. Trial counsel failure [sic] to interview the forensic pathologist, which would have provided a defense indicating the victim's wounds could not be determined by a medical certainty the order of entry of the bullet and as a result could have required the charge of voluntary manslaughter or other defense's [sic];]
 - b. Trial counsel failure [sic] to interview the Applicant's ex-wife render counsel's assistance ineffective. Applicant's ex-wife could have provided testimony indicating the Applicant possibly [sic] engaged in a self-defense struggle with the victim and as such had to protect his person, requiring [sic] a self-defence [sic] instruction at trial.
2. Ineffective Assistance of Appellate Counsel.
 - a. The Applicant received ineffective assistance of appellate counsel in violation of the Sixth Amendment to the United States Constitution when counsel failed to allow the Applicant to fully participate in the appeal process.

In his amendment to the application for post-conviction relief, Applicant raised the following additional grounds:

1. Failures of the Applicant's trial counsel to fully inform him of all of the facts of the case;
2. Failure of trial counsel to review all evidence with applicant before the court date;
3. Failure of trial counsel to fully investigate the facts;
4. Failure of trial counsel to investigate the medical and forensic records of the alleged victims;
5. Failure of trial counsel to file a motion for reconsideration of sentence;
6. Failure of trial counsel to investigate the forensic evidence;
7. Failure of trial counsel to investigate the forensic pathology or interview the forensic pathologist;
8. Failure of trial counsel to accurately advise [A]pplicant when trial counsel communicated to [A]pplicant that [A]pplicant was facing a possible death sentence;
9. Failure of trial counsel to interview [A]pplicant's ex-wife;
10. Failure of trial counsel to investigate and advise [A]pplicant correctly on the forensic evidence including the gun shot residue; [and]
11. The forensic failure to appellate counsel to consult with [A]pplicant.

At the evidentiary hearing, Applicant proceeded forward on the allegations raised in his amendment to the application for post-conviction relief filed by counsel. Additionally, at the evidentiary hearing, Applicant waived all allegations concerning ineffective assistance of appellate counsel.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented the testimony of John D. Delgado, Esquire (Counsel). This Court also had before it a copy of Applicant's plea transcript, the records of the Lexington County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records. Applicant introduced a copy of the autopsy report from Mr. Bell.¹

¹ Applicant and Respondent stipulated to the introduction of this document. Additionally, Applicant and Respondent stipulated "distant" as indicated in the report equaled a distance of eighteen to twenty-four inches, or greater.

During the evidentiary hearing, Applicant testified on his own behalf. Applicant testified he turned himself in on June 14, 2007, shortly after the shooting occurred. He explained at that time, he was "going through something" and was also intoxicated from the night or morning before the shooting took place. He further explained he was emotional when he gave his statement to law enforcement. He also testified he was denied bond while awaiting trial. Applicant further testified he initially hired J. Todd Rutherford, Esquire to represent him. He testified while Mr. Rutherford represented him he was evaluated for and deemed competent. Applicant also testified Mr. Rutherford only represented him until September or October 2008, at which time Applicant relieved Representative Rutherford and hired Counsel.

Applicant further testified he and Counsel met a number of times and wrote letters. He testified he requested his discovery materials, and Counsel provided him with a copy. He explained he reviewed the discovery materials by himself, including the witness statements, forensic evidence, the autopsy report, and the chemical analysis of Mr. Bell, which indicated he had cocaine in his system. He further explained he and Counsel discussed the fact Mr. Bell had cocaine in his system, but did not discuss it in connection with any defenses. He testified he did not know the fact Mr. Bell had cocaine in his system was a potential fact in support of a plea of voluntary manslaughter. Applicant testified he and Counsel did not discuss any defenses and did not discuss self-defense, but they did discuss voluntary manslaughter and sufficient provocation in connection with voluntary manslaughter. He elaborated, however, he and Counsel did not discuss the facts in relation to a defense of voluntary manslaughter. He further elaborated Counsel thought he would be unable to get a charge of voluntary manslaughter. Applicant testified he told Counsel he was involved in an argument with Mr. Bell, but they did not talk

about the application of voluntary manslaughter to the “heat of passion.” He elaborated had he known about the “heat of passion,” he would not have pled guilty.

Applicant testified he and Ms. Bell had a lot of fights, and they yelled at each other. He testified on the day of this shooting, Mr. Bell walked into the mall to escort Ms. Bell out of the building, and Applicant left with them to the mall parking lot. He further testified Ms. Bell was sitting in the car when Applicant shot Mr. Bell three times, killing him. He explained the shots were from a distance. Applicant also testified he believed Mr. Bell had a gun at the time of the shooting and thought Mr. Bell was just trying to scare him. He elaborated he believed Mr. Bell was going to pull the weapon on him. He further elaborated there was no gun found on Mr. Bell, but the gun belonging to Mr. Bell was found at Applicant’s best friend’s house when Applicant’s gun was found. He explained someone took Mr. Bell’s gun from the parking lot. He further testified Ms. Bell did not have a weapon. Applicant also testified he and Counsel did not discuss the fact Mr. Bell had a gun at the time of the shooting.

He testified Counsel did not speak with the forensic pathologist about the shot being “distant” or that that meant the shot was from eighteen to twenty-four inches or greater. He testified he was aware eighteen inches is a distance of one-and-a-half feet. He further testified had he known that, he would have proceeded to trial with a defense of self-defense. Applicant testified he spoke to and Counsel about the autopsy report of Mr. Bell, but he did not believe Counsel had spoken with the forensic pathologist. He further testified he and Counsel reviewed the autopsy report. He elaborated he and Counsel did not discuss the order of the gunshot wounds to Mr. Bell, and he would not have pled guilty if he knew that the gunshot wounds were labeled “arbitrarily” in the autopsy report. He further elaborated “arbitrarily” meant someone could be shot in the back at any point during an incident, not that the first bullet fired entered the

victim in the back. He further testified he and Counsel never discussed the fact a gunshot wound to the back could occur from a defensive move or the victim running away, but rather Counsel believed he would be unable to get a charge on manslaughter when the victim had been shot in the back. Applicant also testified Mr. Bell had gunshot residue (GSR) on the inside and outside of one hand and on the outside of his other hand. He explained he spoke to Counsel about this. He testified the gun was found at his best friend's house and was taken into evidence, along with other guns found at the residence.

Applicant also testified Counsel told him he was eligible for the death penalty,² and the State would seek the death penalty at trial. He testified Counsel told him he was eligible for the death penalty due to an aggravating factor—the risk of death to a number of people in a public place—but they did not discuss this. He elaborated Counsel did not explain to him what facts in his case made him eligible for the death penalty. He further elaborated he never saw any case law of capital cases for comparison. Applicant further testified the State never sought the death penalty in his case, and he never received notice the State would seek the death penalty.

He further testified based on a letter from Counsel,³ he thought he would plead to voluntary manslaughter and would have to serve eighty-five percent of his sentence. He elaborated he did not know there was a mistake in the letter and did not discuss this letter with Counsel. He further elaborated he was confused by this letter, and Counsel never clarified it to him. Applicant testified at the plea, he was unaware murder carried a day-for-day sentence and later discovered voluntary manslaughter carried a maximum sentence of thirty years at eighty-five percent. He explained Counsel never clarified the sentencing repercussions to him; and in his mind, he always believed he was pleading to an eighty-five percent sentence. Applicant

² A letter to this effect was introduced without objection at the evidentiary hearing as Applicant's Exhibit #2.

³ This letter was introduced without objection at the evidentiary hearing as Applicant's Exhibit #3.

testified, however, he was advised of the sentencing range at the plea, and he acknowledged he understood the potential sentence to the plea court. He recalled the plea court advising him he should be prepared to serve every day of any sentence. Applicant also testified he was aware he was pleading to murder. He explained, however, had he known he would have to serve his sentence day-for-day, he would not have pled guilty.

Applicant also testified at the plea, he informed the plea court he was satisfied with the representation and advice of Counsel, and he had no complaints of Counsel. He further testified he informed the plea court he had shared with Counsel everything he knew about the facts and circumstances of this case, any potential witnesses, and anything he knew of that could help Counsel defend him. He testified he agreed with the State's recitation of the facts at the plea. Applicant further testified he told the plea court he was pleading guilty because he was, in fact, guilty and also told the court he was pleading guilty of his own free will. He explained he told the plea court no one had promised him anything, held out any hope of reward, or threatened him in order to get him to plead guilty. Applicant recalled the plea court reviewing each of his constitutional rights with him, and he understood each of those rights. He further understood he was waiving those rights by pleading guilty and understood he was waiving the presumption of innocence and relieving the State of its burden by pleading guilty. He testified he understood he had a right to present a defense to these charges and also understood he had the right to testify on his own behalf. He further testified he informed the plea court understanding all of his rights, he wanted to proceed with the plea.

Applicant testified he asked Counsel to file a motion for reconsideration at his plea while in the courtroom. He explained he wanted Counsel to file this motion because the plea court was

unaware of all of the facts. He further explained he never heard from Counsel about this motion, but Counsel did send him a letter about the notice of appeal.

Applicant rested after his testimony, and Respondent presented the testimony of Counsel. Counsel testified he has been practicing law for forty-three or forty-four years, and ninety-five percent of his practice involves criminal law. He testified he was retained to represent Applicant and met with Applicant approximately twenty-five to thirty times. He further testified Applicant is a very bright person but has psychological and emotional issues. He explained Applicant hears what he wants to hear and sees what he wants to see. Counsel also testified he reviewed everything with Applicant.

He also testified he reviewed the elements of self-defense with Applicant. He testified, however, Applicant was under a restraining order at the time of the shooting and did not have the right to have a gun. He further testified there was no indication Applicant was in fear of his life. He explained based on this, there was no evidence of self-defense. Counsel testified at one point, Applicant told him he and Mr. Bell were grappling over the gun; but at other times, Applicant gave a different story. He explained based on the varying stories Applicant told, Applicant could have been impeached at trial. He further explained Applicant never told law enforcement he and Mr. Bell were fighting over the gun. In fact, Applicant never told law enforcement he was attacked or struck by Mr. Bell. He testified the friend who drove Applicant to the mall did not see any fight between Applicant and Mr. Bell. He further testified in his conversations with Applicant, he attempted to dissuade Applicant from thinking self-defense was a viable option. Counsel testified, however, Applicant had the absolute right to take the stand at trial and present self-defense, but the solicitor would have “crucified” him on cross-examination with his conflicting statements.

Counsel testified he pursued a plea to voluntary manslaughter from the solicitor, but the solicitor rejected that idea. He further testified based on his research, he realized a charge on voluntary manslaughter was not likely in this case. He explained Applicant was in a state of mind where Ms. Bell was the source of all of his discontent and Mr. Bell added to that discontent because he was interfering in Ms. Bell and Applicant's marriage. He further explained Mr. Bell was at the rear of his car with his back to the open car door when Applicant shot him, and there was nothing in the evidence to corroborate a physical confrontation between Applicant and Mr. Bell. Counsel testified this was not a self-defense scenario, nor were there words to incite the shooting. He further testified Applicant stated he shot Mr. Bell because Mr. Bell hurt him emotionally. He testified there was no indication of sufficient legal provocation. He further testified Applicant had the gun unlawfully, and there was no gun found on Mr. Bell. He explained self-defense would not have been available and voluntary manslaughter was not a reasonable or likely alternative, so they were left with murder. Counsel also testified blaming Mr. Bell, and highlighting the fact he had cocaine in his system at the time of death, would be a "dicey position." He testified he explained this to Applicant.

He further testified he was certain he discussed the distance of the shots and the autopsy report with Applicant. He testified he is familiar with the forensic pathologist in this case and has met with her and cross-examined her in a number of other homicide cases, so he what to what she would testify. He explained he is familiar with how pathologists use the term "distant," which means the wound is a no contact wound without any stippling. He further explained he is aware "distant" refers to a distance of eighteen to twenty-four inches, or greater, and may not leave GSR. He testified he does not specifically recall telling Applicant "distant" meant eighteen inches. Counsel also testified even though GSR was found on Mr. Bell, he determined, based on

all of the evidence, this was not a fact worth bringing this case to trial. He testified the GSR also could have gun from a gun, from firing, a gun, or from Mr. Bell touching any other metallic surface.

Counsel also testified the 911 tape was the most evocative thing he has heard and it would reduce people in the courtroom at trial to a palpable silence. He explained Ms. Bell made the 911 call fifteen to twenty seconds after she was shot. He further explained Ms. Bell is heard sobbing and crying “daddy, daddy, daddy” on the call. Counsel testified had they proceeded to trial, this call would have been damning, and he explained to Applicant this would be a key element to the prosecution. He further testified he did not even want Applicant to hear the call due to his fragile state of mind, but he played the recording for Applicant. He testified after playing the call, Applicant stated: “I see what you mean now.” He further testified based on this, they made a strategic decision to angle for a plea to murder.

He testified in preparing this case, he considered the fact capital cases were frequent at that time. He further testified the State advised him they may seek the death penalty if Applicant did not plead. He testified he explained this to Applicant and also explained the State would seek the death penalty due to an aggravating factor. He explained the death penalty was a possibility based on three things: (1) the Lexington County Solicitor’s Office at the time; (2) the shooting occurred in a busy mall parking lot; and (3) the use of a gun and the potential threat to others. He further explained he did not believe proceeding to trial on a capital case would be a good decision for Applicant.

Counsel also testified he learned from Applicant he and Ms. Bell had been to family/church counseling in attempt to remedy their marital problems. He testified he spoke with their counselor, who could not release his notes to Counsel. He further testified the

counselor told Counsel he did not want to see his notes and did not want him to testify at trial. Counsel also testified Applicant had offered a friend of his \$15,000 to beat up Ms. Bell.

He further testified based on his investigation, he realized a plea to murder at a specific sentencing range would be the best option. Counsel also testified he made a typo in his letter (Applicant's Exhibit #3) to Applicant, as clearly thirty years to life is a the potential sentence for murder. He explained despite this typo, he discussed all potential sentences, including day-for-day sentences for murder, with Applicant. He further explained Applicant knew voluntary manslaughter carried between two and thirty years and murder carried thirty years to life. Counsel testified Applicant always wanted to plead guilty and wanted to control the amount of time he would serve. He explained Applicant always sought the best deal he could get but knew he would have to serve time for any offense. He testified he believed the solicitor did not want to put the victims' family through the emotion of a criminal trial. He further testified on a phone call between him, the elected solicitor, the deputy solicitor, and the plea court, the State stated it would not oppose a fifty-year sentence, and the plea court agreed that sentence would be reasonable, which Counsel explained to Applicant that same night or the next day. He testified although this was a plea without negotiations or recommendations, he would not have walked Applicant into that courtroom to plead guilty without informing him of the phone conversation and the likelihood of the fifty-year sentence.

Counsel testified Applicant appeared to understand everything they discussed. He further testified Applicant made the decision to plead guilty knowing all of his constitutional rights, all of the opportunities, and all of the risks of proceeding to trial in Lexington County with these facts and the assaultive history of Ms. Bell by Applicant.

Counsel did not recall Applicant asking for a reconsideration of his sentence. He testified there would have been no meritorious basis to move for a reconsideration. He further testified the fifty-year sentence was as fair as Applicant was going to get.

Following Counsel's testimony, Applicant testified in reply. Applicant testified he would not have pled guilty if he were properly advised and would not have responded to the plea court's questions in the manner he did if he had been properly advised. He testified he told Counsel he and Mr. Bell were fighting over the gun, but they did not discuss it in detail. He further testified he and Counsel did not discuss voluntary manslaughter. He also testified he was unaware of the conversation regarding the fifty-year sentence, and he thought he could get less than fifty years. Applicant testified he asked Counsel to file a motion for reconsideration at the plea, but Counsel filed a notice of appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017).

Applicant's allegations are ineffective assistance of counsel for: (1) failing to prepare for trial; (2) failing to investigate; (3) improperly advising Applicant of the possibility of the State seeking the death penalty; and (4) failing to file a motion for reconsideration.

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985).

When an applicant alleges ineffective assistance of counsel as a ground for relief, the 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*, at 441, 334 S.E.2d at 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, at 441, 334 S.E.2d at 813. The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” *Cherry*, at 117, 385 S.E.2d at 625 (citing *Strickland*). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

After careful review based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court’s findings in regards to each of Applicant’s allegations of ineffective assistance of counsel.

Counsel's alleged failure to prepare for trial

Applicant alleges Counsel was ineffective for failing to prepare for trial. In particular, Applicant alleges Counsel was ineffective for failing to fully inform Applicant of all of the facts and for failing to discuss the evidence with Applicant. “There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). Moreover, when there is evidence counsel met with Applicant in preparation for trial and there is no evidence additional preparation on the part of counsel would have affected the outcome at trial, counsel cannot be said to have been ineffective. *Harris v. State*, 377 S.C. 66, 659 S.E.2d 140 (2008), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018).

This Court finds Counsel’s testimony with respect to this allegation very credible, whereas Applicant’s testimony is not credible. Counsel testified he met with Applicant approximately twenty-five to thirty times. During these meetings, they discussed everything, including potential sentences, the elements of self-defense, voluntary manslaughter, Applicant’s constitutional rights, and the opportunities and risks of proceeding to trial in Lexington County. Counsel also testified he reviewed all of the evidence with Applicant, including the 911 recording. Indeed, counsel played the 911 recording for Applicant prior to the plea. Furthermore, Counsel testified Applicant always wanted to plead guilty, and he made that decision knowing everything that would be presented and raised at trial. In addition, this Court finds this allegation is conclusively refuted by the record. At his plea, Applicant informed the plea court he shared with Counsel everything he knew about the facts and circumstances surround his case, any potential witnesses, and anything that could help Counsel defend him at

trial. Tr. 15. Counsel was preparing for trial, as he not only reviewed with Applicant the elements of the charge and potential sentences but also reviewed with Applicant the discovery and the risks and benefits at trial. In addition, counsel reviewed the extent of the evidence against Applicant with him, particularly highlighting the likelihood of prevailing at trial, possible evidentiary challenges, and assessing potential meritorious defenses. This Court, therefore, finds Applicant has failed to establish any deficiency on the part of Counsel. *See Harris*, at 75, 659 S.E.2d at 145 (finding trial counsel was not deficient when he had been practicing law for a number of years and had met with the applicant, however brief, particularly in light of the fact counsel is presumed to have rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case).

This Court similarly finds Applicant has presented no evidence which would establish any prejudice on the part of Applicant. In particular, Applicant has wholly failed to provide this Court with any evidence as to what benefit could have been realized from additional preparation by Counsel. *See Harris*, at 75, 659 S.E.2d at 145 (“Furthermore, Harris did not offer any evidence or argument as to how counsel’s alleged lack of preparation prejudiced him. Therefore, it is merely speculative that counsel’s alleged deficient performance was prejudicial to Harris.”). Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel’s alleged failure to investigate

Applicant further contends Counsel was ineffective for failing to investigate. In particular, Applicant contends Counsel was ineffective for failing to investigate the medical and forensic records of the victims, for failing to investigate the forensic evidence, for failing to investigate the forensic pathology or interview the forensic pathologist, for failing to interview Applicant’s ex-wife, Ms. Bell, and for failing to investigate the gunshot residue. Applicant

specifically alleges had Counsel investigated these things, he would have been entitled to a defense of self-defense or voluntary manslaughter.

“Counsel’s concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law.” *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). “Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.” *Tucker*, 350 F.3d at 442 (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Strickland*, 466 U.S. at 691; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter*, at 385-86, 629 S.E.2d at 357, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836 (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

Here, Counsel testified he reviewed the evidence, including the autopsy report, with Applicant. He testified although he did not meet with the forensic pathologist, he is very familiar with her as an expert and as a witness based on his experience trying homicide cases. He explained because of this familiarity with the forensic pathologist, he knew how she would testify and also knew what she meant by “distant.” Counsel also met with Applicant and Ms. Bell’s counselor in an effort to determine whether or not they were attempting to mend their relationship. Additionally, Counsel testified based on his review of the facts, the evidence, and his research, defenses of self-defense and voluntary manslaughter were precluded. Based on the

foregoing, this Court finds Applicant has failed to establish any deficiency on the part of Counsel.

This Court further finds Applicant has failed to establish any resulting prejudice from the alleged deficiency. To the extent Applicant alleges Counsel should have interviewed Ms. Bell, Applicant did not present the testimony of Ms. Bell at the evidentiary hearing. Applicant's bare assertions as to what Ms. Bell would have testified, without more, do not give rise to the level of proof required for Applicant to meet his burden. *See Porter*, at 385-86, 629 S.E.2d at 357 ("Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.").

To the extent Applicant alleges Counsel's investigation would have allowed Applicant to present a defense of self-defense at trial, this Court finds this allegation is wholly without merit. "A self-defense charge is not required unless it is supported by the evidence." *State v. Slater*, 373 S.C. 66, 69, 644 S.E.2d 50, 52 (2007) (citing *State v. Goodson*, 312 S.C. 278, 280, 440 S.E.2d 370, 372 (1994)). In order to establish a defense of self-defense, the defendant must: (1) be without fault in bringing on the difficulty; (2) have been in actual imminent danger of losing his life or sustaining serious bodily injury; (3) show that a reasonably prudent person of ordinary firmness and courage would have entertain the belief he was actually in imminent danger and the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or death, if the defense is based upon a defendant's belief of imminent danger; and (4) have had no other probable means of avoiding the danger. *Id.* at 69-70, 644 S.E.2d at 52. A defendant "who provokes or initiates an assault cannot claim self-defense unless he both withdraws from the conflict and communicates his withdrawal by word or act to his adversary." *State v. Jackson*, 384 S.C. 29,

36, 681 S.E.2d 17, 20-21 (Ct. App. 2009). Here, Applicant approached Ms. Bell at her place of work and followed her and Mr. Bell out to their car. After Ms. Bell got into the car, while Applicant and Mr. Bell were speaking outside of the car, Applicant then pulled a gun and shot Mr. Bell three times, including once to the back. There was no indication Mr. Bell did anything to incite the violence, nor that Applicant was in fear for his life. Indeed, no weapon was ever found on Mr. Bell. Moreover, although he indicated at one time there was a struggle for the gun, Applicant failed to mention any struggle over the gun to law enforcement shortly after the shooting occurred. In fact, Applicant's own friend stated he did not see a struggle over the weapon. Applicant also admitted he shot Mr. Bell because he hurt him emotionally. Based on the foregoing, Applicant was not without fault in bringing on the difficult and also was not in imminent danger of loss of life or serious bodily injury.

This Court similarly finds Applicant's allegation he would have been entitled to a charge on voluntary manslaughter had Counsel investigated is also without merit. A trial court is required to charge a jury on the lesser-included offense "if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." *State v. Gourdine*, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996) (emphasis added). If, however, there is no evidence the defendant committed the lesser rather than the greater offense, the trial court should refuse to charge the lesser-included offense. *State v. Smith*, 315 S.C. 547, 549, 446 S.E.2d 411, 413 (1994). Voluntary manslaughter is defined as "the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation." *State v. Cooley*, 342 S.C. 63, 67, 536 S.E.2d 666, 668 (2000) (citing *State v. Cole*, 338 S.C. 97, 525 S.E.2d 511 (2000)). The sudden heat of passion upon sufficient legal provocation "need not dethrone reason entirely, or shut out knowledge or volition, must be such as would naturally disturb the sway of reason, and render

the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence.” *State v. Knoten*, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001) (quoting *State v. Cole*, at 101-02, 525 S.E.2d at 513). As aforementioned, there was nothing to indicate Mr. Bell did anything to evoke the “sudden heat of passion” in Applicant. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel’s alleged failure to file for a motion for reconsideration

Applicant further alleges Counsel was ineffective for failing to file a motion for reconsideration of his sentence. Applicant testified he asked Counsel to file a motion for reconsideration immediately after his plea, but Counsel never filed one and instead filed a notice of appeal. Counsel, however, testified he did not recall Applicant asking him to file a motion for reconsideration. This Court finds Counsel’s testimony very credible, whereas Applicant’s testimony is not. Accordingly, because Applicant did not ask Counsel to file a motion for reconsideration of his sentence, Applicant has failed to establish Counsel was deficient.

Similarly, this Court finds Applicant has wholly failed to establish any resulting prejudice from the alleged deficiency. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. *State v. Franklin*, 267 S.C. 240, 226 S.E.2d 896 (1976); *Clark v. State*, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, the applicant must prove the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. *Clark*, at 378, 192 S.E.2d at 209; *State v. Cogdell*, 273 S.C. 563, 257 S.E.2d 748 (1979). Here, Applicant was

charged with murder and ABWIK.⁴ “A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life.” S.C. Code Ann. § 16-3-20(A). Applicant was sentenced to a term of imprisonment of fifty years for murder and twenty years for ABWIK. The sentence Applicant received was well within the sentencing range prescribed. Accordingly, this allegation must be denied and dismissed with prejudice.

Counsel's alleged improper advice regarding the death penalty

Applicant alleges Counsel was ineffective for failing to accurately advise him regarding the death penalty. “A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life.” S.C. Code Ann. § 16-3-20(A). “When the State seeks the death penalty, . . . if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment.” S.C. Code Ann. §16-3-20(B). Such aggravating factors include: “The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.” S.C. Code Ann. § 16-3-20(C)(3). Applicant testified Counsel informed him he would be eligible for and the State would seek the death penalty based on an aggravating factor. He further testified Counsel never explained to him why he would be eligible. On the other hand, Counsel testified at the time of Applicant’s case, Lexington County frequently sought the death penalty and the State advised him they might seek the death penalty in this case, which he explained to Applicant. Furthermore, this shooting occurred in the middle of a crowded mall parking lot. This Court finds Counsel’s testimony with respect to this allegation very credible,

⁴ In 2010, the State Legislature repealed section 16-3-620, which defined ABWIK. Now, any reference to ABWIK in the 1976 Code refers to attempted murder as defined in section 16-3-29. 2010 Act No. 273, § 7.C. A person convicted of attempted murder “must be imprisoned for not more than thirty years.” S.C. Code Ann. § 16-3-29.

whereas Applicant's testimony is not credible. This Court further finds because Counsel's advice to Applicant was correct, Applicant has wholly failed to prove Counsel was deficient.

Similarly, this Court finds Applicant has wholly failed to prove any resulting prejudice from this alleged deficiency. Counsel testified Applicant always wanted to plead guilty and always wanted to be in control of the amount of time he would get. Moreover, Counsel testified Applicant made the decision to plead guilty knowing all of the risks, including the possibility of the death penalty, and benefits at trial. Accordingly, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

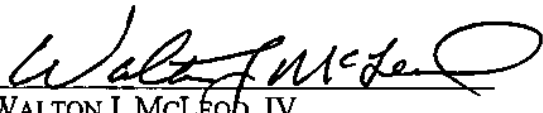
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief 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. That this application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED this 5 day of DECEMBER, 2018.


WALTON J. MCLEOD, IV
Presiding Judge
Eleventh Judicial Circuit

LEXINGTON, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3204648

Michael James Young #345614
Jr

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

12/5/2018

Date

For Clerk of Court Office Use Only

This judgment was entered on December 5th 2018, and a copy mailed first class or placed in the appropriate attorney's box on December 5th 2018, to attorneys of record or to parties (when appearing pro se) as follows:

Robert William Mills 1728 Main St., Ste. 213 Columbia, SC
29201

Kelly Oppenheimer Rembert C. Dennis Building PO Box
11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

LISA COMER/jp

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

County of LexingtonMichael James Young Jr #345614
Full name and prison number (if any) of Applicant

v.

State of South Carolina

FILED

IN THE COURT OF COMMON PLEAS

2020 JUN 15 PM 2:16

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

APPLICATION FOR

POST-CONVICTION RELIEF

2020CP3202106

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution;
South Carolina Department of Corrections
2. Name and location of Court which imposed sentence 11th Judicial Circuit
Court of General Sessions (Lexington, SC)
3. Name(s) of co-defendant(s) (if any) Brian Leagones
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-32-2948 Murder
 - (b) 2007-GS-32-2949 ABWIK

(c) 2007-GS-32-2950 Poss. of FIREARM

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

(a) April 11th, 2011 50 YEARS

(b) April 11th, 2011 20 YEARS

(c) April 11th, 2011

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

Yes

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

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

i. South Carolina Court of Appeals

ii. South Carolina Court of Common Pleas (P.C.R.)

iii.

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

i. Affirmed Conviction + Sentence

ii. Dismissed PCR Application

iii.

(c) the date of each such result:

i. February 10, 2012

ii. On or Around December 2018 (Upon Information + Belief)

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)

(b)

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Please See Exhibit 1
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Please See Exhibit 1
- (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? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (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? Yes
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. Please see case 2012-CP-32-04648
- ii. "
- iii. _____
- iv. "
- (b) the name and location of the Court in which each was filed:
- i. 11th Judicial Circuit (Common Pleas) Lexington, SC
- ii. "
- iii. _____
- iv. "

(c) the disposition thereof:

- i. Please see Case 2012-CP-32-04648
- ii. "
- iii. "
- iv. "

(d) the date of each such disposition:

- i. Please see Case 2012-CP-32-04648
- 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. N/A
- ii. N/A
- iii. N/A

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

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

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

(a) Petitioner wasn't made aware of dismissal
 (b) or Avenues of Appeal.
 (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? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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. Todd Rutherford
Columbia, SC
 ii. John Delgado
Columbia, SC
 iii. Robert W. Mills
Columbia, SC

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

i. Pre-Trial
 ii. Pre-trial / Guilty Plea
 iii. Post-Conviction Relief

EXHIBIT ONE

ISSUE #1: Petitioner did not Voluntarily, Knowingly, or Intelligently waive his right to appeal the Order of Dismissal in first Post-Conviction Relief proceedings (Case #: 2012-CP-32-04648).

Statement of Facts

During the pendency of this above-mentioned proceeding, Petitioners post-conviction Attorney, Robert W. Mills, passed away and because of this petitioner was not made aware of his post-conviction relief case being dismissed, he was not made aware that a Rule 59(e) was prepared and filed, nor was he made aware of the rule 59(e) motion being denied.

The evidentiary hearing was held November 9, 2018 before the Honorable Walton J. McLeod, IV.

Petitioner was represented by Robert W. Mills. Upon information and belief, an Order of Dismissal was filed December 20, 2018. Petitioner Counsel filed a motion to alter judgement on December 20, 2018, which was denied on January 29, 2019.

Mr. Mills passed away February 16, 2019, therefore didn't file a timely notice of appeal. It isn't known at this if Mr. Mills was aware of the order denying the motion to alter judgement prior to his untimely death.

Between the end of December 2019 and the beginning of January 2020, Petitioner heard about the passing of Mr. Mills and was told that it seemed that his Post Conviction case concluded without Petitioners knowledge. It was then that Petitioners family contacted Attorney Elizabeth Best-Franklin and she filed a 'Motion to Allow Appeal of Denial of Post-Conviction Order of Dismissal...' with the South Carolina Supreme Court (Please see Enclosed Motion).

As stated in Attorneys Best's motion¹, Robert Mills passed away on February 16, 2019 (*In the Matter of Robert W. Mills, deceased. Appellate case no. 2019-000291*) and by an Order dated February 27, 2019 the South Carolina Supreme Court entered an order appointing Peyre Lumpkin as Receiver of Mr. Mill's files. It also seems that the Attorney Generals office didn't send Mr. Lumpkin a copy of the order of dismissal and the order denying the motion to alter judgement until June 2019.

At no time did Mr. Lumpkin or anyone from his office contact Petitioner to inform him that Mr. Mills had passed away and that he would need to seek new counsel. Nor did Mr. Lumpkin or anyone from his office advise Petitioner of the Order of Dismissal. Nor was Petitioner advised that he could appeal such dismissal or by what avenue to even seek appellate review. In fact, Petitioner has never received a correspondence from Mr. Lumpkin or his office and he has never even met Mr. Lumpkin or anyone from his office concerning his post-conviction proceedings. Within her motion to the South Carolina Supreme Court, Attorney Best also notes that Mr. Lumpkin office confirmed that they did not send a letter to Petitioner informing him of the death of Mr. Mills and that he needed to seek new counsel.

Due to attorneys death, Petitioner was prejudiced and denied a full and fair opportunity to seek appellate review as he would have most certainly done.

Additionally, Petitioner has not received a copy of the Order of Dismissal, the Motion to Alter Judgement, the Order Denying the Motion to Alter Judgement, or the transcript of the evidentiary hearing from the Court(s) or any Attorney. Petitioner deserves the right to appeal judgement.

Petitioner would also note that due to the elapsed time, without the Order of Dismissal, the motion to alter or amend judgement and the transcript of the evidentiary hearing, while it may be possible to file

¹ Motion was dismissed without prejudice and Petitioner was advised to file another PCR in the circuit court.

an appeal, it would be **extremely** difficult for him to recognize, address and properly lay out appealable issues without them.

EXHIBIT TWO

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walter J. McLeod, IV, Circuit Court Judge

Case No. 2012-CP-32-04648

STATE OF SOUTH CAROLINA,.....Respondent,

vs.

MICHAEL JAMES YOUNG, JR. (#345614).....Petitioner.

**MOTION TO ALLOW APPEAL OF DENIAL OF POST-CONVICTION
ORDER OF DISMISSAL PURSUANT TO *AUSTIN V. STATE*, 305 S.C. 453, 409
S.E.2d 395 (1991).**

Respectfully, Petitioner asks this Court to allow him to pursue an appeal of the denial of his post-conviction relief proceeding. During the pendency of this proceeding, Petitioner's attorney passed away, and Petitioner was not made aware of the denial of his 59(e) motion. He did not voluntarily, knowingly, or intelligently waive his right to appeal and respectfully asks this Court to grant him an appeal at this point.

Petitioner was indicted by the Lexington County grand jury during its October 2007 term for murder (2007-GS-32-2948), assault and battery with intent to kill (2007-GS-32-2949) and possession of a firearm during the commission of a violent crime (2007)GS-32-2950). He was represented by John Delgado. On April 11, 2011, he pleaded guilty before the Honorable Thomas R. Russo to murder and ABWIK. He received a term of imprisonment of fifty (50) years for murder and twenty (20) years for ABWIK. Petitioner then sought an appeal, but by order dated February 10, 2012, the Court of Appeals dismissed the appeal for failing to show how any issue was preserved for appellate review as required by Rule 203(d)(1)(B)(iv), SCACR. The *remittitur* was issued on March 7, 2012.

Petitioner then filed an application for post-conviction relief on November 21, 2012. An evidentiary hearing was held on November 9, 2018 before the Honorable Walton J. McLeod, IV. Petitioner was represented by Robert Mills. An order of dismissal was filed on December 5, 2018. Counsel filed a motion to alter judgment on December 20, 2018, which was denied on January 29, 2019.¹

By order dated February 27, 2019, this Court entered an order appointing Peyre Lumpkin as receiver of Petitioner's lawyer's files and noted that Mr. Mills passed away on February 16, 2019. *In the Matter of Robert W. Mills, deceased. Appellate Case No. 2019-000291*. According to communications with Taylor Smith, assistant Attorney General, their office sent Mr. Lumpkin a copy of the order of dismissal and the order denying the motion to alter the judgment in June, 2019.

¹ Petitioner was also convicted in federal court for conspiracy to purchase a mail bomb and was sentenced to 43 years in prison. *United States v. Michael Young, Jr.*, Case No. 3:17-cr-00575-001.

Petitioner informs counsel that he was unaware that his case became final because he did not receive any communications from Mr. Mills informing him of that fact. Undersigned counsel confirmed with Ms. Patty Lundy with the receivers office that they did not send a letter to Petitioner informing him of the death of Mr. Mills and that he needed to seek new counsel. It appears that the receiver's office believed, based on the condition of the file, that it was a closed matter.

The right to seek appellate review of the denial of PCR is expressly authorized by state law. *S.C. Code Ann.* §17-27-100 (1985); Supreme Court Rule 50(9). Whether such review is granted is discretionary with the Court. *Knight v. State*, 284 S.C. 138, 325 S.E.2d 535 (1985). Petitioner respectfully asks this Court to grant him the right to appeal the denial of his PCR belatedly because he did not knowingly, intelligently or voluntarily waive his right. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

Petitioner also respectfully requests that this Court appoint the South Carolina Office of Indigent Defense, Appellate Division to represent him. Attached to this motion is a copy of an affidavit of indigency. Counsel has the original in her possession.

Respectfully submitted,

Elizabeth Franklin-Best
Elizabeth Franklin-Best, P.C.
2725 Devine Street
Columbia, South Carolina 29205
(803) 331-3421
elizabeth@franklinbestlaw.com

January 23, 2020

Cc: Robert M. Dudek
Michael Young, Jr.

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

Opportunity to Appeal dismissal of
Case: 2012-CP-32-04648

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

No

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, Michael S. Young Sr, 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.

[Signature]

SWORN to and subscribed before me this 4th
 day of June, 2020.

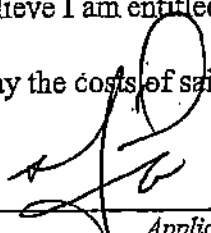
[Signature] (L.S.)
 Notary Public

My Commission Expires: 09/04/2029

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

I, Michael S. Goulet Jr., 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.


Applicant

SWORN or affirmed to and subscribed before me this

14th day of June, 2020.


Notary Public

My Commission Expires: 09/04/2029

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

Michael James Yang Jr #345614

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

Submitted By: Michael J. Yang Jr

Address: LEE Correctional Institution

990 Wisacky Hwy

Bishopville, SC 29010

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

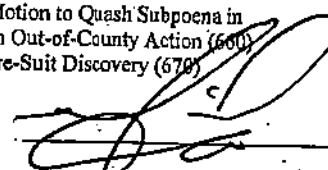
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|---|
| <p>Contracts</p> <p>☐ Constructions (100)</p> <p>☐ Debt Collection (110)</p> <p>☐ General (130)</p> <p>☐ Breach of Contract (140)</p> <p>☐ Fraud/Bad Faith (150)</p> <p>☐ Failure to Deliver/Warranty (160)</p> <p>☐ Employment Discrim (170)</p> <p>☐ Employment (180)</p> <p>☐ Other (199)</p> | <p>Torts - Professional Malpractice</p> <p>☐ Dental Malpractice (200)</p> <p>☐ Legal Malpractice (210)</p> <p>☐ Medical Malpractice (220)</p> <p>Previous Notice of Intent Case # <u>20 -NI-</u></p> <p>☐ Notice/ File Med Mal (230)</p> <p>☐ Other (299)</p> | <p>Torts - Personal Injury</p> <p>☐ Conversion (310)</p> <p>☐ Motor Vehicle Accident (320)</p> <p>☐ Premises Liability (330)</p> <p>☐ Products Liability (340)</p> <p>☐ Personal Injury (350)</p> <p>☐ Wrongful Death (360)</p> <p>☐ Assault/Battery (370)</p> <p>☐ Slander/Libel (380)</p> <p>☐ Other (399)</p> | <p>Real Property</p> <p>☐ Claim & Delivery (400)</p> <p>☐ Condemnation (410)</p> <p>☐ Foreclosure (420)</p> <p>☐ Mechanic's Lien (430)</p> <p>☐ Partition (440)</p> <p>☐ Possession (450)</p> <p>☐ Building Code Violation (460)</p> <p>☐ Other (499)</p> |
| <p>Inmate Petitions</p> <p>☒ PCR (500)</p> <p>☐ Mandamus (520)</p> <p>☐ Habeas Corpus (530)</p> <p>☐ Other (599)</p> | <p>Administrative Law/Relief</p> <p>☐ Reinstate Drv. License (800)</p> <p>☐ Judicial Review (810)</p> <p>☐ Relief (820)</p> <p>☐ Permanent Injunction (830)</p> <p>☐ Forfeiture-Petition (840)</p> <p>☐ Forfeiture-Consent Order (850)</p> <p>☐ Other (899)</p> | <p>Judgments/Settlements</p> <p>☐ Death Settlement (700)</p> <p>☐ Foreign Judgment (710)</p> <p>☐ Magistrate's Judgment (720)</p> <p>☐ Minor Settlement (730)</p> <p>☐ Transcript Judgment (740)</p> <p>☐ Lis Pendens (750)</p> <p>☐ Transfer of Structured Settlement Payment Rights Application (760)</p> <p>☐ Confession of Judgment (770)</p> <p>☐ Petition for Workers Compensation Settlement Approval (780)</p> <p>☐ Other (799)</p> | <p>Appeals</p> <p>☐ Arbitration (900)</p> <p>☐ Magistrate-Civil (910)</p> <p>☐ Magistrate-Criminal (920)</p> <p>☐ Municipal (930)</p> <p>☐ Probate Court (940)</p> <p>☐ SCDOT (950)</p> <p>☐ Worker's Comp (960)</p> <p>☐ Zoning Board (970)</p> <p>☐ Public Service Comm. (990)</p> <p>☐ Employment Security Comm (991)</p> <p>☐ Other (999)</p> |
| <p>Special/Complex /Other</p> <p>☐ Environmental (600)</p> <p>☐ Automobile Arb. (610)</p> <p>☐ Medical (620)</p> <p>☐ Other (699)</p> <p>☐ Sexual Predator (510)</p> <p>☐ Permanent Restraining Order (680)</p> | <p>☐ Pharmaceuticals (630)</p> <p>☐ Unfair Trade Practices (640)</p> <p>☐ Out-of State Depositions (650)</p> <p>☐ Motion to Quash Subpoena in an Out-of-County Action (660)</p> <p>☐ Pre-Suit Discovery (670)</p> | | |

Submitting Party Signature: 

Date: 6/4/2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Lexington County Clerk
205 E. Main St.
Lexington, SC 29072

Re: P.C.R. Application

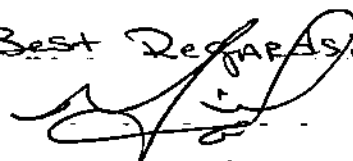
Sir or Ma'am:

Enclosed, please find a Post-Conviction
Relief Application.

If possible, please send me
a stamped copy upon filing.

I appreciate your anticipated
assistance regarding this matter.

Best Regards,


Michael J. Young Jr. #345614
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

FILED		
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Michael James Young, Jr., SCDC #45614	)	Case No. 2020-CP-32-2106
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(COUNSEL APPOINTED)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Michael James Young, Jr. (Applicant) on June 15, 2020, the State makes this return:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on June 14, 2007, following an investigation into the murder of Robert Lynn Bell. During its October 2007 term, the Lexington County Grand Jury indicted Applicant for murder (2007-GS-32-2948); assault and battery with intent to kill (ABWIK) (2007-GS-32-2949); and possession of a firearm during the commission of a violent crime (2007-GS-32-2950).

On April 11, 2011, Applicant appeared before the Honorable Thomas A. Russo and pleaded guilty as indicted to murder and ABWIK without negotiations or recommendations from the State as to sentencing. The State dropped the weapons charge in exchange for Applicant's plea. John D. Delgado, Esquire, represented Applicant. Assistant Solicitor Colleen E. Dixon prosecuted the case. Judge Russo accepted Applicant's plea and sentenced him to concurrent terms of fifty years' imprisonment for murder and twenty years for ABWIK.

Applicant filed a timely notice of appeal. On February 13, 2012, the Court of Appeals dismissed Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed. *Michael Young v. State*, (S.C. Ct. App. filed February 13, 2012). The case was remitted back to the circuit court on March 7, 2012.

2012-CP-32-4648

On November 21, 2012, Applicant filed a post-conviction relief application, alleging he was being held in custody unlawfully based on (excerpted verbatim):

1. Ineffective Assistance of Trial Counsel
 - a. "Trial counsel failure[sic] to interview the forensic pathologist, which would have provided a defense indicating the victim's wounds could not be determined by a medical certainty the order of entry of the bullet and as a result could have required the charge of voluntary manslaughter or other defense's[sic]."
 - b. "Trial counsel failure[sic] to interview the Applicant's ex-wife render counsel's assistance ineffective. Applicant's ex-wife could have provided testimony indicating the Applicant possibly[sic] engaged in a self-defense struggle with the victim and as such had to protect his person, requiring[sic] a self-defence[sic] instruction at trial."
2. Ineffective Assistance of Appellate Counsel.
 - a. "The Applicant received ineffective assistance of appellate counsel in violation of the Sixth Amendment to the United States Constitution when counsel failed to allow the Applicant to fully participate in the appeal process."

The State requested an evidentiary hearing through its return on March 3, 2014. On November 9, 2018, the PCR court convened an evidentiary hearing before the Honorable Walton J. McLeod, IV. Applicant ultimately proceeded only on the following claims:

1. Failures of the Applicant's trial counsel to fully inform him of all of the facts of the case;
2. Failure of trial counsel to review all evidence with applicant before the court date;
3. Failure of trial counsel to fully investigate the facts;

4. Failure of trial counsel to investigate the medical and forensic records of the alleged victims;
5. Failure of trial counsel to file a motion for reconsideration of sentence;
6. Failure of trial counsel to investigate the forensic evidence;
7. Failure of trial counsel to investigate the forensic pathology or interview the forensic pathologist;
8. Failure of trial counsel to accurately advise Applicant when trial counsel communicated to Applicant that Applicant was facing a possible death sentence;
9. Failure of trial counsel to interview Applicant's ex-wife;
10. Failure of trial counsel to investigate and advise Applicant correctly on the forensic evidence including the gun shot residue; and
11. The forensic failure to appellate counsel to consult with Applicant.

Applicant was present at the hearing and represented by Robert W. Mills, Esquire. Assistant Attorney General Kelly Oppenheimer appeared on behalf of the State. Applicant and Counsel Delgado both testified at the hearing. By order signed and filed December 5, 2018, Judge McLeod denied the application on all grounds and dismissed the action with prejudice.

Applicant, through PCR counsel, filed a timely motion to alter or amend pursuant to Rule 59(e), SCRPC. The State filed a return. By order dated January 29, 2019, Judge McLeod denied Applicant's motion. The State served the formal order denying Applicant's 59(e) motion on February 5, 2019. Applicant did not appeal; however, by order dated February 27, 2019, the Supreme Court entered an order appointing Peyre Lumpkin as receiver of Mr. Mills' files and noted that Mr. Mills passed away on February 16, 2019. The State subsequently served the order denying Applicant's 59(e) motion on Mr. Lumpkin on June 20, 2019.

On January 27, 2020, Elizabeth Franklin-Best, on Applicant's behalf, filed a "Motion to Allow Appeal of Denial of Post-Conviction Order of Dismissal Pursuant to *Austin v. State*, 305, S.C. 453, 409 S.E.2d 395 (1991)" with the Supreme Court. On January 29, 2020, the Court issued an order dismissing the appeal without prejudice to allow Applicant to seek *Austin* relief by filing a PCR application in the circuit court. Applicant commenced this PCR action on June 15, 2020.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

1. [Applicant] did not Voluntarily, Knowingly, or Intelligently waive his right to appeal the Order of Dismissal in first Post-Conviction Relief proceedings (Case #: 2012-CP-32-4648).

Applicant requests relief in the form of an opportunity to appeal his prior PCR action.

Attached to this return and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; Applicant's appellate records, including the plea transcript; Applicant's prior post-conviction relief records challenging these convictions; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. RESPONSE TO AUSTIN CLAIM

Applicant alleges he was denied the right to appeal the dismissal of his previous post-conviction relief application because he did not receive notice of the entry of the order of dismissal, 59(e) motion, or order denying the 59(e) motion. Ms. Franklin-Best indicated in her motion that she confirmed with Ms. Patty Lundy with the receiver's office that they did not send a letter to Applicant informing him of the death of Mr. Mills. Ms. Franklin-Best further indicated that the receiver's office believed, based on the condition of the file, that it was a closed matter.

Our Supreme Court has held that every PCR applicant is entitled to a full and fair opportunity to present claims in one PCR application, or one "bite at the apple." *Odom v. State*, 337 S.C. 256, 261, 523 S.E.2d 753, 755 (1999). This "bite" includes an applicant's right to appeal the denial of a PCR application, and the right to assistance of counsel in that appeal. *Id.* at 261,

523 S.E.2d at 755–56. Accordingly, successive applications are generally disfavored “because they allow an applicant to receive more than ‘one bite at the apple.’ ” *Id.* at 261, 523 S.E.2d at 755; *see generally Graham v. State*, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008) (“A successive PCR application is one that raises grounds not raised in a prior application, raises grounds previously heard and determined, or raises grounds waived in prior proceedings.”).

However, our Supreme Court has allowed successive PCR applications where the applicant has been denied complete access to the appellate process. *Odom*, 337 S.C. at 261, 523 S.E.2d at 755; *cf.* S.C. Code Ann. § 17-27-100 (right to appeal final judgment by post-conviction relief court). *Austin* provides for belated appellate review of the denial of a prior PCR action after the statute of limitations has expired where PCR counsel’s failure to timely appeal prevented the applicant from seeking appellate review. 305 S.C. 453, 409 S.E.2d 395; *see, e.g., Hope v. State*, 328 S.C. 78 n.1, 492 S.E.2d 76 n.1 (1997) (permitting an *Austin* appeal where original PCR counsel failed to appeal from the first denial of PCR); *but see Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991) (limiting the reach of *Austin* and holding that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel).

A PCR applicant is entitled to an *Austin* appeal if the PCR judge affirmatively finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review of a previous PCR order was not knowingly and intelligently waived. *Odom*, 337 S.C. at 262, 523 S.E.2d at 756 (citing *King v. State*, 308 S.C. 348, 348–49, 417 S.E.2d 868 (1992)). If the PCR court finds the applicant was denied his or her right to appeal, the applicant can petition for certiorari and the Supreme Court will review whether he or she was prejudiced by the failure to obtain appellate review. *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. Alternatively, if

the PCR court finds the applicant never in fact sought discretionary review, the applicant may appeal that finding, and the Supreme Court will review the appeal based on the normal “any evidence” standard. *Id.* at 455, 409 S.E.2d at 396 (citing *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989) (highlighting that “any evidence” of probative value contained in the record is sufficient to uphold the PCR judge’s factual findings on appeal)); *see generally Drayton v. Evatt*, 312 S.C. 4, 11, 430 S.E.2d 517, 521 (1993) (explaining that this Court “give[s] great deference to a judge’s findings where matters of credibility are involved since we lack the opportunity to directly observe the witnesses”).

Because this allegation raises questions of fact which cannot be conclusively refuted by the record, the State requests an evidentiary hearing limited to this ground for relief.

IV. GENERAL DENIAL

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

[Conclusion and signature on following page]

V. CONCLUSION

WHEREFORE, the State requests an evidentiary hearing be held limited to Applicant's claim that he was denied his right to appeal the dismissal of his 2012 PCR application.

Respectfully submitted,

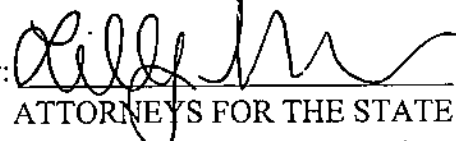
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By:



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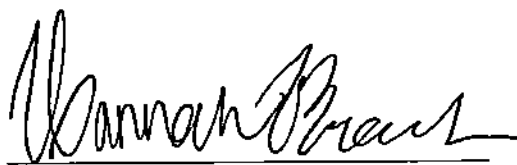
June 3, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2020-CP-32-2106
	)	
MICHAEL JAMES YOUNG, JR., #345614	)	
	)	
Applicant,	)	
	)	
vs	)	CERTIFICATE OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Ola A. Johnson, Esquire
Ola A. Johnson, Attorney at Law
PO Box 549
Lexington, SC 29071

DATED this 3rd day of June, 2021.


 Hannah M. Bradham, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	Case No. 2020-CP-32-2106
COUNTY OF LEXINGTON	)	
	)	
Michael Young Jr. (SCDC #345614),	)	Consent Order Granting <i>Austin</i>¹ Appeal
vs.	)	
	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before the Court by motion of counsel for the applicant, Elizabeth Franklin-Best and with the consent of Lilly Meadows of the South Carolina Attorney General's Office requesting this Court grant applicant an appeal of the denial of his previous order of dismissal in case 2012-CP32-4648. In granting this motion, I make the following findings of fact:

- WPC #1
- 1) Mr. Young is currently confined in the South Carolina Department of Corrections. He was arrested on June 14, 2007 and indicted for the murder (2007-GS-32-2948), assault and battery with intent to kill (2007-GS-32-2949), and possession of a firearm during the commission on a violent crime (2007-GS-32-2950).
 - 2) Mr. Young pleaded guilty as indicted to murder and assault and battery with intent to kill before the Honorable Thomas A. Russo. He was represented by John Delgado. The State was represented by Colleen E. Dixon. Mr. Young was sentenced to concurrent terms of 50 years' imprisonment for murder and 20 years for ABWIK.
 - 3) Mr. Young filed a timely notice of appeal. On February 13, 2012, the Court of Appeals dismissed his appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR, for failure to provide a sufficient explanation why his guilty plea appeal should proceed. *Michael Young v. State*, (S.C. Ct. App. filed February 13, 2012). The case was remitted back to circuit court on March 7, 2012.
 - 4) On November 21, 2012, Mr. Young filed an application for post-conviction relief. An evidentiary hearing was held November 9, 2018 before the Honorable Walton J. McLeod, IV. Mr. Young was represented by Robert W. Mills, Esquire. The State was represented by Kelly Oppenheimer of the South Carolina Attorney General's Office. Judge McLeod denied the application and the order of dismissal was filed December 5, 2018.
 - 5) Counsel filed a timely motion to alter or amend pursuant to Rule 59(e), SCRCP. By order dated January 29, 2019, Judge McLeod denied the motion.

¹ *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

- 6) Mr. Young did not appeal. His PCR counsel, Robert Mills died on February 16, 2019 and the South Carolina Supreme Court entered an order appointing Peyre Lumpkin as receiver of Mr. Mills' files. The State then served the order denying Applicant's 59(e) motion on Mr. Lumpkin on June 20, 2019.
- 7) Counsel for Mr. Young, Elizabeth Franklin-Best, then filed a motion to allow appeal of denial of post-conviction order of dismissal pursuant to *Austin v. State* with the South Carolina Supreme Court. On January 29, 2020, the Court issued an order dismissing the appeal without prejudice to allow Mr. Young to seek *Austin* relief by filing a PCR application in the circuit court.
- 8) Mr. Young filed the present action on June 15, 2020 seeking review of his case.

#2
I find granting Mr. Young an *Austin* appeal is warranted under the circumstances of this case. Mr. Young has indicated by his actions that he has intended to challenge his conviction and sentence. First, he filed a direct appeal which was denied by the South Carolina Court of Appeals. Additionally, Mr. Young has now filed two PCR applications asking the South Carolina courts to review his case. Also, Elizabeth Franklin-Best has represented to this Court and to the South Carolina Attorney General's Office that Mr. Young seeks further review of his convictions and sentence. Based on these facts, I find Mr. Young did not knowingly and voluntarily waive his right to appellate review of the denial of his order of dismissal and that he is now entitled to that review. I also find it is not necessary to have Mr. Young testify in this matter. In the interests of judicial economy, I issue this order without requiring an evidentiary hearing, as the State does not contest this order.

IT IS SO ORDERED.

January 24, 2022


 William P. Keesley, Circuit Judge