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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

PHILLIP KEATHE CAREY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212575

APPENDIX

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
) 2009-GS-23-2441 - 2443;
) 2445, 2446 and 2449
 3)
 4)
 5 State of South Carolina) TRANSCRIPT OF RECORD
 6 -vs-)
 7 Philip Keathe Carey)
 DEFENDANT)

ORIGINAL

9 November 9, 2009
 10 Greenville, South Carolina

11 B E F O R E:

12 THE HONORABLE EDWARD MILLER, Judge

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

14 Barbara Tiffin, Esquire
 Solicitor for the State

15 Chris Posey, Esquire
 Attorney for Defendant

21 CAROLINE HISKELL
 22 Circuit Court Reporter

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I N D E X

(There were no witnesses or exhibits presented.)

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P R O C E E D I N G

1
2 THE CLERK: Your Honor, this is Indictment
3 2009-GS-23-5242, Angel Dearrow Bowens, indicted for
4 conspiracy, pleading to Common law Conspiracy. It is a
5 Waiver.

6 Indictment 2009-GS-23-3974, Ricardo Cheeks
7 indicted for Armed Robbery, pleading to Strong Armed
8 Robbery. It is a Waiver.

9 Indictment 2009-GS-23-4636, James Moyer,
10 indicted for possession of methamphetamine, pleading to
11 the same. It is a Waiver.

12 Indictments 2009-GS-23-2443, 2009-GS-23-2446,
13 2009-GS-23-2449, Philip Keathe Carey, indicted for Armed
14 Robbery on all three, pleading to the same on all, and
15 they are all True Bill. 2009-GS-23-2441, indicted for
16 Burglary, first degree, pleading to Burglary, second
17 degree. It is a Waiver. Indictment 2009-GS-23-2442,
18 indicted for kidnapping, pleading to the same. It is a
19 True Bill. Indictment 2009-GS-23-2445, indicted for
20 Burglary, first degree, pleading to Burglary, second
21 degree. It is a True Bill, and there is a Order of
22 Restitution.

23 Please raise your right hand.

24 ANGEL BOWENS, RICARDO CHEEKS, JAMES MOYER,
25 PHILIP CAREY, having been duly sworn, testified as

1 follows:

2 THE COURT: We got some jail days.

3 MS. TIFFIN: One day on Ms. Bowens, 11 days
4 on Mr. Cheeks, 28 days on James Moyer, 118 on Mr. Carey.

5 THE COURT: In the last 24 hours have you had
6 any drugs alcohol or medication, Ms. Bowens?

7 DEFENDANT BOWENS: No, sir.

8 THE COURT: Mr. Cheeks?

9 DEFENDANT CHEEKS: No, sir.

10 THE COURT: Mr. Moyer?

11 DEFENDANT MOYER: No, sir.

12 THE COURT: Mr. Carey?

13 DEFENDANT CAREY: Yes, sir.

14 THE COURT: What?

15 DEFENDANT CAREY: Theoracet. It's for
16 migraines.

17 THE COURT: Does that limit your ability to
18 understand what you're doing?

19 DEFENDANT CAREY: No, sir.

20 THE COURT: Have you ever been treated for
21 the abuse of alcohol, drugs, mental illness or emotional
22 problems? Ms. Bowens?

23 DEFENDANT BOWENS: No, sir.

24 THE COURT: Mr. Cheeks?

25 DEFENDANT CHEEKS: No, sir.

1 THE COURT: Mr. Moyer?

2 DEFENDANT MOYER: No, sir.

3 THE COURT: Mr. Carey?

4 DEFENDANT CAREY: Yes, sir.

5 THE COURT: What?

6 DEFENDANT CAREY: I currently attend active
7 12 step program for drugs and alcohol.

8 THE COURT: Where is that?

9 DEFENDANT CAREY: This is a NA program. I
10 attend the NA program as often as I can.

11 THE COURT: Are you sober?

12 DEFENDANT CAREY: Yes, sir.

13 THE COURT: When was the last time you used?

14 DEFENDANT CAREY: December 31, 2008.

15 THE COURT: Well, each of you has one or more
16 indictments that have not been presented to the grand
17 jury. You have an absolute right to require the State to
18 present the case or cases to the grand jury where they
19 would have to prove more probably than not that a crime
20 was committed and you did it. Do you want to give that
21 right up which would let you go forward today?

22 Ms. Bowens?

23 DEFENDANT BOWENS: Yes, sir.

24 THE COURT: Mr. Cheeks?

25 DEFENDANT CHEEKS: Yes, sir.

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THE COURT: Mr. Moyer?

DEFENDANT MOYER: Yes, sir.

THE COURT: Mr. Carey?

DEFENDANT CAREY: Yes, sir.

THE COURT: Ms. Bowens, you're up here on Indictment 09-5242 alleges you did in Greenville County, April 23, '09 unlawfully combine with Nona Denise Bowens, Britney Bowens and/or Nicole Michele McGreer for the purpose of accomplishing an unlawful object or a lawful object by unlawful means shoplifting. That carries up to five years, do you understand that?

DEFENDANT BOWENS: Yes, sir.

THE COURT: Mr. Cheeks, you're up here on 09-3974 alleges you did in Greenville County, November 21, '08 armed with a deadly weapon or alleging you were with the representation of one, you took by force or intimidation miscellaneous personal property from the person or presence of JC. Strong armed robbery carries 15 years, do you understand that?

DEFENDANT CHEEKS: Yes, sir.

THE COURT: Mr. Moyer, you're up here on 09-4636 alleges you did in Greenville County, March 11, '09 unlawfully possess a quantity of crank. That's three years, \$5,000. Do you understand that?

DEFENDANT CHEEKS: Yes, sir.

1 THE COURT: Mr. Carey, you're up here on
2 Indictment 09-2445, alleges you did in Greenville County,
3 December 22, '08 unlawfully enter the dwelling of Elman
4 Zavalla on Cedar Lane Road in Greenville without consent
5 with the intent to commit a crime, burglary second. That
6 carries 15 years, do you understand that?

7 DEFENDANT CAREY: Yes, sir.

8 THE COURT: You're also here on 09-2442
9 alleges you did in Greenville County, December 27, '08,
10 unlawfully seize, abduct, confine, inveigle, decoy or
11 carry away Gayle Quentares(ph), Ellio Martinez(ph), Jose
12 Jeron(ph) and/or Jose Adalid(ph) without authority of law,
13 kidnapping, carries up to 30 years. It is a Violent
14 Offense which means no parole. It is a Most Serious
15 offense. If you get a conviction for two or more Most
16 Serious offenses, you're eligible for life in prison
17 without parole. Do you understand that?

18 DEFENDANT CAREY: Yes, sir.

19 THE COURT: You're also here on Indictment
20 09-2441, alleges you did in Greenville County, December
21 27, '08 unlawfully enter the dwelling of Gayle Quentares,
22 Ellio Martinez, José Jeron and/or Jose Adalid on Cedar
23 Lane Road without consent with intent to commit a crime,
24 burglary second, 15 years, do you understand that?

25 DEFENDANT CAREY: Yes, sir.

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THE COURT: You're also here on 09-2449 alleges you did in Greenville County, December 7, '08 armed with a deadly weapon or alleging you were you took by force or intimidation wallets, monies, cell phones, keys from the person or presence of Julio Sanchez, Daniel Aroco, and/or Carlos Quavos, armed robbery carries 10 to 30 years. It is a Violent Offense. It is a Most Serious Offense. Do you understand all that?

DEFENDANT CAREY: Yes, sir.

THE COURT: You're also here on Indictment 09-2446 alleges you did in Greenville County, December 22 '08. armed with a deadly weapon or alleging you were with the representation of one took by force or intimidation money or a wallet and contents from the person or presence of Elman Zavalla, armed robbery carries 10 to 30 years, mandatory minimum, of course. That's a Violent and Most Serious Offense. Do you understand that?

DEFENDANT CAREY: Yes, sir.

THE COURT: And you're also here on 09-2443 alleges you did in Greenville County, December 27, '08 armed with a deadly weapon or alleging you were with the representation of one you took by force or intimidation money, wallet, cell phones, clothing or electronic equipment from the person or presence of Gayle Quentares, Ellio Martinez, Jose Jeron and/or Jose Adalid. That's

1 armed robbery 10 to 30 years. It is a Violent Offense and
2 a Most Serious offense. Do you understand that?

3 DEFENDANT CAREY: Yes, sir.

4 THE COURT: Each of you understanding the
5 nature of the charge charges against you and the maximum
6 possible punishment, how do you want to plead, Ms. Bowens?

7 DEFENDANT BOWENS: Guilty.

8 THE COURT: Mr. Cheeks?

9 DEFENDANT CHEEKS: Guilty.

10 THE COURT: Mr. Moyer?

11 DEFENDANT MOYER: Guilty.

12 THE COURT: Mr. Carey?

13 DEFENDANT CAREY: Guilty.

14 THE COURT: Are you emotionally okay?

15 DEFENDANT CAREY: No, sir.

16 THE COURT: Well, maybe we ought to stand him
17 aside. You have to face the music one day, but apparently
18 you're not ready to face it today. Is there any reason
19 why?

20 MR. POSEY: Judge, I think Mr. Carey
21 understands this is his last day to enter a plea before
22 going to trial.

23 THE COURT: Mr. Carey, are you competent? Do
24 you understand what's going on today?

25 DEFENDANT CAREY: I understand this is my

1 last plea.

2 THE COURT: What is it you don't understand?

3 DEFENDANT CAREY: (No response.)

4 THE COURT: Tell me what it is you don't
5 understand.

6 DEFENDANT CAREY: The charges.

7 MR. POSEY: Judge, I think what it is he's
8 trying to tell you is there is about five co-defendants in
9 this case, two of them pled to lesser charges and he
10 doesn't understand why his is not lesser.

11 THE COURT: Is that a correct statement?

12 DEFENDANT CAREY: Yes, sir.

13 THE COURT: Is there anything else about the
14 charges you don't understand?

15 DEFENDANT CAREY: (No response.)

16 THE COURT: If you did this, it's coming home
17 to roost. It's going to come home to roost one way or
18 another today or another day soon. Do you want to go
19 forward today? You're crying. You are emotional and
20 that's understandable. You're facing extremely serious
21 charges. You could get 150 years in prison and that's
22 with this plea deal. Otherwise burglary first two counts
23 of that you'd be looking at life as well.

24 If you're not ready to do it, if you can't
25 stand up here and handle it and you don't understand

1 what's going on, then we're not taking the plea.

2 But I understand he'll be on the trial
3 docket.

4 MR. POSEY: Yes, sir, as early as December.

5 THE COURT: It's time to fish or cut bait.

6 DEFENDANT CAREY: I'd like to take the plea,
7 sir.

8 THE COURT: All right. Do you think you're
9 emotionally stable to go forward?

10 DEFENDANT CAREY: Yes, sir.

11 THE COURT: All right. How do you want to
12 plead?

13 DEFENDANT CAREY: Guilty.

14 THE COURT: Has anybody forced you in any
15 way, coerced you, threatened you or promised you anything
16 to get you to enter that plea? Ms. Bowens?

17 DEFENDANT BOWENS: No, sir.

18 THE COURT: Mr. Cheeks?

19 DEFENDANT CHEEKS: No, sir.

20 THE COURT: Mr. Moyer?

21 DEFENDANT MOYER: No, sir.

22 THE COURT: Mr. Carey?

23 DEFENDANT CAREY: No, sir.

24 THE COURT: Are you doing this freely and
25 voluntarily, Ms. Bowens?

1 DEFENDANT BOWENS: Yes, sir.

2 THE COURT: Mr. Cheeks?

3 DEFENDANT CHEEKS: Yes, sir.

4 THE COURT: Mr. Moyer?

5 DEFENDANT MOYER: Yes, sir.

6 THE COURT: Mr. Carey?

7 DEFENDANT CAREY: Yes, sir.

8 THE COURT: What?

9 DEFENDANT CAREY: Yes, sir.

10 THE COURT: Do you each understand you have
11 an absolute right to a trial by jury where you would be
12 presumed innocent unless and until the State could prove
13 you guilty beyond any reasonable doubt of each and every
14 element of each offense that you're charged with? You'd
15 have a right to confront and cross-examine the witnesses
16 and any evidence put up against you by the State. You'd
17 have a right to compel in court all relevant and competent
18 evidence in your own defense, or you could remain silent.
19 Your silence could not be held against you and you could
20 never be compelled to incriminate yourself. Do you
21 understand all those rights, Ms. Bowens?

22 DEFENDANT BOWENS: Yes, sir.

23 THE COURT: Mr. Cheeks?

24 DEFENDANT CHEEKS: Yes, sir.

25 THE COURT: Mr. Moyer?

1 DEFENDANT MOYER: Yes, sir

2 THE COURT: Mr. Carey?

3 DEFENDANT CAREY: Yes, sir.

4 THE COURT: Also, I don't know if you've made
5 a statement in this case, but if you made a statement in
6 this case and you enter the plea and I accept it, then you
7 give up your right to challenge the Constitutional
8 propriety of any statement, do you understand that,
9 Ms. Bowens?

10 DEFENDANT BOWENS: Yes, sir.

11 THE COURT: Mr. Cheeks?

12 DEFENDANT CHEEKS: Yes, sir.

13 THE COURT: Mr. Moyer?

14 DEFENDANT MOYER: Yes, sir

15 THE COURT: Mr. Carey?

16 DEFENDANT CAREY: Yes, sir.

17 THE COURT: And I don't know what, if any,
18 evidence has been seized in your case, but if you enter
19 this plea and I accept the plea then you give up your
20 right to challenge the Constitutional propriety of any
21 evidence seized in your case, do you understand that,
22 Ms. Bowens?

23 DEFENDANT BOWENS: Yes, sir.

24 THE COURT: Mr. Cheeks?

25 DEFENDANT CHEEKS: Yes, sir.

1 THE COURT: Mr. Moyer?
2 DEFENDANT MOYER: Yes, sir
3 THE COURT: Mr. Carey?
4 DEFENDANT CAREY: Yes, sir.
5 THE COURT: Are you guilty, Ms. Bowens?
6 DEFENDANT BOWENS: Yes, sir.
7 THE COURT: Mr. Cheeks?
8 DEFENDANT CHEEKS: Yes, sir.
9 THE COURT: Mr. Moyer?
10 DEFENDANT MOYER: Yes, sir
11 THE COURT: Mr. Carey?
12 DEFENDANT CAREY: Yes, sir.
13 THE COURT: Are you totally and completely
14 satisfied with the representation of your attorney,
15 Ms. Bowens?
16 DEFENDANT BOWENS: Yes, sir.
17 THE COURT: Mr. Cheeks?
18 DEFENDANT CHEEKS: Yes, sir.
19 THE COURT: Mr. Moyer?
20 DEFENDANT MOYER: Yes, sir
21 THE COURT: Mr. Carey?
22 DEFENDANT CAREY: Yes, sir.
23 THE COURT: Do you think that your attorney
24 has done everything that is reasonably necessary to
25 adequately prepare your defense in this case? Ms. Bowens?

1 DEFENDANT BOWENS: Yes, sir.

2 THE COURT: Mr. Cheeks?

3 DEFENDANT CHEEKS: Yes, sir.

4 THE COURT: Mr. Moyer?

5 DEFENDANT MOYER: Yes, sir

6 THE COURT: Mr. Carey?

7 DEFENDANT CAREY: Yes, sir.

8 THE COURT: And have you met with your
9 attorney for as long and as often as you think is
10 necessary to prepare your defense? Ms. Bowens?

11 DEFENDANT BOWENS: Yes, sir.

12 THE COURT: Mr. Cheeks?

13 DEFENDANT CHEEKS: Yes, sir.

14 THE COURT: Mr. Moyer?

15 DEFENDANT MOYER: Yes, sir

16 THE COURT: Mr. Carey?

17 DEFENDANT CAREY: Yes, sir.

18 THE COURT: Do you have any complaints you'd
19 like to make against anybody with regards to how you've
20 been treated in this case? Ms. Bowens?

21 DEFENDANT BOWENS: Yes, sir.

22 THE COURT: Mr. Cheeks?

23 DEFENDANT CHEEKS: Yes, sir.

24 THE COURT: Mr. Moyer?

25 DEFENDANT MOYER: Yes, sir

1 THE COURT: Mr. Carey?

2 DEFENDANT CAREY: Yes, sir.

3 THE COURT: And have you had enough time to
4 review the evidence and the discovery in your case?
5 Ms. Bowens?

6 DEFENDANT BOWENS: Yes, sir.

7 THE COURT: Mr. Cheeks?

8 DEFENDANT CHEEKS: Yes, sir.

9 THE COURT: Mr. Moyer?

10 DEFENDANT MOYER: Yes, sir

11 THE COURT: Mr. Carey?

12 DEFENDANT CAREY: Yes, sir.

13 THE COURT: Okay. Tell me about it.

14 MS. TIFFIN: May it please the Court, Your
15 Honor, as to Ms. Bowens on April 23, 2009 this defendant
16 and three others conspired to shoplift clothes from Kohls
17 Department Store on Woodruff Road here in Greenville
18 County. One of the girls made a purchase and then took
19 her bag to the Junior's Department where this defendant
20 and the others put merchandise they had taken off the
21 hangers into that Kohls bag.

22 THE COURT: Does she have a record?

23 MS. TIFFIN: She has a 2004 shoplifting, and
24 there is a recommendation.

25 THE COURT: And that is?

1 MS. TIFFIN: Probation with community service
2 and probation ends when she's completed all the community
3 service.

4 THE COURT: Is all that true?

5 DEFENDANT BOWENS: Yes, sir.

6 THE COURT: Mr. Posey, what do you want to
7 tell me?

8 MR. POSEY: Judge, Ms. Bowens is 24 years of
9 age. She is a high school graduate. She provides child
10 care during the day for people at her home as her
11 employment. She does live alone. Judge, she understands
12 what she did was wrong. Her sister was involved and was a
13 primary player in this and she got caught up in it. She
14 knows what she did was wrong and I would just ask that you
15 follow the recommendation and hopefully I don't think
16 you'll see her again, Your Honor.

17 THE COURT: Anything you want to tell me?

18 DEFENDANT BOWENS: It was a mistake and I
19 know now.

20 THE COURT: Well, you know before. All
21 right, three years provided upon the time she did, two
22 years probation, 15 days public service, random alcohol
23 and drug testing, \$500 Public Defender Fund. Good Luck.

24 MS. TIFFIN: As for Mr. Cheeks on November
25 28, 2008, this defendant and several co-defendants did

1 plan and conspire to commit an armed robbery. This
2 defendant approached the victim, JC, in the parking lot of
3 3500 East North Street. The victim he had said he had
4 just arrived there after going to the store and he felt a
5 tap on his arm that was hanging out of the window of his
6 car.

7 When he looked, this defendant pressed a
8 small handgun against his ribs and got him out of the car
9 and took approximately \$150 from him. The defendant then
10 fled on foot and was apprehended by law enforcement within
11 a few minutes.

12 He has no prior record and I don't see a
13 recommendation.

14 THE COURT: Is all of that true?

15 DEFENDANT CHEEKS: Yes, sir.

16 THE COURT: What happened to the
17 co-defendants?

18 MS. TIFFIN: The co-defendants are still
19 pending.

20 THE COURT: Mr. Posey.

21 MR. POSEY: Your Honor, Mr. Cheeks is 23
22 years of age, went to the twelfth grade but did not
23 graduate. His mother lives in the Greenville area.
24 Judge, he got hooked into trying to become part of a group
25 and this was supposed to be his initiation. He had never

1 done anything like this before and he has no history of
2 anything like this before. He's always been good and
3 always worked. He got into something he had no business
4 being into ever since then he's been out working temp jobs
5 and hasn't been in any sort of trouble. He hadn't been in
6 any trouble before. I don't think he'll get in trouble
7 again.

8 His mom is in the courtroom with him today.
9 I think he's had a hard sentence just being with her since
10 this happened. More than anything else she'll tell me as
11 she told me that it embarrassed her and embarrassed her
12 family. She tells me he needs to finish his education so
13 he can get better jobs than working at temp services and
14 things like that.

15 He is a smart young man. For the life of me,
16 I don't know why he got sucked into this but he allowed
17 himself to be. I think he's got strong family support and
18 strong background. I would ask you to consider probation
19 since he has no record or done anything else before; to
20 give him this one chance in life. He's already been given
21 a big break from the solicitor and he understands that. I
22 would just ask him to walk out of here being the first
23 time and only time he'll ever come in here with no record.

24 THE COURT: What would have happened if you'd
25 gotten away with it? Where would you be now?

1 DEFENDANT CHEEKS: Honestly, sir, I would
2 have been ---

3 THE COURT: I mean who is this group you got
4 to get in that you got to go and rob somebody as to be
5 part of a group?

6 DEFENDANT CHEEKS: It was just something that
7 was made up in the neighborhood. I got suckered into it
8 because my friend he was into it so he tried to drag me
9 into it. Basically, right now I'm doing everything I need
10 to do to get my life back on track and get everything
11 situated so I can go on and take care of myself and grow
12 up the way I need to.

13 THE COURT: Well, your lawyer is right one
14 time in your life you come into court with no prior
15 record, one time. You come to court you bring your past
16 with you. Next time you come, you'll have a record, a
17 serious record.

18 DEFENDANT CHEEKS: Yes, sir.

19 THE COURT: Ten years provided upon one year
20 home incarceration, balance is suspended probation 30
21 months, get your GED, random drug and alcohol testing,
22 \$500 Public Defender Fund. Why don't we send him to Voc
23 Rehab or Job Corp.

24 MR. POSEY: That would be fine, Your Honor.

25 DEFENDANT CHEEKS: Thank you, sir.

1 THE COURT: Good luck to you.

2 MS. TIFFIN: May it please the Court, Your
3 Honor, as to Mr. Moyer around March 11, 2009, this
4 defendant's co-defendant was driving a vehicle with an
5 improperly displayed tag on I85 North in Greenville County
6 when she was stopped by an officer with the Greenville
7 County Police Department. The defendant was a passenger
8 in the vehicle. The defendant and the co-defendant
9 consented to a search and when the officer asked if he
10 would find anything illegal in the vehicle, the defendant
11 looked to the ground.

12 Pursuant to that search, the office located a
13 small metal container on the floor behind the passenger
14 seat that contained a white crystal substance later
15 confirmed to be 0.28 grams of methamphetamine. They also
16 found in the container several items of drug
17 paraphernalia. Neither party claimed the drugs at that
18 time.

19 There is no recommendation and there is a
20 prior record.

21 THE COURT: Okay. What is that?

22 MS. TIFFIN: 2007 simple possession of
23 marijuana; possession of drug paraphernalia, disorderly
24 conduct, seat belt violation and open container; 2009
25 possession of drug paraphernalia and simple possession of

1 marijuana, which I believe are companion charges to this
2 charge, Your Honor.

3 THE COURT: Is all that true?

4 DEFENDANT MOYER: Yes, sir.

5 THE COURT: Okay.

6 DEFENDANT MOYER: Your Honor, my client is 42
7 years of age, is a high school graduate, has worked in the
8 heating and air conditioning business all his life, is
9 divorced and has three children he does support. He
10 started messing with meth and he knows it would lead him
11 to no good. He knows that any drugs would lead him to no
12 good. As far as his employment status, it has hurt him
13 job-wise.

14 I'd ask you to give him probation, some drug
15 counseling. Substance abuse classes would be good for
16 him. He's got to get back on his feet. He's supporting
17 his kids. He's been working on the side to do that. He's
18 been keeping up with his obligations there. He is living
19 with his parents also.

20 THE COURT: You waited until you were 40
21 years old to begin your criminal record.

22 DEFENDANT MOYER: I made some bad choices,
23 sir.

24 THE COURT: You hadn't been up here before,
25 have you?

1 DEFENDANT MOYER: No, sir.

2 THE COURT: Twenty-eight years in jail, I bet
3 that was fun.

4 DEFENDANT MOYER: No, sir.

5 THE COURT: I'll tell you that meth will get
6 a hold of you and won't let go.

7 DEFENDANT MOYER: Yes, sir.

8 THE COURT: Grab that tiger by the tail. All
9 right, I'm going to give you three years provided upon the
10 time you did, probation for 2, 5 days community service,
11 substance abuse counseling, random drug and alcohol
12 testing, \$500 Public Defender Fund. Good luck to you.

13 DEFENDANT MOYER: Thank you, Your Honor.

14 MS. TIFFIN: Your Honor, as to Mr. Carey,
15 Indictment 2009-2249, on December 7, 2008 about 4:30 a.m.,
16 the victim responded to a knock on the door of his
17 apartment on Broadway Drive in Greenville. He was met by
18 two woman. When the victim opened the door, this
19 defendant and co-defendants, Tyrene Fleming and Travis
20 King entered. One had a riffle. They stole wallets, cell
21 phones and keys from the victim and made them go inside a
22 bathroom. Co-defendant Redding confessed and implicated
23 the co-defendants. She said they got access to the
24 apartment by posing at prostitutes.

25 As to Indictment 2009-2445 and 2446, on the

1 night of December 22, 2008, this defendant and the male
2 co-defendant entered the victim's apartment on Cedar Lane
3 Road without permission. One of the defendants punched
4 the victim in the face. They stole his wallet containing
5 between \$300 and \$400. The co-defendant Carly Redding
6 told police she met the victim at a bar and got her to
7 take her to his home. When she got there, co-defendants
8 entered and did the robbery. One had a small pistol
9 during the robbery.

10 As to Indictments 2009-2441, 2442 and 2443,
11 on the night of December 27, 2008, the victim answered a
12 knock on the door of his apartment on Cedar Lane Road in
13 Greenville County. He found a woman, later determined to
14 be co-defendants Jennifer Johnson asking to use his
15 bathroom. The victims let the woman in. Shortly after,
16 this defendant and two co-defendants Fleming and King came
17 to the apartment and kicked in the door. One pointed the
18 pistol at the victims and said they were there for the
19 money. The other had a taser. He chased one of the
20 victims into a bathroom where he tazed in the back of the
21 neck and punched him.

22 The defendants took the victim back into the
23 living room where they tied his hands with power cords.
24 The defendants held a knife to another victim's throat.
25 They took the victims wallets and cell phones. They put

1 all the victims in the bathrooms and then ransacked the
2 apartment.

3 The officers located co-defendants Johnson
4 and Redding in a nearby apartment. They confessed and
5 implicated all of the others.

6 The four other co-defendants, Your Honor,
7 Jennifer Johnson, her case is still pending; Carly
8 Redding, she was sentenced to four years followed by
9 probation. The co-defendant Tyrene Fleming, her case was
10 still pending. Travis King, he was sentenced to 15 years
11 suspended to 13 years and then probation.

12 There is a recommendation of 13 years in this
13 case. Eight other charges are being dismissed, and he has
14 a minor record, Your Honor.

15 THE COURT: And what is that?

16 MS. TIFFIN: A 2007 breach of peace and
17 driving without a license.

18 THE COURT: Is all that true?

19 DEFENDANT CAREY: Yes, sir.

20 THE COURT: Mr. Posey.

21 MR. POSEY: Judge, this is one of those cases
22 you hate because Philip is a good young man who allowed
23 some drug usage and other things to bring him down in a
24 very short period of time. It ruined his life for a
25 period of time.

1 I've been doing this 17 years and I've never
2 seen and Philip is one of the few people I've seen get out
3 of jail and really turn it around in the last year. He
4 has got his GED. He's been going to Greenville Tech.
5 He's been going to church. He's been participating in NA
6 classes. He's been going to addition drug classes through
7 his church.

8 I've had more people stand up for him than I
9 think I've had any other client before and what kind of
10 change he's made in himself. I guess if anybody standing
11 up here before you can go back and change that clock to 13
12 months ago and erase what happened, he would. He knows he
13 put himself in this position.

14 He's always been willing to take his
15 medicine. The one thing I think that has always bothered
16 him is the two females were basically, and I do believe,
17 were the formulators of all these crimes and they seem to
18 be the ones getting the break here. I understand his
19 frustration with that. They were caught first and talked
20 first and I've explained that to him. In some ways, the
21 system isn't always fair in that respect, but it doesn't
22 change responsibility and he understands that.

23 Judge, the 13 recommendation is fair, I'm not
24 saying it's not, but I'm asking, considering his lack of
25 prior record, what he's done since being arrested and

1 being out and actually trying to make something of himself
2 that you impose the minimum sentence of 10 on him.

3 THE COURT: Tell me about the one who got the
4 15 suspended to 13.

5 MS. TIFFIN: That was the co-defendant Travis
6 King. Was he the only other male involved?

7 MR. POSEY: No, Tyrene Fleming. Mr. King and
8 Mr. Fleming had prior records, Your Honor.

9 THE COURT: What did they plead to?

10 MR. POSEY: Mr. King pled to the same thing
11 basically. I don't know if it was charge for charge but
12 it was the same.

13 THE COURT: How did he get a suspended
14 sentence? Those two have prior records?

15 MS. TIFFIN: I don't know but I can find out.

16 THE COURT: Well, find out. It might make a
17 difference.

18 MR. POSEY: I know Mr. Fleming does because
19 I've represented him before.

20 THE COURT: What?

21 MR. POSEY: I think it's mostly drugs. It
22 was several years ago.

23 THE COURT: What do you want to tell me,
24 Mr. Carey?

25 DEFENDANT CAREY: Your Honor, I'm just

1 pleading for another chance.

2 THE COURT: Well, we all get another chance
3 but we all pay for our mistakes one way or another.

4 MR. POSEY: Judge, he had typed a statement
5 and I just ask you to read it instead of him --

6 DEFENDANT CAREY: I'd been on house arrest as
7 a condition of my bond. I've been current with all my
8 payments.

9 THE COURT: Let me read your note.

10 DEFENDANT CAREY: Okay.

11 MR. POSEY: Judge, he does have good family
12 support and they've always been behind him.

13 DEFENDANT CAREY: My mom can speak on that as
14 well.

15 THE COURT: Yes, ma'am. If you would state
16 your name.

17 MS. BAILEY: My name is Denise Bailey(ph),
18 Philip's mom.

19 THE COURT: Anything you want to say?

20 MS. BAILEY: I know being his mom (inaudible)
21 defense of a child, but Philip comes out of a decent home.
22 He should have never been in any trouble. He's never been
23 in trouble like this before. He's done everything to turn
24 his life around and sometimes it takes a tragedy to make
25 things right and kind of see the light at the end of the

1 tunnel. He recently learned that he's a father of a cute
2 little girl that he wants to be a part of her life.

3 He made the effort to get his GED. He is
4 enrolled in Greenville Tech. He is aggressively looking
5 for employment and he's been on numerous interviews.
6 Unfortunately, with the looming over his head, it's making
7 it tough when people do background checks, but he has not
8 given up. He's tried to keep a positive outlook on all of
9 this, and if you could please give him another chance.

10 MS. TIFFIN: Your Honor, as to Mr. Fleming
11 whose case is still pending, he is getting a hire
12 recommendation and he is pleading to three counts of
13 burglary -- I'm sorry -- his prior record is three counts
14 of burglary and armed robbery. And then Mr. King has no
15 adult record and he's pleading to the same charges.

16 THE COURT: All right, and he's the one who
17 got the 13?

18 MS. TIFFIN: He got the 13, yes, sir.

19 THE COURT: Anything else?

20 MR. POSEY: Nothing further, Your Honor.

21 THE COURT: Is there any reason to put him on
22 the sex offender registry?

23 MR. POSEY: No, sir.

24 MS. TIFFIN: No, Your Honor.

25 THE COURT: All right, well, as I said we all

1 get a second chance and we all pay for our mistakes.
2 You've got to pay for your mistakes. I don't know any
3 reason why I should treat him any different than the other
4 guy and it's my policy to have people basically receive
5 equal punishment for their conduct, so I'm giving him 13
6 years on each case and they are all concurrent; credit for
7 118 days in jail.

8 MR. POSEY: Thank you, Your Honor.

9 THE COURT: Good luck.

10 MS. TIFFIN: Thank you, Your Honor.

11 ---END OF TRANSCRIPT RECORD---

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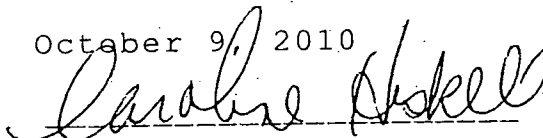
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1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 9th day of November, 2009.

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

11
12 October 9, 2010

13 

14 Caroline Hiskell
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FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

IN THE COURT OF COMMON PLEAS

Philip Keathe Carey #337868)

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

2010-CP-23-6581

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 Lieber Correctional Institution
2. Name and location of Court which imposed sentence Court of General Sessions
305 E. North St. Greenville, SC 29601
3. Name(s) of co-defendant(s) (if any) Tawaine Fleming, Travis King,
Jennifer Johnson, Carley Redding
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 09-2449, Armed Robbery; 09-2446, Armed Robbery; 09-2445, Bur

(b) 09-2443; Armed Robbery; 09-2442, Kidnapping; 09-2441, 1
(c) 09-4573; Attempted Armed Robbery

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

(a) November 9, 2009
(b) 13 year sentence was imposed
(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓
(b) after a plea of not guilty _____
(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
no

8. If you answered Ayes@ to (7), list:

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

i. N/A
ii. _____
iii. _____

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

i. N/A
ii. _____
iii. _____

(c) the date of each such result:

i. N/A
ii. _____
iii. _____

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

i. N/A
ii. _____
iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) counsel failed to appeal after I told him to do so

- (b) _____
- (c) _____

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

- (a) Ineffective Assistance of Counsel
- (b) Involuntary Guilty plea
- (c) _____

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

- (a) counsel failed to file notice of appeal
- (b) counsel rendered erroneous advice, advising me to
- (c) plea without a thorough investigation

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

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

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

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

- iv. _____
- (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?

N/A

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

- (a) which grounds have been presented:
 - i. _____ N/A
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____ N/A
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

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

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

- (a) the name and address of each attorney who represented you:
 - i. Christopher T. Posey
P.O. Box 426 Greenville, SC 29602
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. arraignment and plea
 - ii. sentencing
 - iii. _____

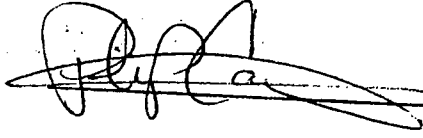
- 19. State clearly the relief you seek in filing this application:
vacate sentencing and conviction and remand for a new trial

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

Revised 3/200

STATE OF SOUTH CAROLINA)
 County of Dorchester) VERIFICATION

I, Philip Keathe Carey, 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.




SWORN to and subscribed before me this 4th
 day of August, 2010.
Sylvia Jones (L.S.)
 Notary Public

My Commission Expires: 1/24/2018

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

I, Philip Keathe Carey, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of m
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
4th day of August, 2010.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2010

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2010-CP-23-6581
COUNTY OF GREENVILLE)	
)	
Phillip Keathe Carey,)	
S.C.D.C. No. 337868,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed August 11, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2009 term of General Sessions for kidnapping (2009-GS-23-2442), three (3) counts of armed robbery (2009-GS-23-2443, -2446, -2449) and first-degree burglary (2009-GS-23-2445). The Applicant waived presentment to the Grand Jury on the charge of first-degree burglary (2009-GS-23-2441). Christopher T. Posey, Esquire represented the Applicant.

On November 9, 2009, the Applicant pled guilty to the charges, except the first-degree burglary charges were reduced to second-degree burglary.¹ The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of thirteen (13) years for kidnapping, thirteen (13)

¹ The State also not prossed the following indictments: 2009-GS-23-2440, -2444, -2447, -2448, -2521, -4566, and -4573.

years for each count of armed robbery, and thirteen (13) years for each count of second-degree burglary. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel:
 - a. Failed to file a notice of appeal.
 - b. Rendered erroneous advice.
2. Involuntary guilty plea.

III.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel

“rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

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

IV.

The Applicant’s assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as

one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

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

between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

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

V.

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

VI.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General


JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

December 16, 2010

I N D E X

(AW) - Denotes Applicant's Witness
 (RW) - Denotes Respondent's Witness

Page No.

<u>(AW) PHILLIP KEATHE CAREY:</u>	
Direct Examination by Mr. Quinn.....	4
Cross-Examination by Ms. Ratigan.....	19
<u>(AW) DENISE EUGENIA FALIN:</u>	
Direct Examination by Mr. Quinn.....	22
<u>(RW) CHRISTOPHER TODD POSEY:</u>	
Direct Examination by Ms. Ratigan.....	30
Cross-Examination by Mr. Quinn.....	36

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

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THE COURT: Yes, ma'am, Ms. Ratigan.

MS. RATIGAN: Thank you, Your Honor.

May it please the Court.

The last case of the day is Phillip Carey v. the State. The docket number is 2010-CP-23-6581. Mr. Carey was indicted for kidnapping, and three counts of armed robbery, and one count of first-degree burglary. He waived presentment to an additional count of first-degree burglary. He was represented on these charges by Mr. Posey.

On November 9th of 2009, Mr. Carey pled guilty to these charges, except one of the first-degree burglaries was reduced -- no, actually, both of the first degree burglaries were reduced down to second-degree burglary. He pled guilty before Judge Miller. He received concurrent terms of 13 years for kidnapping, 13 years for each count of armed robbery, and 13 years for each count of that reduced second-degree burglary.

He did not file an appeal. And the State is ready to proceed.

THE COURT: Mr. Quinn.

MR. QUINN: We're ready, Your Honor.

I call Mr. Carey to the stand.

THE CLERK: Mr. Carey, please, place your left hand

1 on the Bible and raise your right hand.

2 WHEREUPON,

3 PHILLIP KEATHE CAREY,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you.

6 You may be seated.

7 Please state your full name for the record.

8 THE WITNESS: Phillip Keathe Carey.

9 DIRECT EXAMINATION

10 BY MR. QUINN:

11 Q And, Mr. Carey, are you currently an inmate at the
12 South Carolina Department of Corrections?

13 A Yes, sir.

14 Q And how long a sentence are you doing?

15 A 13 years.

16 Q And you may have heard the Attorney General state the
17 charges to which you pled guilty. Were there armed
18 robberies and burglary charges?

19 A Yes.

20 Q Okay. And where are you currently housed?

21 A Right -- the Greenville County Detention Center.

22 Q Well, I'm sorry. Within the Department of
23 Corrections, where are you housed?

24 A Allendale Correctional Institution.

25 Q And who was your attorney on these charges?

1 A Christopher Posey.

2 Q And was he your attorney throughout the entirety, or
3 did you have more than one attorney?

4 A He was the only one.

5 Q And how many times did you meet with Mr. Posey
6 between your arrest and coming to court?

7 A It couldn't have been five times.

8 Q Okay. And of those five times, how many times did
9 you meet for more than five or 10 minutes?

10 A Once.

11 Q And how long a period of time was it between your
12 arrest and going to court?

13 A (There was no response.)

14 Q Let me do it this way. Did you get arrested in April
15 of 2009?

16 A I went to court in -- November of '09 is when I got
17 sentenced. I went -- I went to -- I, originally, went to
18 court on -- or got arrested on December 31st of 2008.

19 Q And so he was your attorney for 10 months and a few
20 days?

21 A Yeah. I probably -- I think I acquired him about
22 February, maybe February or March, if I remember
23 correctly.

24 Q And were you incarcerated, or were you on the streets
25 during the -- waiting to come to court?

1 A I was incarcerated for four months, January,
2 February, March, and April. And I got out on bond. I was
3 on house arrest for seven months up to my court date.

4 Q Now, when you were first arrested, did you request a
5 preliminary hearing on these charges?

6 A Can you repeat the question?

7 Q Did you request a preliminary hearing when you were
8 arrested on these charges?

9 A Oh, yeah, yeah.

10 Q And was a preliminary hearing ever held?

11 A Yes.

12 Q And was the hearing held on all of the charges?

13 A I believe so.

14 Q Okay. And did you speak with Mr. Posey about raising
15 an issue about the arrest warrants at the preliminary
16 hearing?

17 A To be honest, I didn't know about the arrest warrants
18 until after I got to Lieber Correctional Institution when
19 I went to prison.

20 Q And what was your -- or what is your concern about
21 the arrest warrants?

22 A That they're defective.

23 Q And why are they defective? What's the problem?

24 A Not enough information was placed inside the arrest
25 warrant.

1 Q And have we talked about that that's called
2 conclusory? In other words, that it just says you're
3 guilty, but it doesn't say what evidence they have to
4 indicate that?

5 A Correct.

6 Q And was that issue ever raised at the preliminary
7 hearing?

8 A No.

9 Q And, at the preliminary hearing, were you still
10 incarcerated?

11 A Yes.

12 Q And do you understand if the charges had been
13 dismissed at the preliminary hearing, because the warrants
14 were defective, you could have been released?

15 A Yes.

16 Q But that issue was not raised by Mr. Posey, is that
17 your testimony?

18 A Correct.

19 Q Now, did Mr. Posey, subsequently, hold a bond hearing
20 and get you released?

21 A I suppose. I never went in front of a bond hearing.
22 They just came and said I had a bond, so.

23 Q All right. So there was no hearing. You didn't go
24 in front of the television sets down at the detention
25 center?

1 A No.

2 Q Okay. So did you consent to the bond? Did you even
3 know it was being set?

4 A No.

5 Q Now, during the time that Mr. Posey represented you
6 before the plea, did you speak with him about what
7 investigation, if any, was being done?

8 A I tried to, but it felt like he wasn't trying to hear
9 it, like he was just like whatever.

10 Q Well, the Judge doesn't know what "whatever" is.
11 Tell the Judge what you mean by "whatever."

12 A I'm sorry. Basically, it was -- it just felt as if
13 he wasn't really interested in the case, like it was just
14 a burden for him, or something. And...

15 Q Did he review the discovery with you?

16 A I guess you could say that. I mean, like -- well,
17 we went -- me and my mother went to his office. We had
18 some points to show him. And he acted like he didn't want
19 to read it, look at it, or whatever. I don't know if he
20 did that on his own without, you know -- maybe he did his
21 own investigation on that. But I'm not sure. Because, I
22 mean, to me, I know that he didn't do an investigation.
23 Because there was many points that came up in the motion
24 that could have been, you know, raised.

25 Q Okay. Well, let's talk, first of all, about, did he,

1 in fact, give you a copy of the discovery?

2 A Yes.

3 Q And when was that, before or after you pled guilty?

4 A Before.

5 Q Okay. And I gather from your testimony, he gave it
6 to you long enough before that you had a chance to review
7 it before you met with him?

8 A Correct.

9 Q Okay. And did you review the discovery before you
10 met with him?

11 A Yes.

12 Q And had you continued to review it, even after the
13 plea?

14 A Yes.

15 Q And what did you find raised in the discovery that
16 you thought Mr. Posey should have raised to the Court?

17 A Aside from the warrants, there -- I read over, you
18 know, the statements from the police officers, as well as
19 co-defendants stating that they did, you know, actually,
20 find fingerprints, shoe prints, but they did not come back
21 as a positive identification for me.

22 There was -- supposedly, there was a black bandanna
23 or something used in the crime, which was never ran for
24 DNA. So I have no idea what even came up about
25 identifying me as a suspect.

1 Q And you -- I'm sorry. You said they had a partial
2 fingerprint, or a partial shoe print, or both?

3 A Both.

4 Q And neither of those were matched to you?

5 A No.

6 Q So was the evidence against you only the statements
7 of the co-defendants?

8 A Yes.

9 Q Were you ever placed in a physical lineup?

10 A No.

11 Q As far as you know, were you ever picked out of a
12 photo lineup?

13 A No.

14 Q And so what investigation, if any, did Mr. Posey do
15 into those statements?

16 A I don't know.

17 Q Were those other -- the four people that gave
18 statements, were they, also, charged?

19 A Yes.

20 Q Do you know if they were going to testify against
21 you, or if they had been offered pleas? Do you have any
22 information about that?

23 A I do know that one of my co-defendants got the same
24 amount of time as I did. I guess the other one took a
25 plea for more time. But he was already a convicted felon,

1 so I guess that's why he did that.

2 Q But how many of them had pled guilty before you came
3 to court?

4 A Oh, I don't know.

5 Q Well, you knew, at least, one had; isn't that right?
6 Because, in the sentencing, didn't the Judge talk to the
7 Prosecutor about what sentence your co-defendant had
8 received?

9 A Yes, sir.

10 Q Do you know if any of the others had been sentenced?

11 A No.

12 Q And, in fact, didn't you learn, at least, some of
13 them were still going to go to trial, because didn't the
14 Prosecutor come and talk to you after you pled guilty?

15 A Yes.

16 Q And what did the Prosecutor want from you after you
17 pled guilty?

18 A He wanted me to testify against my co-defendants
19 after they pulled me out of Lieber Correctional
20 Institution and brought me to Greenville County. And he
21 wanted me to testify against my co-defendants, which under
22 State v. Turner, he can't do. Because he threatened me
23 saying he was going to give me more time, because I
24 wouldn't testify against them, which I felt he couldn't
25 do. Because I looked at the law books. He can't do that

1 because I've already been sentenced.

2 Q Okay. And let me cut you off. Did he bring any
3 other charges back against you?

4 A No..

5 Q Okay. But was there any conversation with you about
6 being available to testify against your co-defendants, or
7 getting a deal for that?

8 A No.

9 Q Now, on the day you came to court on November 9th,
10 2009, you appeared before Judge Miller; isn't that
11 correct?

12 A Yes.

13 Q And what was your emotional condition that day?

14 A Terrible. I was -- you know, I was hurting at the
15 fact that I had seen my mom go through an emotional state
16 because of everything I put her through. I mean, it's
17 hard to talk about, really.

18 Q Well, but, unfortunately, we need to tell this Judge,
19 who was not there, at least, what your appearance was in
20 court. Were you crying? Were --

21 A Yes, I was.

22 Q -- you distracted?

23 A Yes, I was very stressed out. And, yes, I was in
24 tears.

25 Q And was it obvious to Judge Miller? Did he, in fact,

1 talk to you about your condition?

2 A Yes.

3 Q Did Judge Miller offer you the opportunity to
4 withdraw your plea and wait until another day?

5 A He said something about facing me some day, or one
6 day, maybe I'm not ready today, or whatever the case may
7 have been.

8 Q And did Mr. Posey step in at that point and tell the
9 Judge anything about that you had to do the plea that day?

10 A Yes.

11 Q And what was that? What did he tell the Judge?

12 A He said that I understand that it was my last day to
13 plead before I take it to trial.

14 Q And do you know if that was accurate or not?

15 A I wasn't sure. Like I said, I've never been in this
16 kind of situation before, so I'm not really sure.

17 Q Did you answer the Judge's questions, though?

18 A Yes.

19 Q And had anybody told you how to answer the Judge's
20 questions?

21 A Per se, yes.

22 Q Well, tell me what that means, "per se."

23 A I guess it was not that I really had to answer the
24 questions. But, I mean, I knew I had to because I seen
25 the last -- another person that had went in front of Judge

1 Miller before I did. And when he said he wasn't, you
2 know, satisfied with their lawyer, Judge Miller about
3 jumped down his throat. And I didn't want that to happen
4 to me. You know what I mean? So I went ahead and went
5 with the flow.

6 Q And so were you aware of what answers you had to give
7 the Judge to complete the guilty plea?

8 A Yes.

9 Q And did you answer all of the Judge's questions?

10 A Yes.

11 Q Now, after the plea was finished, did Mr. Posey meet
12 with you again?

13 A No.

14 Q Did he send you a letter and tell you anything about
15 your case?

16 A No.

17 Q Did he ever discuss with you the possibility of
18 appealing your guilty plea?

19 A No.

20 Q And when did you first learn about the possibility of
21 appealing your guilty plea?

22 A When I was nine days into Kirkland R&E.

23 Q And so was that nine days after your guilty plea, or
24 longer than that --

25 A I got sent down to Kirkland on November 10th. So

1 that was the very next day. That's when I went down to
2 Kirkland.

3 Q Okay. So about a week and a half after your guilty
4 plea, you hear about that you might could appeal?

5 A Yes. And that was from another inmate.

6 Q And what did you do at that point?

7 A I immediately sent a letter out, which I didn't know
8 if it was going to be too late, or what. And I never
9 heard anything back.

10 Q And who did you send this letter to?

11 A Mr. Posey.

12 Q And what did you say in the letter?

13 A I just asked if I could -- I was requesting a plea,
14 or a sentence reconsideration.

15 Q Do you mean an appeal, or a sentence reconsideration?

16 A Yes.

17 Q And did you ever hear from Mr. Posey about either of
18 those requests?

19 A No.

20 Q And would you have appealed -- did you want to appeal
21 your conviction?

22 A Yes.

23 Q Now, do you believe that Mr. Posey had a conflict in
24 the matter representing you?

25 A Yes.

1 Q And what's that conflict?

2 A That he admitted to Judge Miller that he had
3 represented one of my co-defendants on a previous
4 endeavor.

5 Q Okay. And what's that co-defendant's name?

6 A Taurine [phonetic] Fleming.

7 Q And had Mr. Fleming already pled guilty at that
8 point, or was he still waiting to come to court?

9 A He was still waiting to come to court.

10 Q And let me be sure I'm clear. Mr. Posey did
11 represent Taurine in the same charges you were charged
12 with; is that right?

13 A No.

14 Q He had represented him at an earlier time?

15 A Right.

16 Q Okay. And how do you think his earlier
17 representation hurt you?

18 A Being that he knew what type of person Taurine was.
19 He even told me that he knew the type of person Taurine
20 was. And, right then, I felt as that's going to hurt me
21 because -- just because I know him, that's making me --
22 putting me on the same level as him.

23 Q And so when Mr. Posey said he knew what kind of
24 person Taurine was, that was not complimentary?

25 A No, it was not.

1 Q Okay. What did he mean by that? What kind of person
2 is Taurine?

3 A He's a convicted felon. I mean, he's constantly in
4 trouble.

5 Q And did that conflict get raised to the Court? Did
6 anybody discuss that with Judge Miller?

7 A No. I know he did -- I know Mr. Posey did mention it
8 to Miller, and Miller really didn't say anything about it.

9 Q And I want to go back to just one thing, Mr. Carey,
10 before I finish with you. You said Mr. Posey acted
11 disinterested in your case. Tell the Court a little bit
12 more about that.

13 A Well, I sent him a letter when I was at the county
14 jail, and never heard nothing back until I was out -- I
15 was out on bond. And it took a little while for me,
16 actually, to get into his office to talk to him. And when
17 I did, it was, actually, me and my mom. We both went in
18 there probably -- we was waiting -- or we had set up an
19 appointment.

20 And by the time we got sit down and get everything
21 set up, you know, we talked for maybe 15, 20 minutes, and
22 then it was over with like -- it was just like he was
23 pretty much saying, you know -- or his -- you know, how
24 actions speak louder than words? Well, his physical
25 actions were just like -- the way he was talking, he was

1 like he was bored, get out of my office. You know what
2 I'm saying? There's nothing else to say, or whatever. I
3 mean, I'm sorry. Excuse me. He didn't have nothing else
4 to say.

5 He felt -- I guess, to me, it felt that he didn't
6 want anything to do with it. He was just trying to get a
7 conviction. That's how I feel.

8 Q Did he ever discuss with you the possibility of,
9 actually, going to trial?

10 A He did. You said a possibility of going to trial?

11 Q Uh-huh.

12 A He did state about a trial. But he, also, said to
13 me, if you do take it to trial, there are no guarantees of
14 me being your lawyer. And he, also, said that if I take
15 it to trial, there is, what, nine times out of ten that
16 I'll go to prison and come out with a body bag -- or a toe
17 tag.

18 Q And is that the phrase he used?

19 A Yes.

20 Q And did that encourage you to go to trial, or
21 discourage you?

22 A It discouraged me. When he said 13 years, that gave
23 me hope.

24 Q And now having gone through the discovery and finding
25 these errors and the problems that you say exist, knowing

1 that, would you go -- have gone to trial, or pled guilty.

2 A I would have went to trial.

3 Q Now, against the sentence that you're serving, has
4 the Department of Corrections credited you with the four
5 months that you did in the county jail --

6 A Yes.

7 Q -- pre-trial?

8 A Yes.

9 Q Have they credited you with any of the time that you
10 were on house arrest?

11 A No.

12 Q And would you ask this Court to credit you with that
13 seven months that you were on house arrest?

14 A Yes.

15 MR. QUINN: Mr. Carey, I don't have any other
16 questions. You have to answer any of the questions the
17 Attorney General may have.

18 CROSS-EXAMINATION

19 BY MS. RATIGAN:

20 Q So you testified that you and Mr. Posey had gone over
21 the State's evidence like the discovery materials, y'all
22 had gone over that together?

23 A Yes.

24 Q And did you tell Mr. Posey your version of what
25 happened?

1 A I tried to.

2 Q And when you say that Mr. Posey should have
3 investigated, do you mean like investigated the facts, and
4 the police report, the arrest warrant, he should have
5 investigated those facts better?

6 A Yes.

7 Q And that he should have investigated the issue about
8 the fingerprint, and the shoe print?

9 A Yes.

10 Q And maybe looked into the whole potential of a DNA
11 test on -- what was it? A hat, I think you said?

12 A A bandanna.

13 Q A bandana. But you wanted him to look into that, as
14 well?

15 A Yes.

16 Q Now, are these issues that you knew at the time, or
17 just since you've been convicted?

18 A Since I've been convicted.

19 Q So why did you go ahead and decide to plead guilty,
20 it was just because you were scared you'd get more time at
21 trial?

22 A It's the fact that the statement that he made to me
23 about the whole body bag thing.

24 Q Okay. And you testified that you wanted to file an
25 appeal?

1 A Yes.

2 Q What errors were made during the guilty plea hearing -
3 that you want reviewed on appeal?

4 A Can you repeat that?

5 Q What errors were made by Judge Miller or the State
6 during the guilty plea hearing that you wanted to appeal?

7 A (There no response.)

8 Q Let me phrase it to you this way then. Why did you
9 want an appeal?

10 A Because I felt that there was more to my case than
11 what was brought up.

12 Q So you didn't want to necessarily appeal what
13 happened at the plea hearing. You just thought -- you
14 just wanted your case reviewed?

15 A Right.

16 Q Okay.

17 A And it wasn't -- I felt it wasn't reviewed.

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

19 THE COURT: Any redirect, Mr. Quinn?

20 MR. QUINN: No, Your Honor.

21 Thank you.

22 THE COURT: All right. Thank you, Mr. Carey.

23 You may step down, sir.

24 MR. QUINN: We would call Denise Falin to the stand.

25 THE CLERK: Ms. Falin, please, place your left hand

1 on the Bible and raise your right hand.

2 WHEREUPON,

3 DENISE EUGENIA FALIN,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you.

6 Please be seated.

7 Please state your full name for the record.

8 THE WITNESS: Denise Eugenia Falin.

9 DIRECT EXAMINATION

10 BY MR. QUINN:

11 Q And if you would, please, spell your middle name and
12 your last name.

13 A E-U-G-E-N-I-A, that's not one that I regularly spell.
14 Last name is F-A-L-I-N.

15 Q And, Ms. Falin, how are you related to Mr. Carey?

16 A He's my son.

17 Q And were you involved with him and the case that
18 we've been discussing today?

19 A Yes, sir.

20 Q Did you accompany him to meetings with Mr. Posey?

21 A Yes, sir.

22 Q Did Phillip ever come to court that you weren't with
23 him?

24 A No.

25 Q And about how many times would you say the two of you

1 then met with Mr. Posey?

2 A Outside of meeting him in the hallway here, we only
3 met with him one time.

4 Q And when you say "in the hallway here," did you ever
5 sit down in one of these side conference rooms and talk?

6 A On a couple of occasions, but they were very brief.

7 Q And describe "very brief." About how long?

8 A Well, we knew that he had other clients that he was
9 representing. And it was always like a -- in a sense, a
10 circus out there with so many people having to go before
11 the Judge, and everything.

12 So we always tried to flag him down. And it was
13 always, you know, just a minute, just a minute, you know.
14 Lots of times, we would say, just a minute -- or he would
15 say just a minute. And then he'd be off trying to talk to
16 somebody else. And then we would go in the courtroom.
17 And next thing we know, it's one of those, you know, well,
18 we're not going before the Judge today, you know, just go
19 home. I'll let you know when to come back.

20 Q So the conversations here at the courthouse that
21 you're describing were not about any particulars about the
22 case?

23 A No.

24 Q Did you ever meet with Mr. Posey and discuss the
25 facts of the case involving your son?

1 A Yes. We went -- well, we made an attempt to.
2 Phillip was in the hospital. And I went to his office to
3 pick up the motion for discovery. And that's what I have
4 here. I went through it. His girlfriend at the time,
5 also, went through it, just as a -- for a fresh set of
6 eyes. And we found a lot of flaws in the statements of
7 his co-defendants.

8 So when we went to his office, we made an attempt --
9 you know, I brought the book with all the Post It notes
10 included where we made our comments where we thought that
11 there was a conflict. And he said it didn't matter what
12 the -- you know, what the conflicts are. He said that the
13 statements were enough and...

14 Q And were the statements, essentially, the Government's
15 case against your son?

16 A Yes.

17 Q And were there four statements?

18 A Yes, sir.

19 Q Was there any physical evidence that you're aware of,
20 fingerprints, footprints, DNA, anything like that?

21 A There were pictures that were included in the motion
22 for discovery, but nothing stating that Phillip was the
23 person that they belonged to.

24 Q And that's what I mean. Were any fingerprints
25 identified as your son's?

1 A No.

2 Q Footprints identified as your son's?

3 A No.

4 Q DNA?

5 A No, sir.

6 Q And so did you concentrate on those four statements?

7 A Yes.

8 Q Okay. And when you approached Mr. Posey with that,
9 what was his attitude about that?

10 A He said the statements were so similar that there was
11 no way that they would stand up in trial. And I pointed
12 out to him that they were similar possibly because in
13 German when people are closely related not by -- you know,
14 by family, but it's kind of like a boyfriend-girlfriend
15 type of situation. They call it sleeping in bed together.
16 And with these statements, you had a nephew, an uncle, and
17 each of their girlfriends.

18 So we felt that there was, basically, like a
19 conspiracy between them. There were conflicts. They
20 didn't know Phillip's name in some of the statements. One
21 minute, he was there, then he wasn't. There were other
22 statements that were submitted that said they lied, you
23 know, just --

24 Q Ms. Falin --

25 A I'm sorry.

1 Q -- when you presented all that to Mr. Posey, what was
2 Mr. Posey's response?

3 A He was not interested.

4 Q And how long did you spend with Mr. Posey on the one
5 meeting you had about the facts?

6 A Give or take, about 30 minutes.

7 Q And where was that held?

8 A At his office.

9 Q And how long before the guilty plea was that meeting?

10 A We went to his office in July of '09.

11 Q And he pled guilty November of '09; isn't that
12 correct?

13 A Yes, sir.

14 Q So several months?

15 A Yes, sir.

16 Q In between that meeting and court, did you attempt or
17 did your son, that you know of, attempt to set up any
18 other meetings with Mr. Posey?

19 A No.

20 Q Did Mr. Posey attempt to get y'all in to talk to you
21 again?

22 A No, sir.

23 Q Did you come to court with your son on November 9th?

24 A Yes, I did.

25 Q And were there any other conversations with Mr. Posey

1 on that day?

2 A Where he signed -- he did pull us into one of the
3 side rooms, and he went over the Solicitor's offer of 13
4 years. They had reduced it from 17 to 13 years.

5 Q And what was his attitude that day about whether you
6 should take the plea or not?

7 A He said that -- he advised Phillip to take the plea.
8 Because if he took it to trial that he would most likely
9 come out in a body bag, because of the amount of the
10 charges -- the times for each charge.

11 Q Did he say anything about who his lawyer might be?

12 A No.

13 Q Okay. And what -- how did that effect Phillip?

14 A He was emotional. He was very reluctant to sign the
15 plea. Because he said he didn't do it. He wasn't -- I
16 know that's irrelevant right now, but.

17 Q Did Mr. Posey ever talk to Phillip about going to
18 trial?

19 A No.

20 Q And have -- you, obviously, have had the opportunity
21 to review the discovery; isn't that correct?

22 A Multiple times.

23 Q Was it -- did you have the opportunity to speak with
24 your son and tell him whether you thought he should go to
25 trial or plead guilty?

1 A I did. But I felt it was his decision, you know. I
2 mean, I can make suggestions. But I felt he was an adult,
3 you know. He was acquainted with these four people. And
4 I left the decision to him.

5 Q If the decision had been yours, what would you have
6 advised him to do?

7 A Gone to trial.

8 Q After the plea, did Mr. Posey speak with you?

9 A Briefly. Afterwards, he came -- you know, he pulled
10 me into one of the side rooms, because I was really
11 emotional. He said that was the best he could do, and
12 that Phillip should be thankful for what he got. Because
13 he would have been -- probably gone to jail for life if --
14 you know, any other way.

15 Q Did he discuss with you the appellate rights that
16 Phillip might have had?

17 A No.

18 Q And do you -- did you ever speak with Mr. Posey after
19 the plea about whether Phillip could or should appeal?

20 A I'm sorry. Repeat that, please.

21 Q Did you ever speak with Mr. Posey after the guilty
22 plea about whether Phillip should appeal?

23 A No.

24 Q Or whether he had a right to appeal?

25 A No, not that I remember.

1 Q Did Phillip contact you about wanting to either get
2 an appeal or a motion for reconsideration?

3 A He had mentioned it to me during one of the phone
4 calls. I guess he found out from somebody there that he
5 had the right, that there was a short time frame. And
6 there were, I guess, some weekends involved. And I guess
7 that didn't include -- or that did include the weekends,
8 which, at that time, there wasn't enough time.

9 Q And did you try to follow-up with, Mr. Posey?

10 A No, I did not.

11 MR. QUINN: I don't have any other questions.

12 Thank you.

13 THE COURT: Ms. Ratigan.

14 MS. RATIGAN: I have no questions for this witness,
15 Your Honor.

16 THE COURT: Thank you, Ms. Falin.

17 MR. QUINN: That would be the Applicant's case.

18 THE COURT: All right. Ms. Ratigan.

19 MS. RATIGAN: Thank you, Your Honor.

20 We call Mr. Posey.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 CHRISTOPHER TODD POSEY,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 You may be seated.

3 Please state your name for the record.

4 THE WITNESS: Christopher Todd Posey.

5 DIRECT EXAMINATION

6 BY MS. RATIGAN:

7 Q Mr. Posey, do you recall representing Mr. Carey on
8 these charges?

9 A Yes, I do.

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

12 A I was appointed.

13 Q Did you file discovery motions?

14 A Yes.

15 Q Did you review those materials with your client?

16 A Yes.

17 Q Did you, as part of those discovery materials,
18 receive the arrest warrants?

19 A Yes. I'm sure they were included.

20 Q Did you review those warrants?

21 A I'm sure at some point in time I did. I don't
22 remember when.

23 Q Do you recall if there were any glaring errors or
24 problems with those warrants?

25 A Nothing that jumped out to me noticeably. I'm not

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1 sure if I had them before or after the preliminary
2 hearing.

3 Q Okay. Do you recall whether, as part of the
4 discovery, you received any information about fingerprints
5 or shoe prints?

6 A I don't remember any. I remember they had nothing
7 that would tie directly to Mr. Carey. It was, basically,
8 a statement case.

9 Q So you would agree with Mr. Carey that it was,
10 basically, the co-defendants statements against him was
11 the crux of the State's case?

12 A Yes.

13 Q And you reviewed all of those statements with your
14 client?

15 A Yes, as well as the statements of the victims.

16 Q Did you have -- well, let me back it up a little bit.
17 Mr. Carey testified you had told him you had represented
18 his co-defendant, a Mr. Fleming, in the past; is that
19 accurate?

20 A Yes. I believe I did tell him that. I represented
21 Mr. Fleming several years earlier on some drug charges, I
22 believe it was.

23 Q Were those prior charges in any way related to the
24 charges Mr. Carey was facing?

25 A No.

1 Q In your opinion, did you have any kind of a conflict
2 in representing Mr. Carey on these charges?

3 A No.

4 Q The State -- I believe Mr. -- no. I'll take that
5 back. I believe Mr. Carey's mother testified that the
6 State made the 13-year plea offer the day of the plea.
7 Does that sound accurate or --

8 A I think either that, or it was a few days before
9 that. It started out -- I think the first offer was 20 or
10 21 years. And then it went to 17, and then, finally, down
11 to 13. And I believe the basis for that offer came
12 because that's what one of his co-defendants had -- one of
13 the two or three co-defendants that had pled already had
14 received.

15 Q And did you review that 13-year offer with Mr. Carey?

16 A Yes.

17 Q And, from the transcript, it appears the State nolle
18 prossed several other charges. Was that, also, part of
19 the overall plea offer?

20 A Yes.

21 Q And did you discuss that part of the offer with your
22 client?

23 A Yes.

24 Q Did you tell your client that if he went to trial,
25 he'd likely end up leaving the Department of Corrections

1 in a body bag?

2 A I think what I explained -- I think where that comes
3 from is he asked me, what does a life sentence mean, which
4 he would have potentially faced had he went to trial.
5 Because it was burglary first. And I may have described
6 it as a life sentence is what we call a toe-tag sentence,
7 you come out when they put a toe tag on you. That's it.
8 You don't -- there's no parole eligibility.

9 Q Did you tell him this as a way to pressure him or
10 coerce him into pleading guilty, rather than going to
11 trial?

12 A No. I did it as a way to make him fully understand
13 the possible sentence ramifications.

14 Q And it's been testified to, and I think it's pretty
15 clear in the transcript, that he was -- would it be fair
16 to say he was very emotional and overwrought that day?

17 A He was. Phillip -- strange -- not a strange case.
18 Actually, it was unusual in the fact that he had done very
19 well since being released from the Greenville County
20 Detention Center. He had done things that most people
21 charged with the crimes he was charged with do not do,
22 educationally, spiritually, and other means.

23 And I think that was one big problem he always had
24 with the sentence he was facing is he had done so well.
25 He didn't feel he was getting enough credit for it.

1 Q I believe in the transcript it -- you informed the
2 Court that this was kind of a last chance to plead before
3 it went on the trial docket. Does that sound accurate?

4 A Yes. I believe Mr. Moyer, who was the Prosecutor on
5 that case, had let it be known this was the last
6 opportunity he was going to give him a chance to plead
7 guilty with any kind of a recommendation, and with any
8 reduction of charges.

9 Q And you would have explained all that to Mr. Carey,
10 this is his last chance to plead with a recommendation?

11 A Yes.

12 Q Okay. In your opinion, were there any legal errors
13 or omissions that would have been appealable issues from
14 the plea hearing?

15 A No.

16 Q Did Mr. Carey ever tell you he wanted to file an
17 appeal?

18 A I have no recollection of it. I'm not going to say
19 he did not. But I don't believe I spoke with him after
20 the plea. I spoke with his mother. So I don't remember
21 ever receiving anything stating that he wished to appeal.
22 But I cannot swear to that.

23 Q If Mr. Carey had asked you to file an appeal within
24 that ten-day time period, would you have done so?

25 A Yes. Because it would have, basically, ended -- my

1 involvement would have ended at that point in time. It
2 was -- it would have been referred to the Office of
3 Appellate Defense after that.

4 Q Both Mr. Carey and his mother have testified that
5 they went to speak with you about the discovery materials.
6 Do you remember having such a meeting with them at your
7 office?

8 A Yes.

9 Q And can you just kind of recap for us what y'all
10 talked about during that meeting?

11 A I thought it was a thorough, frank discussion of what
12 was out there, what was there, what wasn't there, what was
13 good, what was bad. And, you know, I think I did opine to
14 them that these statements while not perfect, everything
15 didn't line up perfectly and very rarely does, but that I
16 thought it was enough to sustain a conviction if he went
17 to trial, that he could be convicted on the statements
18 alone, I guess I should say.

19 Q And, obviously, this would have occurred after the
20 plea hearing. But did Mr. Carey ever tell you that
21 Mr. Moyer had approached him after the plea?

22 A Actually, I found out about it. Mr. Moyer and I had
23 a discussion about that which I let my thoughts and
24 feelings be known to Mr. Moyer about that.

25 Q And, to the best of your knowledge, none of those

1 charges were ever resurrected against your client?

2 A No. And I believe I told Mr. Moyer I would represent
3 Mr. Carey without appointment if he tried to do that.

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

5 THE COURT: Mr. Quinn, cross-examination.

6 MR. QUINN: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. QUINN:

9 Q Mr. Posey, do you agree that lawyers are supposed to
10 avoid actual conflicts, and, also, the appearance of a
11 conflict?

12 A Yes.

13 Q Did you discuss with Mr. Carey whether it appeared
14 you may have a conflict because of your earlier
15 representation of Taurine Fleming?

16 A I think I told him I represented Taurine Fleming.
17 Because I said, basically -- and I think what he said is
18 accurate to some degree. I said knowing the type of
19 person that I knew Taurine Fleming to be, had he been the
20 one giving actual statements against him, it would have
21 not been credible.

22 Q And do you, also, remember telling Mr. Carey that you
23 knew Mr. Fleming and didn't think much of him, and,
24 therefore, didn't think much of Mr. Carey?

25 A Well, no. I don't think -- I think I said I don't

1 think I would find any statements Mr. Fleming gave would
2 be credible. I think there was plenty of public record
3 information that could discredit Mr. Fleming. I think
4 that's what my intent meaning was. It was never intended
5 to Mr. Carey himself.

6 Q And let me go back and just be sure. So do you
7 remember -- did you ever discuss with him the appearance
8 of a conflict --

9 A Yes --

10 Q -- with Mr. Fleming?

11 A Because I asked him -- I think part of that
12 discussion, I told him if he asked -- if wanted me to, I
13 would file a motion to be relieved, as I would anybody.

14 Q And do you, specifically, remember discussing with
15 Mr. Carey his right to appeal the guilty plea and the
16 sentence?

17 A Not specifically. It's something usually when I go
18 over all the questions the Judge is going to ask, I
19 usually include that. I don't know why I wouldn't have at
20 that time. But I don't remember, specifically, saying
21 that.

22 Q And, subsequent to the plea, you didn't send him a
23 letter setting out what his appellate rights might have
24 been?

25 A No.

1 Q In the plea itself, Judge Miller didn't ask about
2 appellate rights, and you didn't pick up on that?

3 A I did not until you said it. I've read the
4 transcript. But I didn't pay that close attention to see
5 if Judge Miller, actually, mentioned it or not.

6 Q And I believe your testimony is that you don't
7 remember receiving a letter from Mr. Carey asking about an
8 appeal or a motion for reconsideration?

9 A I don't. And -- but I'm not going to swear to it,
10 that I did not. No, I cannot do that.

11 Q And do you agree that -- with Mr. Carey's description
12 of the case that the bulk of the evidence against him was
13 the four co-defendant?

14 A I think it was 95 percent, plus. That was the bulk
15 of it.

16 Q Because you had mentioned the victims. But there was
17 no lineup in this case; right?

18 A There was no lineup. When I said the victims
19 statements, it was comparing the victims statements of
20 events to the co-defendants statements of events, and how
21 there was similarities, there was discrepancies, and such
22 things as that.

23 Q And there was no physical evidence against Mr. Carey?

24 A No.

25 Q So what investigation, if any, did you do into the

1 background of the four co-defendants?

2 A I ran -- I was able to receive all their criminal
3 records from Mr. Moyer. He did provide those, or allow me
4 to look at them. I don't think he, actually, gave me
5 copies of them. Of course, I was familiar with
6 Mr. Fleming, though Mr. Fleming really did not give a
7 statement that would -- I think would have hurt Mr. Carey
8 at that point in time.

9 The -- I attempted to contact the lawyer -- and if
10 you ask me who it is, I couldn't tell you -- of the two
11 girls who gave -- whose original statements were the first
12 persons to give statements in the case. And I believe I
13 was denied permission to talk to them at that point in
14 time. Because they had not pled at that point in time.

15 Q And Ms. Falin's description of the relationships
16 between the other four, is that accurate that two are
17 related by blood, and the two women are the girlfriends?

18 A Definitely the girlfriend part. I can't say that I
19 remember the blood part. But I know there was
20 relationships between the parties, yes.

21 Q And two of the co-defendants had pled guilty when
22 Mr. Carey pled guilty. That's in the transcript?

23 A Yes.

24 Q Was there discussions with Mr. Moyer about having
25 Mr. Carey assist the State, and then get some sort of

1 consideration for it?

2 A We had talked about it. And I think that was towards
3 Mr. Fleming, at best. And he was not willing to reduce
4 the charges below armed robbery, which carried the minimum
5 mandatory 10.

6 So I think Phillip and I had talked about it. I
7 didn't feel it was necessary to commit to testifying, if
8 Mr. Moyer was not going to get him out of a minimum
9 mandatory range. He did reduce the burglary, which took
10 away that minimum mandatory, but would not reduce the
11 armed robberies.

12 Q And when you found out later that he had spoken with
13 him -- I'm sorry, when Mr. Moyer had spoken with Mr. Carey
14 about assisting him, did you attempt to get the case
15 reopened and renegotiate the sentence at that point?

16 A No. Because I think Mr. Moyer told me, based on his
17 conversation, that he was not going to use Mr. Carey. And
18 he said say he thought he could bring back charges that --
19 and I said, you know, that's when I informed him I would
20 represent Mr. Carey gratis, if he chose to do that.

21 Q And did you ever think this case might be a trial?
22 Did you ever discuss that with Mr. Carey?

23 A We did. We discussed it. And I told him it was a
24 decision he had to make. And he did think about it, I
25 know that, because we were up here several times, probably

1 three maybe total, possibly four. And we did have
2 discussions each time we were up here about his position.

3 I think, in the end, he chose to enter the plea. I
4 would have supported him either way. My advice was to
5 take the plea, because he is such a young man. And I
6 thought the last recommendation was a fair one, even
7 though I asked Judge Miller to cut it down to the minimum.
8 It gave him a definite light at the end of the tunnel.

9 Q And would you agree with the description by Mr. Carey
10 and his mother about the amount of time that you spent
11 with them?

12 A I would say it was more than that. I think we had
13 more substantive discussions than they said. I'm not
14 going to say they were hours in length. But I think we
15 talked substantively about the issues on more than one
16 occasion.

17 Q And but on one occasion at your office?

18 A One occasion at my office, which was, I would say,
19 between 30 minutes and an hour long.

20 Q And the other times would have been catch us -- catch
21 you up here during court --

22 A Yeah. But a little more than a couple times, a
23 little more involved. Because there were times -- I know
24 there was one day we probably spent maybe not at one
25 stretch, but probably a total of 45 minutes to an hour

1 talking at different phases.

2 Q And did you go through the discovery with Ms. Falin,
3 and consider her concerns?

4 A Yes. We talked about it in my office that day.
5 Because she had tabbed it. And she's the one who,
6 actually, came and got the discovery from my office.
7 Because I believe Phillip was in the hospital at the time.

8 MR. QUINN: Thank you.

9 I don't have any other questions.

10 THE COURT: Cross-examination [sic].

11 MS. RATIGAN: I have no redirect.

12 And the State would rest at this time, Your Honor.

13 THE COURT: Thank you, Mr. Posey.

14 THE WITNESS: Thank you.

15 THE COURT: Any reply testimony, Mr. Quinn?

16 MR. QUINN: No, Your Honor.

17 Thank you.

18 THE COURT: Any evidence or argument either side
19 wishes to present at this time?

20 MR. QUINN: No, Your Honor.

21 Thank you.

22 MS. RATIGAN: No, Your Honor.

23 THE COURT: Well, thank you very much for your
24 presentation.

25 And I'm going to study the application in light of

1 the testimony I heard today. And I'll let you know my
2 decision in the next several weeks.

3 Thank you very much.

4 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

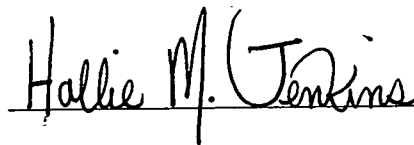
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth 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 the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 29th day of February, 2012.

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

December 31, 2012



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Phillip Keathe Carey,)
 S.C.D.C. No. 337868,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-6581

ORDER OF DISMISSAL

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 AND A. W. WOODRUFF

2012 JUN 25 PM 2:38

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed August 11, 2010. The Respondent made its return on December 16, 2010. An evidentiary hearing into the matter was convened on February 29, 2012 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Thomas J. Quinn, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Denise Falin and the Applicant's plea counsel, Christopher T. Posey, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the October 2009 term of the Greenville County Grand Jury for kidnapping (2009-GS-23-

2442), three (3) counts of armed robbery (2009-GS-23-2443, -2446, -2449), and first-degree burglary (2009-GS-23-2445). The Applicant waived presentment to the Grand Jury on the charge of first-degree burglary (2009-GS-23-2441). He was represented by Christopher T. Posey, Esquire.

On November 9, 2009, the Applicant pled guilty to the charges, except the first-degree burglary charges were reduced to second-degree burglary.¹ The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of thirteen (13) years for kidnapping, thirteen (13) years for each count of armed robbery, and thirteen (13) years for each count of second-degree burglary. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failed to file a notice of appeal.
 - b. Rendered erroneous advice.
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

¹ This Court notes the State not prossed the following indictments: 2009-GS-23-2440, -2444, -2447, -2448, -2521, -4566, and -4573.

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Applicant stated he had approximately five (5) brief meetings with plea counsel before he pled guilty. The Applicant stated he and plea counsel reviewed the State’s evidence and his version of events. The Applicant stated plea counsel should have investigated: the facts

in the statements, fingerprints, and DNA evidence. The Applicant stated plea counsel was not interpreted in discussing the case with him. The Applicant stated plea counsel had a conflict of interest because he had previously represented one of his co-defendants. The Applicant stated he only pled guilty because plea counsel said if went to trial and lost, he would leave prison "in a body bag." The Applicant stated plea counsel did not advise him of the right to appeal. The Applicant stated there were no errors in the plea hearing, but he wanted an appeal so that his case would be reviewed.

Denise Falin, the Applicant's mother, stated she often went with the Applicant to meet with plea counsel. Falin stated plea counsel was not interested in discussing the conspiracy between the co-defendants to implicate the Applicant. Falin stated plea counsel advised the Applicant to plead guilty because of the "body bag" comment.

Plea counsel testified he filed discovery motions and reviewed the discovery materials with the Applicant. Plea counsel testified there was no forensic evidence implicating the Applicant. Plea counsel testified this was a "statement case" because of the statements given by the co-defendants and victims. Plea counsel admitted he had represented a co-defendant on prior charges, had disclosed this to the Applicant, and there was no conflict of interest. Plea counsel testified he had a thorough and frank discussion with the Applicant and Falin about the case. Plea counsel testified he told them there were imperfections in the statements against the Applicant but that the statements were enough for a conviction. Plea counsel testified the State reduced its twenty (20) year plea offer to seventeen (17) years and then to thirteen (13) years. Plea counsel testified he advised the Applicant to accept the thirteen (13) year offer. Plea counsel testified he advised the Applicant he was facing a life sentence because of the first-degree burglary charge and, when the Applicant asked what he meant by "life," plea counsel told

him it meant this was a "toe tag sentence." Plea counsel testified he told the Applicant this in order to make him understand the severity of the charges. Plea counsel testified they did not specifically discuss the right to appeal but that, regardless, there were no legal errors to appeal.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.14; p.25). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.11-13; pp.14-16).

This Court finds the Applicant failed to meet his burden of proving plea counsel failed to investigate aspects of his case. Specifically, the Applicant argued he wanted plea counsel to have investigated the facts in the statements, the fingerprint evidence, and DNA evidence. This Court notes plea counsel's testimony that there was no physical or forensic evidence linking the Applicant to these charges. Rather, both plea counsel and the Applicant admitted he was implicated because of the statements against him. Regardless, this Court finds that – as the Applicant did not articulate what counsel could have discovered upon further investigation – he failed to meet his burden of proof. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to

present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel had a conflict of interest because he had previously represented a co-defendant. An applicant alleging his conviction was unlawful due to a conflict of interest from counsel's representation bears the burden of showing that a potential conflict actually materialized into a realized conflict adversely affecting counsel's performance. See Jackson, 329 S.C. at 354, 495 S.E.2d at 773 (citing Cuyler v. Sullivan, 446 U.S. 335, 100 S. Ct. 1708 (1980)). This Court finds the Applicant failed to meet his burden of proving an actual conflict materialized in this case.

This Court finds the Applicant failed to meet his burden of proving he is entitled to a belated appeal. Plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). The Applicant made a clear, informed choice to plead guilty that day. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712. The Applicant, while emotional, did not indicate at any point that he was doing so under duress. Based on the thorough and complete guilty plea colloquy, it is unlikely a rational defendant would have wanted to appeal. See Roe v. Flores-Ortega, 528 U.S. at 480, 120 S. Ct. at 1036.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

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

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel’s representation. Furthermore, the Applicant’s guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

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

7
M/H

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 21st day of June, 2012.

D. Garrison Hill

D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

Michael Jarvis

CP

Greenville County Sheriff's Office

12/31/2008

DOCKET NO. 2009-GS-23-002445

LMH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
October

TERM 2009

THE STATE

vs.

PHILLIP KEATHE CAREY

ARREST WARRANT NUMBER

1477159

ACTION OF GRAND JURY

12/31/2008

Michael Jarvis

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

✓

0066
0079

Indictment for

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

OCT 20 2009

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That PHILIP KEATHE CAREY did in Greenville County, on or about the 22nd day of December, 2008, willfully and unlawfully enter the dwelling of ELMIN ZAVALA located at 1201 Cedar Lane Rd., Apt B-14, Greenville, South Carolina, without consent and with the intent to commit a crime therein and/or the entering or remaining occurred during the nighttime hours and/or did cause physical injury to a person who was not a participant in the crime. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

C. Miller

Greenville County Sheriff's Office

12/31/2008

DOCKET NO. 2009-GS-23-

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
October
TERM 2009

THE STATE

VS.

PHILIP KEATHE CAREY

ARREST WARRANT NUMBER

1477175

ACTION OF GRAND JURY
RETURNED

Hicki Lawrence

For person of Grand Jury

VERDICT

Indictment for
0095

KIDNAPPING

VIOLATION § 16-03-0910

For person of Petit Jury

Date:


STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on **OCT 20 2009** the Grand Jurors of Greenville
County present upon their oath:

That PHILIP KEATHE CAREY did in Greenville County, on or about the 27th day of December, 2008,
unlawfully seize, abduct, confine, inveigle, decoy or carry away Gayle Quinteri, Elio Marinez, Jose Giron, and/or
Jose Adalid, without the authority of law. This is in violation of §16-03-0910 of the South Carolina Code of
Laws (1976) as amended.

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



SOLICITOR

WITNESSES

C. Miller

[Signature]

Greenville County Sheriff's Office

12/31/2008

DOCKET NO. 2009-GS-23-002443

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October TERM 2009

THE STATE

VS.

PHILIP KEATHE CAREY

ARREST WARRANT NUMBER

1477174

ACTION OF GRAND JURY

[Signature]

Foreperson of Grand Jury

VERDICT

Indictment for

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

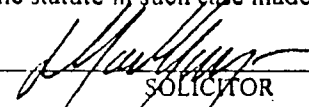
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on OCT 20 2008 the Grand Jurors of Greenville
County present upon their oath:

That PHILIP KEATHE CAREY did in Greenville County, on or about the 27th day of December, 2008, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money, wallets, cell phones, clothing, and/or electronic equipment from the person or presence of Gayle Quinteri, Elio Martinez, Jose Giron, and/or Jose Adalid. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

Michael Jarvis

(Signature)

Greenville County Sheriff's Office

12/31/2008

DOCKET NO. 2009-GS-23-002446

The State of South Carolina
LMM

County of Greenville

COURT OF GENERAL SESSIONS

October TERM 2009

THE STATE

VS.

PHILIP KEATHE CAREY

ARREST WARRANT NUMBER

1477160

ACTION OF GRAND JURY

Phicki Lukwura

Foreperson of Grand Jury

VERDICT

0139

Indictment for

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

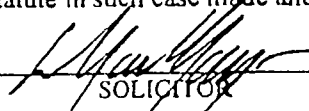
INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **OCT 20 2009** the Grand Jurors of Greenville

County present upon their oath:

That PHILIP KEATHE CAREY did in Greenville County, on or about the 22nd day of December, 2008, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a wallet and contents from the person or presence of Elmin Zavala. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

David Weiner

[Signature]

Greenville County Sheriff's Office

12/31/2008

DOCKET NO. 2009-GS-23-

LMM

The State of South Carolina

County of Greenville

002742

COURT OF GENERAL SESSIONS

October

TERM 2009

THE STATE

VS.

PHILIP KEATHE CAREY

ARREST WARRANT NUMBER

1477192

ACTION OF GRAND JURY
TRIPPLET

[Signature]

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0139

Indictment for

ARMED ROBBERY

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ARMED ROBBERY

At a Court of General Sessions, convened on

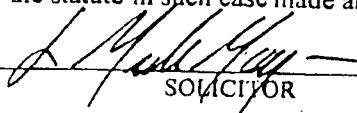
OCT 20 2009

the Grand Jurors of Greenville

County present upon their oath:

That PHILIP KEATHE CAREY did in Greenville County, on or about the 7th day of December, 2008, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Wallets, money, cell phones, and/or keys from the person or presence of Julio Sanchez, Daniel Orocco, and/or Carlos Cuevas. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR