

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable R. Markley Dennis, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DERRICK JOSEPH MILES,

APPELLANT

APPELLATE CASE NO 2019-000958

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Berkeley County

Roger E. Henderson, Family Court Judge

DERRICK J. MILES

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001197

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD

V.) 2012-GS-08-0255

DERRICK MILES,)

DEFENDANT.)

JULY 25, 2013

MONCKS CORNER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE STEPHANIE P. MCDONALD, JUDGE

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

COLLEEN DIXON, ASSISTANT SOLICITOR

ATTORNEY FOR THE STATE

WILLIAM RUNYON, ESQUIRE

ATTORNEY FOR THE DEFENDANT

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

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****NO EXHIBITS WERE INTRODUCED****

1 Thursday, July 25, 2013

2 THE COURT: Mr. Runyon, is this Mr. Derrick Miles?

3 MR. RUNYON: It is, Your Honor.

4 THE COURT: Okay. And I have that he is here to
5 enter a plea to burglary second, violent, a negotiated
6 plea; is that correct?

7 MR. RUNYON: Yes, Your Honor.

8 THE COURT: And do you agree with his decision to
9 enter this plea?

10 MR. RUNYON: Absolutely, Judge.

11 THE COURT: And does he understand that the violent
12 designation affects his sentencing, how they calculate
13 the sentence at SCDC?

14 MR. RUNYON: Yes, Your Honor.

15 THE COURT: And you agree with his decision to
16 enter the plea?

17 MR. RUNYON: Yes, Your Honor. Absolutely.

18 THE COURT: Mr. Miles, if you could raise your hand
19 for me.

20 DERRICK MILES, after having been duly sworn,
21 testified as follows:

22 THE COURT: I'm going to ask you some questions
23 this morning to make sure that any plea that you choose
24 to enter is entered knowingly, intelligently and
25 voluntarily. Okay, sir? How old are you?

1 THE DEFENDANT: Thirty-two.

2 THE COURT: Thirty-two. And are you working
3 anywhere?

4 THE DEFENDANT: Yes.

5 THE COURT: Where do you work?

6 THE DEFENDANT: Superintendant for Allstate Steel
7 Erectors (phonetic).

8 THE COURT: Okay. And has he served any time on
9 this, Mr. Runyon?

10 MR. RUNYON: Yes, Your Honor. He was in Berkeley
11 County jail for a year.

12 THE COURT: A year?

13 MR. RUNYON: Prior to being released on bond.

14 THE COURT: So do you all have 365 or do we have a
15 different calculation?

16 MR. RUNYON: No, 365.

17 MS. DIXON: 365 is fine with us, Your Honor.

18 THE COURT: Okay. Thank you.

19 Mr. Miles, have you ever been treated for any kind
20 of drug or alcohol problem?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right. When was that?

23 THE DEFENDANT: 2006.

24 THE COURT: Okay. And what was that treatment for?

25 THE DEFENDANT: For methamphetamine.

1 THE COURT: Okay. Were you able to complete that
2 treatment?

3 THE DEFENDANT: Yes, ma'am, I did.

4 THE COURT: Good. How are you doing now?

5 THE DEFENDANT: So, so. Going through some rough
6 times.

7 THE COURT: Sorry to hear that. Are you feeling
8 well enough today to go forward?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Sir, are you under the influence
11 of anything this morning, prescription medication or any
12 substance --

13 THE DEFENDANT: No, ma'am.

14 THE COURT: -- okay, that would make it difficult
15 for you to understand what we are doing here this
16 morning?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Okay. Have you ever been treated for
19 any kind of mental illness or disease?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Okay. Thank you, sir. I've got you
22 here on indictment 2012-0255. It's an indictment for
23 burglary first degree alleged to have occurred in
24 Berkeley County on or about July 25th of 2011 at the
25 dwelling of Robin McDonald.

1 Sir, it's my understanding that you are entering a
2 negotiated plea this morning to the lesser offense of
3 burglary second with the violent designation. Is that
4 your understanding, sir?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. Sir, that carries a penalty
7 of up to 15 years, however because it's a negotiated plea
8 I've been presented with a negotiation that you will be
9 sentenced to 15 years and I can't change that in any way;
10 do you understand that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. And I already talked about
13 this for a minute with Mr. Runyon but you understand that
14 because this is classified as violent, burglary second,
15 and the way our code of laws works that that will affect
16 your parole or the sentence calculation by SCDC?

17 Is it an 85 percent?

18 MR. RUNYON: Yes, Your Honor.

19 MS. DIXON: It is not, Your Honor.

20 THE COURT: It is not?

21 MS. DIXON: No, ma'am. It's violent but it doesn't
22 carry up to 20, so they do not classify it as 85 percent.

23 THE COURT: They do not. Does it have an affect
24 on --

25 MS. DIXON: I believe it's a 65 percent but I'm

1 not --

2 THE COURT: Okay.

3 MR. RUNYON: Well, Your Honor, just for the record.

4 My advice to him is to look forward to the possible 85

5 percent because once you get into the world of SCDC --

6 THE COURT: I agree. I agree.

7 MR. RUNYON: It's a different world and how they

8 you calculate is -- and you always have to expect the

9 worst.

10 THE COURT: It is a mystery to many of us. In

11 fact, nobody asks much of me of this because their

12 lawyers tell them this. And as Mr. Runyon has explained

13 to you, if somebody says, Well, when will I get out, I

14 don't have any way of telling you that and neither does

15 Mr. Runyon. But it could be up to 85 percent of the

16 time, and some of it is dependant upon your behavior

17 there; do you understand that, sir?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Understanding all of that how

20 would you like to plead to this charge?

21 THE DEFENDANT: Guilty.

22 THE COURT: Okay. Yes, ma'am?

23 MS. DIXON: Thank you, Your Honor. The victims in

24 this case, George and Robin McDonald, are seated in the

25 back there. They do not wish to address the Court.

1 THE COURT: Okay.

2 MS. DIXON: The incident did occur on July 25th,
3 2012 at their home on Church Place in Crowfield Planation
4 in the Goose Creek area of Berkeley County.

5 This defendant, along with two co-defendants, broke
6 into the McDonald's home by kicking in a door in the
7 back. They went inside, went upstairs, stole a large
8 amount of jewelry, also some guns owned by the McDonalds.
9 When they got home that day their house obviously had
10 been ransacked.

11 This defendant, along with the two co-defendants,
12 were captured, Your Honor, because they had pawned a lot
13 of the jewelry and guns at various pawnshops around the
14 Charleston area. We were also able to recover some
15 gloves that had been used that came back as matching the
16 defendant's DNA.

17 His co-defendant, Your Honor, James Griffin has
18 already pled. You sentenced him to 20 years on a
19 burglary first charge. I believe it was about a month
20 ago, after we had selected a jury. The third
21 co-defendant, Jeffrey Lynch, has not pled yet. He is
22 still in the detention center. I anticipate his case
23 will be pleading next month.

24 Mr. Miles does have a prior record which I've put
25 on your information sheet, Your Honor. His record was

1 not as bad as Mr. Griffin's, and in exchange for his plea
2 we have dropped it from the burglary first down to
3 burglary second with the negotiated 15 years that we
4 would ask the Court to accept.

5 THE COURT: Okay. Thank you, ma'am.

6 Yes, sir?

7 MR. RUNYON: Your Honor, Mr. Miles, his record
8 speaks for itself in one sense, Judge. He indicated that
9 he was involved. He was primarily outside, under the
10 circumstances. It doesn't really matter in the long run
11 but he spent a year in the Berkeley County Detention
12 Center and I've always maintained that if you spend time
13 in the county jail, not because the county jails are bad
14 places in and of themselves, but that's almost -- should
15 be getting two for one so-to-speak but I've never been
16 able to sell that to anybody but --

17 THE COURT: No, but your point is well taken based
18 on some of the things we've heard this week, earlier in
19 the week.

20 MR. RUNYON: And this plea almost didn't occur
21 today, Judge. He works for a steel erection company.
22 It's the high construction business. And yesterday in
23 Columbia they had a scaffold collapse and three of his
24 co-workers were killed.

25 So he works hard, Judge, in a dangerous business.

1 And so we almost had to call today and say this case is
2 mooted out, but it's not mooted out and he's here and
3 ready to face the music so-to-speak.

4 We do have this negotiation. We do have the fact
5 that he has served a year. And I know the Court is going
6 to enter that on the record, which automatically lowers
7 things.

8 He is married. He has children. And I must say,
9 Judge, when I got involved we made a motion to set a bond
10 and Mr. Shelton, the prior solicitor, who was a great
11 person and what have you, but he was not at all amenable
12 and was just sure that Mr. Miles would not properly
13 comply with bond orders.

14 And so there was a requirement that Mr. Shelton
15 personally be advised of his address and where he was
16 working, the address and what have you, and I can tell
17 you that since he's been out on bond he has faithfully
18 complied with all his GPS and Mr. Shelton has promptly
19 gotten a work address, living address, if he was
20 temporarily somewhere in the state on the job, and he has
21 proven my friend, Mr. Shelton, absolutely incorrect in
22 his original assessment of Mr. Miles on bond.

23 THE COURT: Okay. All right.

24 MR. RUNYON: And I think that says something about
25 Mr. Miles. He does have skill and that works against

1 you, quite frankly, when you have skills.

2 THE COURT: But he understands this a negotiated
3 sentence, correct?

4 MR. RUNYON: Yes, Your Honor. He does have skills
5 and that works against you because as a practical matter
6 if you've got these skills and work hard what are you
7 doing here? But he is here and we are prepared to hear
8 the judgment of the Court.

9 THE COURT: Okay. Thank you, sir.

10 Mr. Miles, I know Mr. Runyon has explained all this
11 to you because you have an excellent attorney, but you
12 waive important constitutional rights when you plead
13 guilty. You waive your right to a jury trial, you waive
14 your right to remain silent and you waive your right to
15 have Mr. Runyon cross-examine and confront the State's
16 witnesses on your behalf; do you understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. If you wanted to exercise
19 your right to a jury trial you'd be presumed innocent
20 throughout any proceeding. The State would bear the
21 burden of proving you guilty beyond a reasonable doubt
22 and 12 jurors would have to unanimously agree to find you
23 guilty. You'd then have the opportunity to appeal that
24 conviction to a higher court, if you so chose. You waive
25 all that when you plead guilty. You want to waive those

1 rights and enter this plea today?

2 THE DEFENDANT: Yes, ma'am, I do.

3 THE COURT: Okay. Other than the negotiated term
4 and permitting you to plead to a lesser included charge
5 of burglary second has anybody promised you anything or
6 done anything to force you to plead guilty?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: You have any other questions for your
9 attorney?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: You happy with his work for you?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: You will have 10 days from today's date
14 to appeal, if you wish to do so. I will accept the
15 negotiated plea. I do find that Mr. Miles is pleading
16 knowingly, intelligently and voluntarily this morning and
17 that he is competent and well enough to do this plea
18 today. He's been represented by an excellent attorney
19 who has explained everything to him that he will need to
20 do and that he will face, and the consequences of plea.
21 The negotiated term is 15 years. I will give credit for
22 the 365 days served. Good luck, sir.

23 (WHEREUPON, the hearing was concluded.)

24

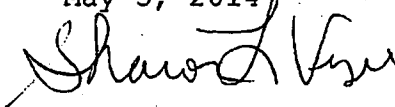
25

C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 25th day of July 2013.

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

May 3, 2014



SHARON L. VIZER

CIRCUIT COURT REPORTER

2013-CP-08-2847

STATE OF SOUTH CAROLINA

County of

BerkeleyDerrick J miles #307815

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible, 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 Hill-Finkler Det-Center/GPS
Monitor + Home House Arrest (378 days)
2. Name and location of Court which imposed sentence Berkeley County
3. Name(s) of co-defendant(s) (if any) JAMES DEAN GRIFFIN
Michael Patrick Lynch
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012 G5 0800 255
 - (b) _____

2013 DEC 23 PM 4:46
 MARY F. BROWN
 CLERK OF COURT
 BERKELEY COUNTY
 FILED

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 7-25-2013
- (b) 15 yrs and violent
- (c) Reduced from Burglary 1st to 2nd violent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Berkley County Clerk of court
- 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 "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INSUFFICIENT COUNSEL
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) LACK OF PERSONAL CONTACT
- (b) LACK OF ANY VERBAL COMMUNICATION
- (c) WHILE IN JAIL
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. TIME REDUCTION RECONSIDERATION SENTENCE
- ii. MODIFICATION
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Berkley County Court of General Sessions
- 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?

NA

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

(a) which grounds have been presented:

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

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

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

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

(a) _____
 (b) _____
 (c) _____

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

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ~~Yes~~ No
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

NO

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

(a) the name and address of each attorney who represented you:

i. PAMELA ~~PAUL~~ POLZIN A.H. AT LAW (Charleston)

ii. William L. ~~PAUL~~ RUNYON JR.
#3 Gamecock Ave

iii. Suit 303
Charleston, S.C. 29407

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

i. Pre lim / Bond Hearing

ii. Second Bond Hearing And continuation of proceedings.

iii. _____

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

Amendment of my present sentence to be lowered /
Also I am asking that the court give me credit
for time spent on GPS monitor from 7-12-12 to 7-25-13

20. Are you now under sentence from any other court that you have not challenged? ^{Title: 24-13-40 o}
^{SC Code (2013)}

In every case in computing time served by a
prisoner, full credit against the sentence must be given for time
served prior to trial and sentencing, and may be given for any
time spent under monitored house arrest and Rule (29) A of
South Carolina Rules of Criminal Pro. ROAN-US-STATE 6955, E 2d 850 (2010)

STATE OF SOUTH CAROLINA)

County of Berkeley)

VERIFICATION

I, Derrick Joseph Miles #307815, 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.

Derrick J. Miles

SWORN to and subscribed before me this 20th
day of December, 2013.

[Signature] (L.S.)
Notary Public

My Commission Expires: 9/9/2023

FILED
15 2013 DEC 23 PM 3:46
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

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

I, Derrick J. Miles #307815, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Derrick J. Miles
Applicant

SWORN or affirmed to and subscribed before me this

20th day of December 2013.

[Signature]
Notary Public

My Commission Expires:

9/9/2023

FILED
2013 DEC 23 PM 3:46
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

2013-CP-08-2847

Derrick Miles, #307815,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 23, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. The Applicant was indicted at the February 2012 term of the Berkeley County Grand Jury for burglary- first degree (2012-GS-08-0255). The Applicant was represented by Bill Runyon, Esquire.

On July 25, 2013, the Applicant pled guilty to a negotiated fifteen year sentence. The Honorable Stephanie P. McDonald sentenced the Applicant to confinement for a period of fifteen years. The Applicant did not appeal his conviction or sentence

Attached herewith and incorporated herein are the records of the Berkeley County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Lack of personal contact.
 - b. Lack of any verbal communication while in jail.

III.

In this application, the Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such

that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
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By: AL R. WILSON

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march 31st, 2015.

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS

2013-CP-08-2847

DERRICK MILES, #307815)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

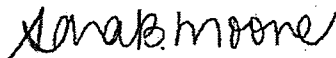
STATE OF SOUTH CAROLINA,)

Respondent.)

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

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 31st day of March, 2015.



Sara B. Moore, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Derrick J. Miles, #307815,

Applicant,

v.

State of South Carolina,

Respondent.

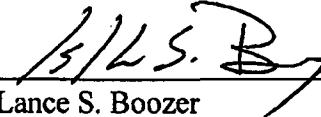
IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 C/A NO: 2013-CP-08-2847

**FIRST AMENDMENT TO PRIOR
 APPLICATION FOR PCR**

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed December 23, 2013:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (i) Counsel failed to ensure enforcement of terms of negotiated guilty plea.
 - (ii) Counsel failed to request that the plea judge enforce the negotiated plea agreement or move to withdraw the plea agreement.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
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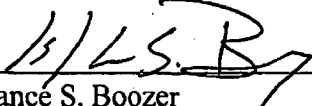
Columbia, South Carolina
 June 19, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A NO: 2013-CP-08-2847
	)	
Derrick J. Miles, #307815,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Rutledge Johnson
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


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Columbia, South Carolina
June 19, 2015

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
DERRICK J. MILES,	)	CASE NO. 2013-CP-08-02847
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	(PCR)
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
DEFENDANT.	)	

July 22, 2015

Charleston, South Carolina

B E F O R E:

The Honorable Roger E. Henderson

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

Lance S. Boozer, Esquire
For the Applicant

J. Rutledge Johnson, Esquire
For the Respondent

Phyllis Norton, CVR, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

(AW) - DENOTES APPLICANT'S WITNESS

(RW) - DENOTES RESPONDENT'S WITNESS

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WITNESSES(AW) Derrick Miles:

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Look for an original signature in blue ink on the certification sheet to verify that the court reporter has certified the transcript you are viewing.

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

E X H I B I T S

<u>APPLICANT</u> <u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
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1 MR. JOHNSON: May it please the court, Your Honor.
2 This is Derrick Miles versus the State of South Carolina.
3 It is Case Number 2013-CP-08-2847. Mr. Miles was indicted
4 back in February 2012 term of the Berkeley County Grand Jury
5 for burglary first-degree. On July 25th, 2013, he pled
6 guilty to a negotiated 15-year sentence on a burglary
7 second-degree before the Honorable Stephanie P. McDonald.

8 There was no appeal filed; however, there was a timely
9 PCR application filed December 23rd, 2013. The State filed
10 its return March 31st, 2015. And he is represented here
11 today by Mr. Lance Boozer.

12 And, Your Honor, do you have in your packet the amended
13 PCR application? It would have been dated June 19th, 2015.

14 THE COURT: Is that it (motioning)?

15 MR. JOHNSON: Yes, sir, that is it.

16 THE COURT: It's captioned first amendment to prior
17 application?

18 MR. JOHNSON: Yes, sir. Thank you.

19 THE COURT: Okay. Mr. Miles, I want you to stand and
20 be sworn, sir.

21 (WHEREUPON, Derrick Miles was duly sworn.)

22 THE COURT: All right. You are Derrick J. Miles?

23 MR. MILES: Yes, sir.

24 THE COURT: How old are you, Mr. Miles?

25 MR. MILES: Thirty-three years old.

1 THE COURT: Okay. How far did you go in school?

2 MR. MILES: I have a GED.

3 THE COURT: Okay. What kind of work do you do?

4 MR. MILES: I am an iron worker, structural steel; a
5 superintendant for Buckner -- excuse me, for All State Steel
6 Erectors.

7 THE COURT: Okay. Now you have filed an application
8 for post-conviction relief; is that correct?

9 MR. MILES: Yes, Your Honor.

10 THE COURT: All right. And what do you think you can
11 get as a result of filing that application?

12 MR. MILES: I am in hopes to get what I was promised on
13 a negotiated plea. There was some misunderstanding with the
14 negotiated plea with two different issues on it.

15 I was told that I was pleading to five years and five
16 years' probation and that I would get credit for -- all
17 credit for time served, which would have been one year in
18 the county jail and three hundred seventy-eight days under
19 house mon- -- house arrest with a GPS monitor where I was
20 allowed only to go to home and work, where that law was
21 passed 45 days before my sentencing. I believe that is 24-
22 1340 the law on that.

23 Mr. Runyon told me the morning of court upon going to
24 court I was going just to get my ankle monitor off so I
25 could go to a job in North Carolina.

1 THE COURT: Okay.

2 MR. MILES: But upon getting to court ---

3 THE COURT: Okay, let -- before we get into all of
4 those facts I want to advise you that if you were to prevail
5 in this post-conviction relief hearing the relief that I can
6 grant you is a new trial.

7 MR. MILES: Yes, sir.

8 THE COURT: I can send you back and you would be faced
9 with the burglary-first charge. Do you understand that?

10 MR. MILES: Yes, sir.

11 THE COURT: And if you were to go forward and have a
12 trial with regards to the burglary first do you understand
13 you could get a sentence of up to life in prison?

14 MR. MILES: Yes, sir.

15 THE COURT: Okay. So I just want to make sure you
16 understand the risk in going forward with this matter. I
17 mean you certainly have the right to go forward. I am not
18 trying to talk you out of it. But I want you to understand
19 you could be trading 15 years for a life sentence. Do you
20 understand that?

21 MR. MILES: Yes, sir.

22 THE COURT: You have talked to Mr. Boozer about this?

23 MR. MILES: Yes, sir.

24 THE COURT: Okay. And he has explained to you the same
25 risk involved?

1 MR. MILES: Yes, ma'am.

2 THE COURT: Obviously there would be some benefit if
3 you went to trial and were acquitted, but the risk of a life
4 sentence may very well outweigh that. Do you understand?

5 MR. MILES: Yes, sir.

6 THE COURT: Okay. Anybody, you know, putting any
7 pressure on you in any way whatsoever at this point?

8 MR. MILES: No, sir, just my mom who wants me home.

9 THE COURT: Okay. Have you had enough time to talk
10 with Mr. Boozer so far?

11 MR. MILES: Yes, sir, I have had plenty of time to talk
12 with him. He has been a good lawyer.

13 THE COURT: Okay. And you want to go forward with his
14 matter?

15 MR. MILES: Yes, sir, I do.

16 THE COURT: Okay. All right, sir. Okay.

17 You may proceed, Mr. Boozer.

18 MR. BOOZER: Thank you, Your Honor. If it pleases the
19 court. Judge, we would call Mr. Miles to the stand.

20 THE COURT: Come around, Mr. Miles.

21 (WHEREUPON, the witness was duly sworn.)

22 THE CLERK: Once seated state your first and last name
23 and spell your last name loudly and clearly into the
24 microphone.

25 MR. MILES: My name is Derrick Joseph Miles. And it is

1 D-E-R-R-I-C-K M-I-L-E-S.

2 MR. BOOZER: Your Honor, if I may just have a moment to
3 get situated and also if I may approach the witness with
4 this package.

5 THE COURT: Yes, sir.

6 MR. BOOZER: Thank you.

7 THE COURT: No problem.

8 **DIRECT EXAMINATION BY MR. BOOZER OF DERRICK MILES:**

9 Q. Mr. Miles, how are you doing today?

10 A. I am doing fine, sir. Thank you.

11 Q. Good. All right. You have heard -- you have heard the
12 court ask you a number of questions today. And just to make
13 sure we are clear, you are here; you filed a post-conviction
14 relief application; correct?

15 A. Yes, sir, I did.

16 Q. Okay. And you understand that the only relief that His
17 Honor can give is for you to have a new trial on the
18 original charges?

19 A. Yes, sir.

20 Q. And he can't cut your time or enforce any sort of plea
21 agreement that you believe may be out there?

22 A. Yes, sir.

23 Q. And knowing that you still want to go forward with it?

24 A. Yes, sir.

25 Q. Okay. Now you are currently serving a 15-year sentence

1 for burglary-second?

2 A. Yes, sir.

3 Q. All right. And what were you originally charged with?

4 A. The original charge was first-degree burglary and
5 criminal conspiracy.

6 Q. Okay. Who represented you --- you pled guilty; is that
7 right?

8 A. Yes, sir.

9 Q. Who represented you at that plea?

10 A. Mr. William Runyon.

11 Q. All right. And obviously you filed an application for
12 PCR; and you have got a number of allegations, right?

13 A. Yes, sir.

14 Q. Let's go through and kind of frame those allegations.
15 And I want you to tell the court and explain to the court
16 about those allegations, okay.

17 A. Okay. I started out ---

18 Q. Let me stop you. Let's first go -- on your first
19 application. Because you have had -- you have had an
20 amendment?

21 A. Yes, sir.

22 Q. So on your first application you allege there was a
23 lack of personal contact with Mr. Runyon?

24 A. Yes, sir.

25 Q. So explain to the court what it is that you mean by

1 that allegation.

2 A. Mr. Runyon seen me one time at my request. And I
3 believe it was on a Friday afternoon when I come down from
4 Charleston. We spoke a couple of times over the phone
5 throughout the year that he was my attorney. He never met
6 with me to go over it to -- and we talked about -- the one
7 time I met him we talked about a plea agreement, you know,
8 that I couldn't plea to 15 years.

9 And I seen him another time at the courtroom briefly
10 when I went in front of a judge to turn down a 15-year
11 violent plea. And that was in like January or February of
12 2013. And I never seen him again throughout the whole year.

13 Q. Okay. When -- when were you first arrested on these
14 charges?

15 A. I was arrested on this charge in July two thousand --
16 excuse me, August 2011.

17 Q. When did you retain Mr. Runyon?

18 A. June 2012..

19 Q. Okay. Were you out on bond or what -- tell me that.

20 A. No, sir, I had had a pro bono attorney, Ms. Pamela
21 Palzene; and she tried to get me to plea to 25 years and
22 told me I would never get a bond.

23 And I finally told my mom -- I had some cash put up,
24 and I finally told my mom to give the money to my wife. And
25 somebody had referred me to Mr. Runyon about what a

1 wonderful attorney he was. And I sent my wife down with the
2 five grand down payment to pay Mr. Runyon. It still left me
3 owing him like \$2,500. And within about three weeks I made
4 bond. Mr. Runyon got me a bond for \$65,000.

5 Q. So you made bond. How many times -- you ended up
6 pleading July 25th of ---.

7 A. Yes.

8 Q. --- 2013. In between the time that you retained Mr.
9 Runyon and your plea how many times did you meet with Mr.
10 Runyon?

11 A. One time to meet to discuss the case, and then I walked
12 -- then I went to the courthouse in January or February
13 2013. He just told me we were going there for my bond.
14 They were trying to take my bond from me because of work.
15 And we didn't really discuss the case. I turned down a 15-
16 year violent plea that day on the record in front of the
17 judge.

18 And he just said don't worry about it, they are
19 rattling swords. And he left and I went my way. So pretty
20 much twice in a year's time. But really only one good
21 meeting that we discussed the case.

22 Q. How long did that meeting last do you think?

23 A. That meeting lasted probably about 30 minutes. We were
24 in his office.

25 Q. Okay. Did y'all talk about any defenses you might have

1 to these charges?

2 A. No, sir, he just said that -- to be quite honest with
3 you, I told him from the start that I wanted to get a plea
4 bargain but I didn't want to do no more than five years and
5 I would do the maximum probation whatever it could be.

6 I had my family and my wife and my mom really needed
7 me. My dad was sick at the time before he died, and they
8 needed me out there.

9 And Mr. Runyon said well let's worry about getting this
10 last \$2,500 paid off, it is going to be a while before you
11 go another year or two and we will get it put off. But
12 there was never no discussion of no defense or what kind of
13 plea I would get or he could work out.

14 Q. Okay. You have also got your other claim is lack of
15 any verbal communication while in jail. Is that kind of
16 going along the same lines of what you have just been
17 discussing?

18 A. Yeah -- yeah, pretty much so. You know, when I -- even
19 after I got sentenced -- the day I got sentenced was July
20 25th, 2013. I had -- that was on Thursday. Finally I got
21 in touch with him. I had a ten-day window to appeal. I was
22 at Hill Finkley Detention Center waiting to transport to
23 SCDC.

24 I finally got a three-way call through to him through
25 my wife and he said that he would not file my appeal for him

1 because I still owed him the 2,500.

2 My wife asked me well if I pay you \$20 a week to pay
3 this off will you go ahead and file the appeal within this
4 ten-day window. He refused to do it.

5 I have a letter here from him talking about that issue
6 a little bit too if the court would like to see it.

7 Q. Okay.

8 MR. BOOZER: And, Your Honor, may I approach the
9 witness?

10 THE COURT: Sure.

11 Q. Is that ---

12 A. No, this is a different letter. That is what that.

13 Q. All right. So that pretty much encompasses though your
14 two claims with regard to his contact and his meetings with
15 you; is that right?

16 A. Yes, sir.

17 Q. Okay. So let's move on to you obviously filed your
18 amended application. And I believe these two claims really
19 are together so we can kind of handle those claims together.

20 You have alleged in your amended application that
21 counsel failed to ensure the enforcement of terms of a
22 negotiated plea agreement, and you have also got that
23 counsel failed to request that the plea judge enforce the
24 negotiated plea agreement or move to withdraw the plea
25 agreement?

1 A. Yes, sir.

2 Q. I want you to explain to the court what you mean by
3 those two allegations.

4 A. All right. I was told the morning that we were called
5 out into -- the morning I come to court, July 25th, 2013, I
6 was told that I was coming to court to get my ankle monitor
7 removed so I could go to a job that the company I was
8 working for had in North Carolina. That is the only way I
9 could go was to have my ankle monitor removed.

10 I got to court, me and my mother did. Mr. Runyon was
11 not there at that time. The victims were there. I said Mom
12 something is not right about this, there must be some type
13 of plea they are going to offer.

14 Mr. Runyon showed up. He called me and my mother to
15 talk with the solicitor. He called me and my mother in the
16 hallway. My mother and I went out there. He said -- he
17 handed me the sentencing sheet which I have here.

18 And he said: I've got a plea agreement for you; it is
19 either take this today or they are going to move to revoke
20 your bond and go to trial next month. Your co-defendant got
21 20 -- 20 years this past court term; you need to take this
22 plea.

23 He said it carries zero to fifteen; it is second-degree
24 burglary; it is a violent so you are going to do a violent
25 85. He said but you are only going to get five years --

1 probably five years or probably five years and five years
2 probation. He said sign right here.

3 So I had the sentencing sheet in my hand and I seen
4 where it was marked negotiated, checked negotiated, and it
5 had second-degree burglary but no amount of time.

6 So I signed it, you know, trusting Mr. Runyon because
7 he is my paid attorney. And I go into the courtroom. They
8 call a recess. Him and the judge go back in chambers.
9 About ten minutes later him and the judge come out.

10 The judge said she was ready to proceed, do you want to
11 call Mr. Miles. And they called my name. And I look at Mr.
12 Runyon and I am shaking my head no. I decided I didn't want
13 to take the plea.

14 He comes over by me and my mom and he blocks me in the
15 pew with both hands. And he says you are going to take this
16 plea, you have got to take this plea, if you don't take this
17 plea you are going to go to trial and get life next month.

18 And I am like I don't want to take it. So I go up -- I
19 am crying and upset because I've got my company truck in the
20 parking lot. You know, my company is expecting me back at
21 work that day. And I go up to take the plea knowing he had
22 told me I was going to get the time served, so I figured --
23 I figured I had maybe two-and-half years to do. And the
24 next thing I know the judge hits me with 15 years.

25 Q. Okay. Was your -- was your mother -- who is your

1 mother?

2 A. My mother is Linda C. Barnett.

3 Q. All right. Was she involved -- was she there at your
4 plea?

5 A. Yes, sir, she was.

6 Q. Okay. Was she there with you at any of the meetings
7 with Mr. Runyon?

8 A. No, sir, she was never at none of the meetings with Mr.
9 Runyon. She was there with them at my bond hearing, with my
10 wife and Mr. Runyon at my bond hearing when I got the bond.
11 And she was there at the plea agreement.

12 Q. Okay.

13 MR. BOOZER: Your Honor, I am not sure if this is the
14 appropriate time or maybe later on in the hearing is an
15 appropriate time. I have an affidavit from his mother who
16 he just testified is Ms. Barnett. Ms. Barnett is
17 unavailable today to testify. She did submit to me a sworn
18 statement. I would like to present it to the court at this
19 time or later on just the affidavit and a couple of
20 statements from the affidavit.

21 MR. JOHNSON: Your Honor, I am going to object to that
22 because she is not here to testify and lay any foundation
23 for this affidavit.

24 THE COURT: You have no right to cross-examine that
25 affidavit ---

1 MR. JOHNSON: Right.

2 THE COURT: --- so I don't know -- I am going -- I am
3 not going to permit that affidavit in. She had the
4 opportunity to come testify in person so.

5 MR. BOOZER: Your Honor, if I may then may I mark the
6 affidavit as just for identification and allow him to read
7 as recognizing his mother's signature and stating what she
8 has got in the affidavit?

9 THE COURT: That would be the same difference as ---

10 MR. JOHNSON: I still don't have a chance to cross-
11 examine.

12 THE COURT: Yeah.

13 MR. JOHNSON: And it is a typed statement. I have got
14 a copy of it, and it's

15 THE COURT: I mean that is no different than if I just
16 go ahead and allow the affidavit if he reads from it. So,
17 no, sir, I am not going to allow that.

18 MR. BOOZER: Thank you, Your Honor.

19 BY MR. BOOZER:

20 Q. Mr. Miles, you thought you were going to get five
21 years?

22 A. Yes, sir.

23 Q. Okay. And you were also on an ankle monitor, right?

24 A. Yes, sir.

25 Q. All right. Is that part of your claim?

1 A. Yes, sir, I was expecting -- I had 365 days that I did
2 get credit for for when I was in the Berkeley County
3 Detention Center; but under the new law that was passed 45
4 days before I pled it allows, under 24-1340 I believe, it
5 allows for me to get the credit for the home detention on
6 GPS.

7 I was only allowed to work and home. I couldn't even
8 stop at a gas station and gas my company truck up. So I was
9 supposed to get the credit for that time served too under
10 that law.

11 Q. What discussion did you have with Mr. Runyon about
12 that?

13 A. No, all Mr. Runyon said is I would get credit for all
14 time served.

15 Q. So you thought that that meant the 365 plus the time on
16 the ankle monitor?

17 A. Yes, sir.

18 Q. Okay. What effect would that credit on the ankle
19 monitor have on your release date?

20 A. That -- right now that would put me out at two
21 thousand -- February 2020; but it would put me eligible for
22 parole right now. Which we all know usually you won't get
23 parole the first time up. But it would give me the hope of
24 parole for right now. And it would knock -- it would knock
25 a little over a year off, like February of 2020. Right now

1 I am at like July of 2020.

2 Q. Okay. Why is it -- why did you plead guilty in this
3 case?

4 A. I pled guilty because I thought I was getting five
5 years with five years probation. And Mr. Runyon had me
6 terrified to death I was going to get life without parole.

7 And which that wasn't the case. My co-defendant went
8 to trial and got 20 years. Which I have the statutes. The
9 statutes for my crime for second-degree burglary they should
10 have been dropped anyhow. That's why they offered them to
11 be dropped from my co-defendant as well. He just went to
12 trial.

13 You know, I would have never pled -- knowing what I
14 know now about the law I would have never pled -- pled
15 guilty to what I was -- to none of this.

16 Q. Going back to the actual plea date did you know that
17 you were there to enter a plea that date?

18 A. No, sir. No, sir. I was there to get my ankle monitor
19 removed that day so I could go out of town to North Carolina
20 and work.

21 Q. When did you realize you were going to enter a plea?

22 A. When Mr. Runyon come back through -- when once he got
23 there and he come back from the solicitor's table and called
24 me and my mom in the hallway and showed us the sentencing
25 sheet marked negotiated and second-degree burglary.

1 But it doesn't have an amount of time. He didn't --
2 him and the judge is saying it is a negotiated 15. He told
3 me in the hall it was a negotiated five with five years, but
4 he told me I would be doing 85 percent of it. Even in my
5 transcripts where we get up in front of the judge he is
6 saying it is 85 with no parole. The solicitor is saying it
7 is a 65 with no -- with parole. And the judge is saying,
8 well, I don't know either; y'all don't seem to know; I don't
9 know; we will just let the Department of Corrections decide
10 how much time he does.

11 Q. And what you are referring to that is reflected at the
12 guilty plea?

13 A. That is reflected in the transcripts. Nobody knew what
14 I was getting. They didn't know. They were going to let
15 the Department of Corrections decide how much time.

16 Q. Why didn't you -- did you hear them say 15 years ---

17 A. No, sir, I was so out of it. I was crying and upset.
18 Because I knew my mom has got health problems but my dad had
19 been in the hospital. The day before I had three guys die
20 on my crew. It is reflected in the transcripts. I had
21 three of my guys that I was responsible for fall and die on
22 my crew. That was brought up in court.

23 And, you know, I didn't even -- one of them was my best
24 friend. I didn't even get to go bury him or explain to his
25 mom what happened. I was pretty much out of it. You

1 know, I was in tears the whole time. I had a whole lot
2 going on.

3 Q. All right. Going back to your allegations does that
4 encompass your whole PCR application?

5 A. Yes, sir, as far as -- as far as I know, yes, sir.

6 Q. Okay. Is there anything else that we haven't covered
7 that you haven't addressed in your PCR application that you
8 want to address?

9 A. No, sir. I would just like to say for the record that
10 letter my mom wrote -- my mom -- it was notarized and my mom
11 has ---

12 MR. JOHNSON: Objection, Your Honor. First of all, it
13 is non responsive; and he is trying to testify about the
14 affidavit.

15 THE COURT: I sustain the objection.

16 BY MR. BOOZER:

17 Q. You can't testify about what is in the affidavit, okay.

18 A. All right. Well, that is pretty much it then.

19 Q. Okay.

20 MR. BOOZER: Your Honor, I don't have any further
21 questions at this time.

22 THE COURT: Okay. Mr. Johnson.

23 PLAINTIFF ATTY: May it please the court, Your Honor.

24 **CROSS-EXAMINATION BY MR. JOHNSON OF DERRICK MILES:**

25 Q. Mr. Miles, your testimony today is that you thought you

1 were getting five years with five years probation, correct?

2 A. Yes.

3 Q. And that's what you said Mr. Runyon advised you of, ---

4 A. Yes.

5 Q. --- right? But at your guilty plea you were under oath
6 like you are right now, correct?

7 A. Yes.

8 Q. Okay. And you swore to tell the truth, the whole truth
9 and nothing but the truth; correct?

10 A. Yes.

11 Q. And you did that, right?

12 A. Yes.

13 Q. Okay. But on Page 6 of your transcript the judge
14 explains to you: Sir, that carries a penalty of up to 15
15 years however because it is a negotiated plea I have been
16 presented with a negotiation that you will be sentenced to
17 15 years and I can't change that in any way; do you
18 understand that? To which you replied: Yes, ma'am.

19 Is that correct?

20 A. I guess it is correct.

21 Q. You also had some confusion about 65, 85 and that they
22 were going to let the Department of Corrections, you know,
23 figure that out. Are you aware that is a normal procedure?

24 A. No, I'm not aware. Because different sentences carry
25 different things. And the judge sentencing you per law the

1 judge is supposed to know what you are getting and whether
2 it is a parolable offense or not. The judge is supposed to
3 know that before she sentences you.

4 Q. But, Mr. Miles, on number -- Page Number 7, Line 15,
5 the judge says to you: But it could be up to 85 percent of
6 the time and some of it depending on your behavior; do you
7 understand that? Yes.

8 And then she states: Okay, understanding all of that
9 how do you like to plead to this charges? And you state
10 guilty. Correct?

11 A. I understand that. But she said we will let them
12 decide. So I mean pretty much we should have skipped the
13 courtroom and sent me to SCDC and let them decide my
14 sentence is what you are saying.

15 Q. And you also state that you were going through some
16 rough times - and I am sorry to hear about that - during
17 your plea. But the judge asked you about how were you doing
18 today, and you said going through some rough times. And she
19 said sorry to hear that and says are you feeling well enough
20 to go forward. To which you replied, yes, ma'am. Correct?

21 A. Yes, I mean I was scared about getting a life sentence.
22 I was told I was only getting five years with five years
23 probation, sir.

24 Q. But that is not what the judge said the negotiation
25 was, to which you agreed with that?

1 A. I was in tears crying uncontrollably. Mr. Runyon had
2 to reach over and steady me and tell me to calm down. I
3 didn't -- I didn't hear what even was being said pretty
4 much.

5 Q. But you continued to answer the questions the judge
6 asked you, did you not?

7 A. I mean I guess I did.

8 Q. At no time did you stop the proceeding and say judge I
9 don't want to do this, he promised me ---

10 A. I wasn't -- I wasn't aware ---

11 Q. May I finish my question?

12 THE COURT: Sir, wait a minute. Sir, don't talk over
13 him.

14 MR. MILES: Yes, sir.

15 THE COURT: Let him finish the question before you
16 respond to it.

17 MR. MILES: Yes, Your Honor.

18 BY MR. JOHNSON:

19 Q. At no point did you stop the proceedings and say Mr.
20 Runyon has promised me five years with five years probation;
21 he never promised you -- I don't want this negotiated
22 fifteen years; I am too upset right now; you never told the
23 judge that, did you?

24 A. I wasn't aware I could.

25 Q. So your answer is no?

1 A. Yes, it is no.

2 Q. You also state that you believe you deserve credit for
3 the time spent on the home detention; correct?

4 A. Yes.

5 Q. Okay. And you cited Section 24-1340; correct?

6 A. Yes, sir.

7 Q. And are you aware that it says that the judge may give
8 you time credit for that?

9 A. I mean I am aware of that, yes, sir.

10 Q. Okay. So the judge did not have to give you that time?

11 A. No, they didn't have to; but it wasn't brought up
12 either.

13 MR. JOHNSON: That's all the questions I have for this
14 witness, Your Honor. Thank you.

15 THE COURT: Mr. Boozer.

16 MR. BOOZER: No redirect, Your Honor.

17 THE COURT: You can step down, sir.

18 (WHEREUPON, witness stepped down from the witness stand.)

19 THE COURT: Any other witnesses, Mr. Boozer?

20 MR. BOOZER: Your Honor, we would call Mr. Runyon to
21 the stand.

22 (WHEREUPON, the witness was duly sworn.)

23 THE CLERK: Once seated please state your first and
24 last name and spell your last name loudly and clearly into
25 the microphone.

1 MR. RUNYON. My name is William L. Runyon, Jr.

2 R-U-N-Y-O-N.

3 **DIRECT EXAMINATION BY MR. BOOZER OF WILLIAM RUNYON:**

4 Q. Mr. Runyon, how are you doing?

5 A. Just fine, sir.

6 Q. Good. Do you recall representing Mr. Miles?

7 A. Yes, sir.

8 Q. All right. And were you retained in that case?

9 A. I was retained, yes, sir.

10 Q. Do you recall when you were retained?

11 A. Yes, sir, what is left of my file I have that here. I

12 have a contract retainer which was June 11th, 2012, here in

13 Charleston.

14 Q. Okay. And his plea was July 2013?

15 A. Yes, sir.

16 Q. Do you recall or have any notes reflecting in your file

17 how many times you may have met with Mr. Miles prior to the

18 plea?

19 A. No, I do not have those times. I met with him I think

20 it was twice in Berkeley before we got the bond set. I

21 could be mistaken about that. But I did meet with him in

22 the Berkeley County jail.

23 Q. Okay. Do you recall once -- he actually got out and

24 was on an ankle monitor?

25 A. We got him out on bond and an ankle monitor. And then

1 I met with him I think it was twice in my office. Of course
2 I meet with my clients -- I will meet with them --
3 particularly because he was working during the week I
4 meet -- I will meet with them on Saturday or Sunday even.
5 So I leave it up to my clients to make the appointments with
6 me.

7 Q. So just so I am clear on it, you met with him twice in
8 Berkeley County and you may have met with him two more times
9 in your office?

10 A. I met with him at least two more times in my office.
11 And then we had the meetings at the courthouse. I didn't
12 tell him not to come to my office, but every time I spoke to
13 him on the phone he was always working around the state.

14 And we did have several telephone conversations though.
15 I mean we talked a lot on the telephone. Mr. Shelton, the
16 solicitor, was not -- the assistant solicitor who handled
17 the case, nice fellow; but he was not happy that Mr. Miles
18 was out of jail even on the bond situation. And so I kept
19 tabs on Mr. Miles. Quite regularly we talked.

20 Q. Did you guys discuss I guess any sort of trial
21 strategy, or was this a plea from the get go?

22 A. Well, it -- by the time I got into it, okay, his co-
23 defendants -- he had -- well, I took the whole package. He
24 had Berkeley County charges and he had some Charleston
25 County charges. And he had some co-defendants in Berkeley

1 County.

2 The indications from their counsel was that they were
3 going to work some sort of -- try to work some sort of deal.
4 They were going to testify; they were going to give
5 statements, what have you.

6 In those kind of cases it kind of looked like there was
7 going to be some sort of a plea down the road, in all
8 candor. The simple fact is they -- you had more than one
9 burglary charge. And burglary-first and you are looking at
10 potential life. I mean this was -- this whole situation was
11 serious as a heart attack. I mean it was -- it was not just
12 a slap and tickle kind of charge.

13 Q. Now you have heard some of the allegations regarding
14 what he knew he was doing that day on the plea date. Was he
15 aware that he was going to plead on that day that he
16 actually entered the plea?

17 A. Yes, sir. There was -- there were two occasions when
18 we went to court about his plea. Mr. Shelton had offered a
19 plea, and in January of the first time we appeared in court
20 Mr. Shelton pursuant to the Supreme Court decision about
21 making sure that the -- the United States Supreme Court
22 decision, about making sure that plea offers were in fact
23 memorialized and what have you. He had brought us to court
24 to publish the plea offer at the time and that Mr. Miles was
25 rejecting it. Which in fact was in fact done. That was one

1 of the times we met in Berkeley County, in all candor.

2 The second time we appeared in court was when -- was
3 when the plea was actually entered. And that was after a
4 co-defendant had been convicted and some other developments
5 in the case had occurred.

6 And frankly I had never heard the thing about going out
7 of state. I can tell you this, under no circumstances would
8 Mr. Shelton had ever agreed to allowing Mr. Miles to leave
9 the state on bond. So I don't know about this removing his
10 ankle monitor to go out of state. Never heard about that.

11 Q. But your testimony is that that day, July 25th, that
12 you knew that it was to go and enter a plea?

13 A. That we were being -- that we were being asked to
14 plead, that the offer was being put on the record subsequent
15 to the co-defendant being convicted, and that this was kind
16 of a drop dead situation so to speak. I am not being
17 sarcastic when I say that. It was Mr. Shelton was wanting
18 to know are we going to plead or are we going to go to
19 trial.

20 Because -- and that was the situation we were in. We
21 had to make a decision about the plea offer that was entered
22 on that day or we were going to go to trial. Because they
23 had already tried the co-defendant.

24 Q. Did you ever tell -- well, let me ask you this: Did
25 you have discussions with his mother, Linda Barnett?

1 A. Ms. Barnett was present at the courthouse I believe on
2 the day that we entered the plea. She was present. I
3 didn't have a lot of discussion with her, but she was
4 present.

5 Q. Did you tell Mr. Miles or his mother that you felt that
6 he was going to get a five-year sentence or that he would
7 actually serve five years?

8 A. No, I -- the plea offer was 15 -- negotiated 15 years
9 sentence. How much time he would serve was going to be
10 dependent upon a lot of things. And there was no way I can
11 guarantee the time.

12 Now Mr. Miles said I will take five years. And I said
13 well that is nice, but I mean there's no guarantee that you
14 will serve only five years; you are going to get negotiated
15 15; you are going to do whatever time the SCDC gives you;
16 you have got a year in the Berkeley County Jail, that would
17 come off the thing -- that will come off your time.

18 Q. Did you indicate to him that he would also be getting
19 the ankle monitor credit?

20 A. No, I did not indicate that he would get the ankle
21 monitor credit.

22 Q. Did you request that?

23 A. It is not in the record.. I don't -- I do not recall
24 discussing that with Judge McDonald, and it doesn't appear
25 to be in the transcript that I read. And I just don't

1 recall it.

2 Q. And you have reviewed the transcript?

3 A. Yes, sir.

4 Q. Okay. And looking back is that something you probably
5 should have done was ask for -- for the credit?

6 A. I probably should have called that to the court's
7 attention, yes, sir; there is no question about that.

8 Q. In looking at the transcript you would agree with me
9 from looking at the record there was some confusion as to
10 whether that was a 65 percent or an 85 percent crime, right?

11 A. Well, there was some discussion on the record; but
12 the -- and I haven't seen the sentencing sheet. But the
13 sentencing sheet is marked as to whether or not it is
14 violent or nonviolent. And I am not sure from reading the
15 transcript how that come up -- came about. But if it is a
16 nonviolent plea then it is 65 present.

17 Q. Did you explain those differences to Mr. Miles prior to
18 the plea?

19 A. Just prior to the plea?

20 Q. Any time -- at any time.

21 A. We had had discussions about various sentencing
22 configurations when we talked both in person and on the
23 telephone.

24 And I -- I've got to point out -- I've got -- you know,
25 I've got to say this, I make myself available. If somebody

1 wanted to come see me on Sunday afternoon I would have made
2 the appointment and I would have been in my office.

3 So the appointments at my office were at Mr. Miles'
4 calling, not mine. I didn't refuse -- I never -- I have
5 never refused an appointment at the office to a client.

6 Q. So was that you think you did describe the differences
7 or not?

8 A. No, I know we -- I know we discussed the various
9 configurations of sentences. And then when Mr. Shelton came
10 down with here is the -- here is the plea offer, 15 years
11 negotiated, we had to talk about what that would mean, yes,
12 sir.

13 MR. BOOZER: Your Honor, may I approach the witness?

14 THE COURT: Yes, sir.

15 MR. BOOZER: Thank you.

16 Q. Mr. Runyon, I am going to hand you a copy of what
17 appears to be a letter on your letterhead that I was
18 provided by my client today. If you would just take a
19 moment and review that.

20 A. Yes, sir.

21 Q. Have you had a moment to review it?

22 A. Yes, sir.

23 Q. Okay. Is that your letter?

24 A. That is my letter of March 19th to Bluestein and
25 Douglas regarding Mr. Miles' fee dispute which he filed with

1 the South Carolina fee dispute committee.

2 Q. Okay. And so Mr. Miles had apparently a fee dispute
3 with you and you had to respond to it I guess?

4 A. Yes, sir, and I responded to it. And ultimately it was
5 a favorable decision for me so.

6 Q. Okay. And is that a true and accurate copy of your
7 letter that you sent?

8 A. That is not a true and accurate copy; ---

9 Q. It is the original ---

10 A. --- that is the letter.

11 Q. It is the original?

12 A. That is the original.

13 Q. Okay. And there's also a couple of I believe exhibit
14 numbers marked on it, 27. Is that your handwriting or no?

15 A. I don't know what those Exhibit 27's are. I don't know
16 whether that is someone from the fee dispute committee.

17 Frankly, Mr. Miles also filed a complaint with ODC
18 about me, Mr. Shelton, and the judge. And a lot of these
19 papers were in fact included. So someone wrote Exhibit 27
20 here. There were a lot of exhibits.

21 MR. BOOZER: Your Honor, if I may move to mark this as
22 Applicant's Exhibit 1.

23 MR. JOHNSON: I have no objection to this, Your Honor.
24 I have seen it before.

25 THE COURT: All right. That will be admitted into

1 evidence.

2 MR. BOOZER: Thank you, Your Honor.

3 (WHEREUPON, Applicant's Exhibit Number 1 was marked for
4 identification.)

5 (WHEREUPON, Applicant's Exhibit Number 1 was admitted into
6 evidence.)

7 BY MR. BOOZER:

8 Q. Mr. Runyon, in looking at this letter that has been
9 marked Applicant's Exhibit 1 you will see there I guess the
10 second sentence. If you would, starting at "considering",
11 would you read that line.

12 A. Considering he was facing life without parole and he
13 will be out in July of 2016 I think I did a fair job of
14 lawyering in there with fourteen charges more or less
15 pending in two counties, yes, sir.

16 Q. Okay.

17 A. And that was -- and that was based upon the parole
18 eligibility date of July 2016 which I think is in the FCD
19 sheet.

20 Q. He will be out in July of 2016?

21 A. Yes, sir.

22 Q. You are saying that you think that that -- that you are
23 basing that number or that date on his parole eligibility?

24 A. Yes, sir.

25 Q. But he is not automatically out for his parole; he

1 would be up for parole; right?

2 A. Well, he would be up for parole; but considering Mr.
3 Miles' job experience, his skills and what have you and the
4 fact that he can get a job in -- as an iron worker before he
5 clears the door, so to speak, having gone through various
6 parole hearings I think it would be -- that is -- it may be
7 optimistic, but I think that's -- that's -- that's where he
8 would wind up, yes, sir.

9 Q. Would your agree with me that if he were sentenced in
10 July of 2013 and he were given a years' credit for his time
11 in Berkeley County and then he were also given credit on the
12 200 days that that would be also a close approximate date of
13 his release date, July 2016?

14 A. Yeah, I ---

15 Q. On a five-year sentence?

16 A. On a five-year sentence?

17 Q. Right.

18 A. Well, he didn't get a five-year sentence.

19 Q. Well, if he did.

20 A. Assuming he got a five-year sentence, certainty.
21 Absolutely. But that wasn't what was offered and that
22 wasn't what was pled to.

23 MR. BOOZER: Court's indulgence, Your Honor.

24 THE COURT: Yes, sir.

25 BY MR. BOOZER:

1 Q. Mr. Runyon.

2 A. Yes, sir.

3 Q. The solicitor in this case I think you had mentioned
4 earlier was Mr. Shelton?

5 A. Yes, sir.

6 Q. Okay. Are you aware that at the plea it was actually
7 Colin Dixon that was the ---

8 A. Yes, sir.

9 Q. --- solicitor?

10 A. The transcript reflects he was there. But Mr. Shelton
11 was the solicitor that I worked with during the whole
12 process up until the day of the plea.

13 Q. Okay.

14 MR. BOOZER: Court's indulgence, Your Honor?

15 THE COURT: Yes, sir.

16 MR. BOOZER: No further questions. Thank you, Mr.
17 Runyon.

18 THE COURT: Mr. Johnson.

19 MR. JOHNSON: Briefly, Your Honor.

20 **CROSS-EXAMINATION BY MR. JOHNSON OF MR. RUNYON:**

21 Q. Mr. Runyon, concerning that letter what is the date of
22 that letter?

23 A. Let's see what it says here. I will put my glasses on
24 so -- March 19th, 2014.

25 Q. So that is getting close to a year after the actual

1 guilty plea, isn't it?

2 A. Yes, sir.

3 Q. And so whatever advice that counsel was referring to,
4 you wouldn't have given him that before the plea would you,
5 as far as, you know, max out dates, parole dates?

6 A. No. There is no -- first of all, SCDC has this magic
7 computer; and I don't think the court, the attorney
8 general's office, the Department of Probation and Parole or
9 any of us can figure out what SCDC is going to come up as
10 far as dates are concerned.

11 This letter was written partly in response to the
12 initiation of that investigation. And there were -- there
13 was another investigation. And it was kind of an after-the-
14 fact letter, so to speak. And by that time we knew that
15 what SCDC's projected date was on his sheet and you can look
16 it up on the computer.

17 Q. And concerning the plea, you have testified that you
18 discussed the 15-year negotiated plea with Mr. Miles?

19 A. Yes, sir.

20 Q. And was he on board with that plea?

21 A. Yes, sir. I mean it was -- you know, we -- I was -- I
22 would have taken him to trial if he wanted to go to trial.
23 And as a matter of fact the Solicitor's Office was going to
24 add it to their trial docket in the immediate future.

25 They didn't give me an actual trial date, but it would

1 have been within the next 60 days. And they -- they rattled
2 the saber. But by that time they were ready to try the case
3 because they had already taken care of the co-defendant.

4 Q. Did you ever threaten him to get him to pled guilty?

5 A. No, sir, I didn't threaten him. I advised him. I mean
6 you have got an offer here that will clear up everything in
7 two counties for a flat 15 negotiated under the
8 circumstances that are -- that is in the transcript and this
9 is the last time we get a chance to either take it or leave
10 it.

11 The first time -- we had already been on the record of
12 refusing it back in January. Now that is one of the
13 appearances we made, and he refused the plea offer then.
14 And we put -- and that was put on the record back in
15 January. And subsequent events changed the landscape.

16 Q. Whose decision was it to accept this guilty plea?

17 A. His.

18 MR. JOHNSON: No further questions, Your Honor.

19 THE COURT: Mr. Boozer, anything else?

20 MR. BOOZER: No questions, Your Honor.

21 THE COURT: All right. You can step down, sir. Thank
22 you.

23 MR. MILES: Thank you.

24 THE COURT: Anything else from the State, Mr. Johnson?

25 MR. JOHNSON: That was his witness.

1 THE COURT: I'm sorry, that was your witness. I'm
2 sorry.

3 MR. BOOZER: No further witnesses.

4 THE COURT: Anything from the State?

5 MR. JOHNSON: Nothing from the State, Your Honor.

6 THE COURT: Do you wish to argue anything, Mr. Boozer?

7 MR. BOOZER: Your Honor, I believe I will probably just
8 let the testimony and what has been put on the record speak
9 for itself. In considering the letter I believe Mr. Miles I
10 guess was under -- he has testified he was under the
11 impression he was going to get significantly more credit
12 than what was accounted for, 365 days. And also apparently
13 he was under the impression he was going to be getting a
14 five-year sentence.

15 I would submit just based on argument sake that the
16 letter from Mr. Runyon regarding a fee dispute may give some
17 credence to that with July 2016 if you were to do the math
18 on a five-year sentence with basically 365 days of credit
19 and an extra 200 of credit may corroborate Mr. Miles' -- his
20 position, Judge.

21 THE COURT: Okay. Thank you.

22 MR. BOOZER: Thank you, Your Honor.

23 THE COURT: Mr. Johnson.

24 MR. JOHNSON: Just briefly, Your Honor. First of all,
25 I think the transcript directly refutes any thought on Mr.

1 Miles' part that he was getting five years and five years
2 probation. It clearly says 15 negotiated. And he said yes,
3 ma'am, to the judge. Never stopped any of the proceedings
4 and said, you know, this is not what I was promised, it is
5 not what Mr. Runyon told me.

6 The letter I think has absolutely no relevance
7 whatsoever, to be honest. This is clearly almost a year
8 after the plea was accepted. And as Mr. Runyon correctly
9 stated, SCDC does have a magical calculator that we all
10 never known what they are going to do.

11 But looking at his SCDC sheets he has a parole date, a
12 projected parole date, of July of next year, 2016. So I
13 think it is pretty accurate even if he did get that advice -
14 which he said he did not - that that is pretty accurate to
15 what SCDC has.

16 I think the record and the testimony stands for, you
17 know, by itself; and we ask you to deny and dismiss this
18 application.

19 THE COURT: Okay. Thank you, sir.

20 MR. BOOZER: And, Your Honor, is there any way that
21 we -- that is an original letter that I marked as an
22 exhibit, and Mr. Miles has asked if I can get it copied for
23 him. Would that be possible?

24 THE COURT: Any problem substituting a copy?

25 MR. JOHNSON: Oh, no, absolutely not.

1 THE COURT: Okay. We will substitute a copy and give
2 you the original back.

3 MR. BOOZER: Thank you, Your Honor.

4 THE COURT: Okay. All right. Counsel, I will take
5 this matter under advisement and I will let you hear from
6 it.

7 MR. JOHNSON: All right. Thank you, Your Honor.

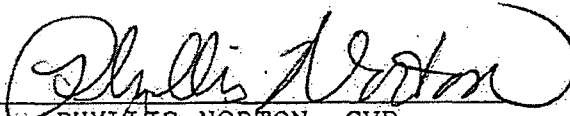
8 (Whereupon the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on July 22, 2015.

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


PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: October 28, 2015

Certified Transcript Provided For: SCC ID
Certification Reference # 102815B 0216

Exhibit 27

received
3/10/14**William L. Runyon, Jr.**

Attorney At Law

#3 Gamecock Avenue, Suite 303

Charleston, SC 29407

Telephone: (843) 571-3515 Facsimile: (843) 766-5085

March 19, 2014

BY FAX & MAIL: (843)769-7079

Bluestein & Douglas, L.L.P.
One Carriage Lane
Building D, Second Floor
Charleston, SC 29407

Attn: Ms. Dolly Lipman

RE: S.C. Fee Dispute
Derrick Miles v. William Runyon

Dear Ms. Lipman:

This is to follow up on our conversation in re the above claim. A copy of the contract is enclosed. Mr. Miles/his wife still owe me \$2300.00 on the contract. I have never sued a client for a fee and will pass away with many dollars owed to me. Mr. Miles has complained to the office of Disciplinary Counsel about me, two (2) assistant Solicitors and the Judge. Considering he was facing Life Without Parole and he will be out in July of 2016 I think I did a fair job of lawyering on the over Fourteen (14) charges (more or less) pending in two counties. I will be more than happy to meet with anyone as directed to explain these matters.

Please advise if these submissions are not responsive to your requests.

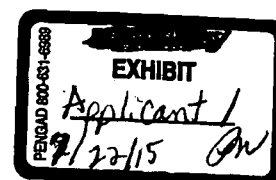
Awaiting your directions, I remain

Sincerely,

William L. Runyon, Jr.

WLR, JR. / bb

Enclosure

Exhibit
27

Page 1 of 9

On July 25, 2013, the Applicant pled guilty to Burglary, 2nd degree, as a lesser included offense, to a negotiated fifteen year sentence. The Honorable Stephanie P. McDonald sentenced the Applicant to confinement for a period of fifteen years. The Applicant did not appeal his conviction or sentence.

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

1. Ineffective assistance of Counsel.
 - a. Lack of personal contact.
 - b. Lack of any verbal communication while in jail.

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

1. "Counsel failed to ensure the enforcement of terms of negotiated guilty plea."
2. "Counsel failed to request the plea judge enforce the negotiated plea agreement or move to withdraw the plea agreement."

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea Counsel.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he wants a new trial and was charged with Burglary, 1st degree and Criminal Conspiracy. Applicant first claimed there was a lack of personal contact with Counsel and only met one time with Counsel to discuss a plea agreement. Applicant stated he saw Counsel one other time to reject a fifteen-year plea agreement. Applicant testified he paid Counsel \$5,000 and Counsel got him a bond. Applicant stated he pled on July 25, 2013 and met once with Counsel to discuss the charges. Applicant claims he and Counsel did not discuss any defenses.

Applicant then testified Counsel failed to ensure the negotiated plea agreement or moved to withdraw the guilty plea. Applicant stated Counsel handed him a plea agreement and said Applicant needed to take the plea. Applicant claimed the plea agreement was for five (5) years' imprisonment with five (5) years' probation and said he signed the sentencing sheet without the time listed on it. Applicant testified he decided at the last second he did not want to accept the plea offer. Applicant then claimed Counsel "boxed him in the aisle" and told him to accept the plea or get life at trial. Applicant stated he thought he was receiving five (5) years not fifteen (15).

Applicant next claimed he thought he was getting credit for house arrest since he had to wear an ankle monitor because the statute allows for it. He claimed Counsel said he would get credit for all of the time. Applicant also testified he pled guilty because he thought he was getting five (5) years and that Counsel had him scared about the potential of life without parole. He then stated he did not know he was going to plead guilty on the day he did. Applicant lastly stated he was "out of it" because he was going through tough times.

On cross-examination, Applicant admitted when he pled guilty he was under oath and swore to tell the truth. Applicant then admitted when the plea judge asked him if he knew the plea was negotiated for fifteen (15) years, he replied, "yes, ma'am." Applicant admitted he understood when the plea judge explained to him that his sentence could be 85% but that it would be left to SCDC. Applicant also stated that while he was going through tough times, he was still well enough to proceed with his plea. Applicant claimed he was in tears during his plea, but admitted that he never stopped the judge and explained that he thought he was only getting five (5) years. Applicant lastly admitted the he knew the statute concerning credit for house arrest states that a judge "may" give credit for time served on house arrest.

Counsel testified he was retained and met with Applicant twice at the Berkeley County Detention Center before Applicant made bond and at least twice more at his office. Counsel stated Applicant had charges in Berkeley and Charleston Counties and that Applicant's co-defendant was cooperating with the State and would testify against Applicant. Counsel testified this case looked like a plea down the road due to the seriousness of the charges. Counsel stated they appeared in court for the first time because the judge made the Applicant reject the first offer on the record. The second appearance in court was for the actual plea, which was after his co-defendant was convicted at trial.

Counsel then stated the Solicitor would not agree to Applicant leaving the state or removing the ankle monitor. Counsel also stated the Solicitor emphasized this was the last plea offer. Counsel testified he did not tell Applicant or his mother that the plea offer was for five (5) years, but that the plea was for fifteen (15) years. Counsel stated he told Applicant there was no guarantee that he would serve a 65% sentence, but would have to serve whatever time SCDC calculated. Counsel testified he explained to Applicant that Applicant would receive credit for time served at the detention center, but did not discuss credit for house arrest. Counsel then testified he discussed various sentencing possibilities with Applicant.

Counsel testified Applicant filed a fee dispute against Counsel as well as ODC complaints against him, the Solicitor and the plea judge. Counsel lastly stated a letter he wrote to Applicant stated he would be out in 2016, but was not what Applicant pled to.

On cross-examination, Counsel testified the letter was dated March 19, 2014, which was after the plea date and was in response to the dispute filed by Applicant. Counsel stated that SCDC has a "magic calculator" and nobody can figure out exactly how much time a defendant will serve. He

then stated he would have taken this case to trial if Applicant wanted and that Applicant was "on board" with plea. Counsel testified he never threatened Applicant to accept the plea and that it was Applicant's decision to accept the plea agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

Applicant alleges 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) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea Counsel, the Applicant must show that there is a reasonable probability that, but for Counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

This Court finds Counsel provided effective assistance of counsel in this case. Counsel advised Applicant of all of the charges and the sentences the charges carried. Counsel also negotiated with the State in Applicant's best interest. This Court finds Applicant made the decision on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

This Court further finds the Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court finds the Applicant has failed to meet his burden of proving Counsel's performance was deficient or that he was prejudiced thereby.

Applicant's main contention for post-conviction relief is that he thought the plea offer was for five (5) years' imprisonment and five (5) years' probation. However, the record and Counsel's testimony clearly indicate Applicant was fully apprised that the negotiated plea offer was for fifteen (15) years. On page 6 of the plea transcript, the Court asks Applicant, "Sir that [charge] carries up to



15 years, however because it's a negotiated plea I've been presented with a negotiation that you will be sentenced to 15 years and I can't change that any in way, do you understand that?" to which the Applicant replied, "Yes, ma'am." Additionally, Counsel testified he did not tell Applicant the offer was for five (5) years but for fifteen (15). This Court finds Applicant has failed to meet his burden of proof as to this claim. Accordingly, this allegation is denied.

Applicant also claims Counsel failed to sufficiently meet with him. The "brevity of time spent in consultation, without more, does not establish that Counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). Counsel testified he met with Applicant twice while Applicant was incarcerated at the Berkeley County Detention Center and at least twice more at his office. Applicant has failed to prove that had Counsel spent more time with him, he would not have pled guilty but pursued a trial or how more time spent with Applicant would change the outcome of his case. This Court finds Applicant has failed to meet his burden of proof as to this claim. Accordingly, this allegation is denied.

Lastly, Applicant claims Counsel told him he would receive credit for time served on house arrest. However, Counsel testified he discussed with Applicant credit for time served in the detention center but not concerning while Applicant was on house arrest. S.C. Code Ann. § 24-13-40 states: "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and **may be given for any time spent under monitored house arrest.**" (emphasis added). This Court find Applicant has failed to meet his burden of proof that Counsel promised him credit for time served on house arrest or that he misguided him concerning the possible credit. Accordingly, this allegation is denied.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that 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 Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

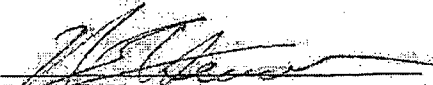
CONCLUSION

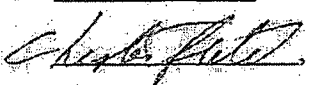
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by Counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate Counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR Counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!
Roger E. Henderson
Presiding Circuit Court Judge
Ninth Judicial Circuit

8-18, 2015
 South Carolina

2013-CP-08-2847

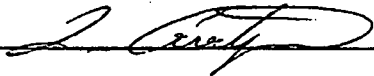
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BTS2011-09-01241

WITNESSES

Goose Creek Police Department



AGENCY CASE NUMBER

20112807

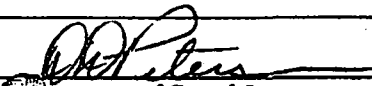
ARREST WARRANT NUMBER

K002255

DATE OF ARREST

October 25, 2011

ACTION OF GRAND JURY


Foreperson of Grand Jury
Date: 2/22/12

VERDICT

True Bill

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012-GS-08-0255

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

February Term

THE STATE

vs.

DERRICK JOSEPH MILES

DOB:

W/M

Indictment for

Burglary 1st Degree

§16-11-0311(A)

CDR: 0079

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on February 22, 2012 the Grand Jurors of Berkeley County present upon their oath:

Burglary 1st Degree

That DERRICK JOSEPH MILES did in Berkeley County, South Carolina, on or about July 25, 2011, enter the dwelling of Robin MacDonald, located at , Goose Creek, South Carolina without consent and with the intent to commit a crime therein and while in the dwelling, he and/or another participant became armed with a deadly weapon, in violation of §16-11-0311(A) 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.


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Roger E. Henderson, Circuit Court Judge

DERRICK J. MILES

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001997

PETITION FOR WRIT OF CERTIORARI

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Trial counsel erred in failing to request time served credit for petitioner during his time spent on house arrest before he pled guilty in the case.

STATEMENT

Petitioner Derrick J. Miles pled guilty to second degree burglary during the July 2013 term of the Berkeley County General Sessions Court before Judge Stephanie P. McDonald and was sentenced to a negotiated fifteen-year prison term. App. 1-12. Petitioner was represented by William Runyon at the plea proceeding, and Assistant Solicitor Colleen Dixon appeared on behalf of the state. No direct appeal was filed in the case.

On December 23, 2013, petitioner filed a PCR application with the Berkeley County Office of the Clerk of Court. App. 14-19. An amended PCR application was filed on June 19, 2015. App. 26. The respondent filed a return dated March 31, 2015, requesting that a hearing be held in the case. App. 21-24

A PCR hearing was convened on July 21, 2015, at the Charleston County Courthouse before Judge Roger E. Henderson. App. 28 – 68. Petitioner was present at the hearing and represented by Lance S. Boozer, and Assistant Attorney General J. Rutledge Johnson appeared on behalf of the state.

On August 28, 2015, Judge Henderson issued an Order of Dismissal denying petitioner's claims of ineffective assistance of counsel in the case. App. 71-79.

Petitioner appealed Judge Henderson's Order of Dismissal. This petition follows.

ARGUMENT

Trial counsel erred in failing to request time served credit for petitioner during his time spent on house arrest before he pled guilty in the case.

Petitioner was arrested and jailed for first degree burglary on October 25, 2011, but had been released on bail per an Order Setting Bond on June 29, 2012. App. 80; App. 82. On July 25, 2013, petitioner pled guilty to second degree burglary.

During the plea proceeding, the trial judge gave petitioner time served credit for the months that he spent in jail from October 25, 2011, to his release on bond on June 29, 2012. The judge's sentence follows:

Judge: Has he served any time on this?

Counsel: He was in Berkeley County jail for a year (365 days)...**prior** to being released on bond. App. 4, lines 10 – 18

Judge: The negotiated term is 15 years. I will give credit for the 365 days served. App. 12, lines 21 – 22.

However, at no point during the plea proceeding did trial counsel request time served for the **second** 365 days that followed jail time when petitioner was on house arrest (while out on bond) from June 2012 through July 2013. Petitioner pled guilty on July 25, 2013.

During the PCR hearing, petitioner testified that he did not receive his full time served credit, i.e., "one year in the county jail [**plus**] three hundred seventy-eight days under house arrest with GPS monitoring." App. 32, lines 15-22. In other words, petitioner received credit for time served while jailed, but failed to receive time served credit while out on bond during house arrest.

Petitioner's testimony explaining the same follows:

A. Yes, sir, I was expecting – I had 365 days that I did get credit for when I was in the Berkeley County Detention Center; but under the new law that was passed 45 days before I pled it allows, under 24-13-40 I believe, it allows for me to get the credit for the home

detention on GPS. I was only allowed to work and home. I couldn't even stop at a gas station and gas my company truck up. So I was supposed to get the credit for that time served too under that law.

Q. What discussion did you have with [trial counsel] about that?

A. No, all [trial counsel] said is I would get credit for all time served.

Q. So you thought that that meant the 365 plus the time on ankle monitor?

A. Yes, sir. App. 45, lines 1-17.

Trial counsel testified at the PCR hearing and admitted that he failed to request time served credit for petitioner from 2012-2013 during which time petitioner was on house arrest under the ankle monitor while out on bond, and agreed that "[he] probably should have called that to the court's attention." App. p.57, l. 18 – p. 58, l. 7.

The PCR judge ruled that petitioner failed to meet his burden of proof that counsel promised him credit for time served on house arrest or that he misguided him concerning the possible credit. App. 77.

S.C. Code Ann § 24-13-40 reads as follows:

In every case in computing the time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing. *Provided, however*, that credit for time served prior to trial and sentencing shall not be given: (1) when the prisoner at the time he was imprisoned prior to trial was an escapee from another penal institution; or (2) when the prisoner is serving a sentence for one offense and is awaiting trial and sentence for a second offense in which case he shall no receive credit for time served prior to trial in reduction of his sentence for the second offense.

In State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (Ct. App. 2004), the Court held that time served credit under § 24-13-40 could only be given to inmates serving time in a penal institution and not on home detention. However, on June 7, 2013, S.C. Code Ann. § 24-13-40, was amended to read as follows:

The computation of the time served...must be calculated from the date of the imposition of the sentence.....[and] full credit against the sentence must be given for time served prior to trial and sentencing and may be given for any time spent under monitored house arrest.

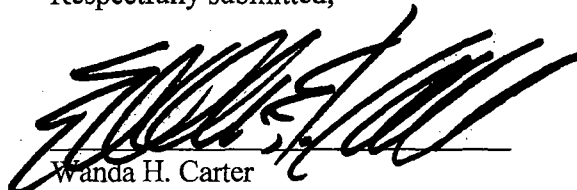
Consequently, S.C. Code Ann. § 24-13-40 as amended meant that Higgins was no longer controlling on the issue of whether to bestow time served credit while on home detention. Therefore, counsel erred in failing to request credit for time served for petitioner while he was on house arrest, which would have shaved an additional year off his sentence since he had already received a year's worth of credit for time served while in jail. The amendment went to effect on June 7, 2013, and petitioner pled guilty and was sentenced on July 25, 2013. Therefore, the amendment allowing house arrest time served was applicable in his case.

In the case at bar, counsel's error in failing to request that petitioner receive house arrest time served credit while he was out on bond constituted deficient legal representation of petitioner during his guilty plea proceeding in violation of the Sixth Amendment. See Hill v. Lockhart, 484 U.S. 52 (1985). Petitioner was prejudiced as a result because due to counsel's error, petitioner's prison time has been extended beyond the time required of him to serve.

CONCLUSION

Based on the foregoing argument, counsel requests that this Court grant the petition and allow full briefing on the above-raised issue.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 6th day of April, 2016.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

 Certiorari to Berkeley County

 Roger E. Henderson, Circuit Court Judge

DERRICK J. MILES

PETITIONER,

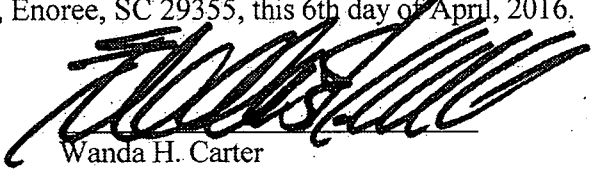
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

 CERTIFICATE OF SERVICE

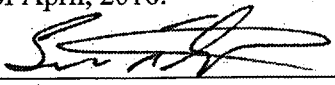
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Derrick J. Miles #307815, at Tyger River Correctional Institution, 200 Prison Road, Enoree, SC 29355, this 6th day of April, 2016.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day
of April, 2016.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO BERKELEY COUNTY
Court of Common Pleas

The Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No.: 2015-001197

DERRICK J. MILES,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General
SC Bar # 78871

P.O. Box 11549
Columbia, SC 29211
(803) 734-4124

ATTORNEYS FOR RESPONDENT

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QUESTION PRESENTED

Did the PCR court err in finding that Petitioner failed to meet his burden of proof that his trial counsel promised him credit for time served while on house arrest or misguided him regarding possible credit earned prior to his guilty plea?

STATEMENT OF THE CASE

Petitioner (Derrick J. Miles) was indicted at the February 2012 term of the Berkeley County Grand Jury for Burglary, First Degree (2012-GS-08-0255). William Runyon, Esquire represented Petitioner. On July 24, 2013, Petitioner pled guilty to Burglary Second Degree, as a lesser included offense, to a negotiated fifteen (15) year sentence. The Honorable Stephanie P. McDonald sentenced Petitioner to confinement for a period of fifteen (15) years. Petitioner did not appeal his conviction or sentence.

Petitioner subsequently filed an application for post-conviction relief on December 23, 2013. Respondent filed a Return on March 31, 2015. On August 28, 2015, the Honorable Roger E. Henderson issued an Order of Dismissal. On April 6, 2016, Petitioner filed a Petition for Writ of Certiorari to this Court. This Return follows.

STANDARD OF REVIEW

The proper standard for reviewing a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a PCR proceeding, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

- I. The PCR court correctly found that Petitioner failed to meet his burden of proof that his trial counsel promised him credit for time served while on house arrest or that he was misguided as to possible credit he could receive.

Petitioner asserts the PCR court erred in finding that trial counsel did not err in failing to request credit for time served while on house arrest prior to his guilty plea. Petitioner claims that he was prejudiced as a result because, but for counsel's error, his prison sentence has been extended beyond what he believes he should be required to serve. This allegation is without merit, and therefore, certiorari should be denied.

S.C. Code Ann. § 24-13-40, as amended shortly before Petitioner pled guilty, states: "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spend under monitored house arrest." (emphasis added). Therefore, the court's decision to grant credit for time served under monitored house arrest is discretionary. It is not mandatory. Therefore, trial counsel cannot be deemed ineffective for failing to address the issue at Petitioner's guilty plea hearing. See Smith v. State, 329 S.C. 280, 494 S.E. 2d 626 (1997) (holding Counsel is not ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing).

Furthermore, aside from the two matters specifically mentioned in the statute, post-conviction relief is a proper avenue of relief only when the Applicant mounts a collateral attack challenging the validity of his conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). A credit-related claim or challenge to other

conditions of confinement are administrative matters and, thus, cannot be raised in a post conviction relief proceeding. Id. Likewise, a challenge to the conditions upon which parole eligibility is determined or decided is not cognizable in a post-conviction relief application. Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000). For that reason, this Petitioner's allegation is without merit, and therefore, certiorari must be denied.

CONCLUSION

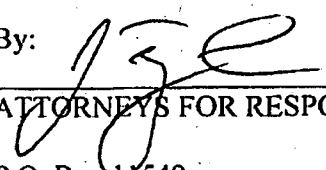
For the reasons stated above, this Court should deny the Petition for Writ of Certiorari and affirm the PCR Court's ruling. Should this Court grant Certiorari, the Respondent requests permission under the rules to brief the issues discussed above fully.

Respectfully submitted,

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General
SC Bar # 78871

By:


ATTORNEYS FOR RESPONDENT

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

June 29, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County
Court of Common Pleas
The Honorable Roger E. Henderson, Circuit Court Judge

Appellate Case No.: 2015-001197

DERRICK J. MILES,

PETITIONER,

v.

THE STATE OF SOUTH CAROLINA,

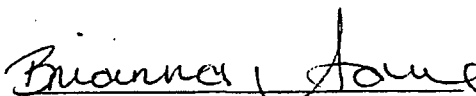
RESPONDENT.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Return to Petition for Writ of Certiorari, has been served upon opposing counsel by mailing two (2) copies in the United States mail, postage prepaid:

Wanda H. Carter, Esquire
SC Commission of Indigent Defense
Post Office Box 11589
Columbia, SC 29201

This 29th day of June, 2016


BRIANNA ARNONE
LEGAL ASSISTANT

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

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Derrick J. Miles, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2015-001997

Lower Court Case No. 2013-CP-08-02847

ON WRIT OF CERTIORARI

Appeal From Berkeley County
The Honorable Roger E. Henderson, Circuit Court Judge

Memorandum Opinion No. 2017-MO-012

Submitted May 31, 2017 – Filed June 21, 2017

REMANDED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Petitioner.

Attorney General Alan Wilson and Assistant Attorney
General Alicia A. Olive, both of Columbia, for
Respondent.

RECEIVED
JUN 12 2017
APPELLATE DEFENSE

PER CURIAM: Petitioner seeks a writ of certiorari from the denial of his application for post-conviction relief. The petition for a writ of certiorari is granted. We dispense with further briefing and direct the court of general sessions to determine if, in its discretion, petitioner should be given credit for time served on house arrest. *See* S.C. Code Ann. § 24-13-40 (Supp. 2016) (stating sentence credit "may be given for any time spent under monitored house arrest").

REMANDED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ.,

concur.

1
2 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
3 COUNTY OF BERKELEY) CASE NO. 2012-GS-08-00255
4 STATE OF SOUTH)
CAROLINA,)
5) Transcript of Record
Plaintiff,)
6)
vs.)
7) Date: May 28, 2019
DERRICK JOSEPH MILES,)
8)
Defendant.

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13 B E F O R E:

14 The Honorable R. Markley Dennis

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23 Denise J. Lauder, RPR

24 Ninth Judicial Circuit

25

A P P E A R A N C E S

REPRESENTING THE STATE OF SOUTH CAROLINA:

BRYAN ALFARO, ASSISTANT SOLICITOR

Ninth Circuit Solicitor's Office

400B California Avenue

Moncks Corner, SC 29461

REPRESENTING THE DEFENDANT:

WANDA H. CARTER, ESQUIRE

Deputy Chief Appellate Defense

S.C. Commission On Indigent Defense

Po Box 11589

Columbia, SC, 29211-1589

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8 E X H I B I T S

9 NO EXHIBITS PROFFERED

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1 (The following proceedings were had May
2 28, 2019, Berkeley County General Sessions, 2:45
3 p.m.)

4 MR. ALFARO: Judge, this is Derrick
5 Joseph Miles.

6 THE COURT: I think Judge McDonald
7 actually sentenced him?

8 MR. ALFARO: He posted bond with a
9 condition of GPS monitoring and house arrest on
10 July 12th, 2012. He subsequently pled guilty
11 before Judge McDonald July 25, 2013, at which time,
12 during the hearing he was given credit for
13 365 days, which is what is annotated on the
14 sentencing sheet.

15 THE COURT: Correct.

16 MR. ALFARO: In advance of the hearing
17 this morning, I was able to find some notes in our
18 system, as well as some e-mails from a previous
19 appellate attorney, Tommy Thomas, which indicates
20 that this issue was raised before Judge Harrington
21 on March 24, 2015, for the same issue regarding
22 house arrest and GPS monitoring credit.

23 THE COURT: A hearing for credit?

24 MR. ALFARO: Yes, Your Honor.

25 THE COURT: Okay.

1 MR. ALFARO: However, no written order
2 was ever prepared. I have some e-mails that I
3 found in my system that shows where Tommy Thomas
4 indicated -- because I -- quite honestly, I didn't
5 handle the initial plea, but I apparently did
6 handle the hearing in March of 2015.

7 And I found some e-mails from Tommy
8 asking if we received an order, which we had not.
9 And the last correspondence he and I had was, if
10 you send me an order, I'll get it signed. And we
11 never received that and its never been filed.

12 So my understanding in my conversation
13 with counsel this morning is that that issue -- or
14 that those facts were not presented during his PCR
15 hearing from the AG's office or from previous
16 counsel. So that's why we're here today.

17 THE COURT: Ms. Carter, what's your
18 position?

19 MS. CARTER: Please the court, Your
20 Honor.

21 THE COURT: Yes, ma'am.

22 MS. CARTER: At the PCR hearing --
23 unfortunately, that issue was not fleshed out
24 exactly the way the Solicitor has recalled, but at
25 the PCR hearing, the entire -- the entire

1 sentencing issue revolved around house arrest time
2 credit.

3 THE COURT: Right.

4 MS. CARTER: Judge McDonald did give
5 him credit for the pretrial detention period that
6 one year, but after that year that Mr. Miles was on
7 house arrest where he worked, he did not get credit
8 for 378 days while he was on house arrest and he
9 worked.

10 So the issue on PCR was that naked
11 issue with respect to credit for house arrest. The
12 statute had just gone into effect maybe 30 days
13 before he was sentenced. And at PCR we did not
14 have the benefit of the information that we have
15 now with respect to the 2015 hearing; however, the
16 Court has remanded it for us to explore the issue.

17 You know, as far as I can tell, during
18 that period of house arrest, there were no
19 problems. There were no incidents. I mean, he
20 worked, he came back, and --

21 THE COURT: I don't quarrel with the
22 fact that he was -- that he probably met the
23 standard set forth in the statute. That's really
24 not an issue before me as far as I'm concerned
25 because nobody has challenged that.

1 The problem -- do you have -- I don't
2 have the file. Do you have the sentencing sheet
3 that Judge McDonald signed?

4 MR. ALFARO: I do have a copy.

5 THE COURT: All right. The key to me
6 is this: And the reason I'm saying that is, oddly
7 enough -- and this is strange, I didn't realize how
8 significant this would be. This is a negotiated
9 sentence. Okay. And that's as to the time and
10 everything here, as far as I'm concerned.

11 And the reason I say that is this: I
12 just did a plea last week here. And it was a
13 negotiated sentence for six years on a felony DUI,
14 with no credit for any time served.

15 I called -- I've made a note -- in
16 fact, it's still here -- 347 days, house arrest.
17 And I called the parties and I said, look, I'm
18 considering -- because as you did, he complied. He
19 was on house arrest, and that's fine.

20 I said, I'm willing, according to the
21 -- with the statute exercise my discretion and give
22 him credit for that. But the Solicitor and the
23 attorney came back and said, no, Judge. That was
24 part of the negotiation in getting the time that
25 they were elected to serve, and therein lies the

1 problem.

2 I'm going to let you speak, but I'm
3 doing something in the past. You had a sentence
4 for burglary, I assume -- was it -- it was a lesser
5 included, so it was indicted for burglary first
6 degree?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you got to plead to the
9 lesser included offense, which is a parolable
10 offense, not part of the burglary, and you got the
11 same amount of time.

12 So that's -- those are significant
13 factors for me, because Judge McDonald had the
14 right to do it or not do it; although, all of that
15 would have been a part of the record as far as I'm
16 concerned, because that's precisely what a
17 negotiated sentence is.

18 It's both sides coming -- and I'm not
19 at liberty, and I don't think any judge is at
20 liberty of changing any aspects of it. So the
21 record, frankly, reflects the negotiated sentence,
22 as far as I'm concerned.

23 THE DEFENDANT: Your Honor --

24 MS. CARTER: Don't --

25 THE COURT: No, Ms. Carter. I think he

1 needs to speak. I don't have a problem.

2 THE DEFENDANT: The problem was -- and
3 the issue was raised at PCR when I --

4 THE COURT: You and I are not on the
5 same page. I'm not talking about what -- after the
6 fact. I'm talking about that day.

7 THE DEFENDANT: I understand. Judge
8 McDonald wrote a letter and said -- my paid
9 attorney, Mr. Runyon, didn't know that he could ask
10 for it because it had just been changed.

11 Judge McDonald stated she couldn't talk
12 to me because of the ex parte communications, but
13 she said that she would change it if my attorney
14 would contact her. Mr. Runyon wouldn't do it.

15 THE COURT: Where's the letter that
16 she said that?

17 THE DEFENDANT: In the PCR file.

18 THE COURT: Where is it?

19 MS. CARTER: If I could just clarify.
20 Your Honor, I understand that that was a negotiated
21 sentence; however, at the PCR hearing that issue
22 was explored.

23 THE COURT: I understand it was
24 explored, but it's after the fact.

25 MS. CARTER: Well, Your Honor,

1 Mr. Runyon did indicate that he failed to place
2 that, with the Court.

3 THE COURT: That's fine. Did the Court
4 give him a new trial? Did the Court change it?
5 Did the judge change it at the PCR?

6 MS. CARTER: At the PCR hearing, the
7 judge ruled that counsel was effective; however,
8 on --

9 THE COURT: Was effective?

10 MS. CARTER: Yes, sir; however, on
11 appeal, we raised the issue of the house credits --
12 I mean, house arrest time served, and the Court
13 issued the remand for us to have the discussions
14 that we are having now.

15 However, I understand Your Honor's
16 position, which is that this was all baked into one
17 cake, but Bill Runyon did express concerns about
18 that factor or that ingredient was not baked in.

19 THE COURT: I appreciate that, but the
20 problem -- and I didn't hear it. Is that what
21 Judge Harrington heard on PCR?

22 MS. CARTER: This is the PCR --

23 MR. ALFARO: Your Honor, she heard a
24 motion to reconsider sentence. That's all I've --

25 THE COURT: Who heard the PCR?

1 MS. CARTER: The PCR hearing was before
2 Judge Henderson.

3 THE COURT: And we have a copy of the
4 order for that?

5 MS. CARTER: Yes, sir, we do. We have
6 an order of dismissal that Judge Henderson signed.

7 THE COURT: All right. So he signed it
8 saying, no, he found him to be effective, and then
9 the Court said remand it here.

10 Okay. And I have no problem. I will
11 be happy to put on the record as to the reasons for
12 it and you can -- then the Court can decide what
13 they want to do.

14 MS. CARTER: All right.

15 THE COURT: Frankly, I think if they
16 are waiting on this, it may help him.

17 MS. CARTER: That was an ingredient
18 that was just not thrown in --

19 THE COURT: Ms. Carter, I agree with
20 you. Listen, I practiced law. I understand your
21 advocacy; I don't have a problem with that. The
22 problem I have is, I have a negotiated sentence and
23 a certainly competent judge with competent lawyers
24 who said this was a 15-year sentence, max sentence,
25 which I understand.

1 I've done them. I can't think of how
2 many times I've given this same sentence of 15
3 years when it's pled down from burg first, because
4 there's no question that in and of itself is a
5 major benefit. You know that as well as I do.

6 But from the standpoint of the
7 365 days, that, to me, is a part and parcel that
8 everybody understood and everybody was on the same
9 page. Now, maybe Mr. Miles testified, I didn't
10 understand that to be part of the agreement, that
11 wasn't part of the negotiated sentence.

12 I don't know what he testified to at
13 the PCR. That's already been -- that's in the
14 record. That's done. He doesn't have to do
15 anything about that.

16 My feeling is the negotiated sentence
17 is what it is. And the credit he's entitled to is
18 reflected in Judge McDonald's sentence and,
19 therefore, it is my opinion that Judge McDonald who
20 had the -- it was discretionary. Not a mandatory.

21 And Judge McDonald decided. Given the
22 whole deal, that's what she chose. That's going to
23 be my order. You prepare the order to that effect.

24 Now, I have complied with the remand.
25 Now the court of appeals can say yay or nay and say

1 that Mr. Miles is entitled to a new trial because,
2 obviously, that was a critical aspect of the
3 negotiated sentence; and, therefore, if, in fact --
4 that will be up to the court as to whether -- I
5 think you said that Judge Henderson said he didn't
6 fall below the standard.

7 MS. CARTER: Exactly.

8 THE COURT: So that's where we are.

9 MS. CARTER: Right.

10 MR. ALFARO: Your Honor, one more thing
11 for the purposes of the record. In reviewing the
12 transcript of the initial guilty plea, while
13 Mr. Runyon does not specifically ask for credit for
14 the house arrest and the GPS, there is a discussion
15 from Mr. Runyon to the court relaying to the judge,
16 Judge McDonald, that the defendant actually was on
17 GPS monitoring at the time of the -- prior to the
18 plea.

19 And as you indicated, it is a
20 discretionary decision from the judge. We would
21 just also like to point that out.

22 THE COURT: I stand by whatever the
23 transcript is. I think that's precisely what is
24 reflected in this.

25 And let me add this, Mr. Miles. If

1 this was a plea with a recommendation, I may have a
2 little broader discretion than I would. My feeling
3 is, a negotiated sentence is exactly that; all
4 parties are involved in what Judge McDonald has in
5 this document.

6 I know that's how I do it and I think
7 that's how most judges do it. And that's precisely
8 why I'm doing what I'm doing here today.

9 If the Court thinks that judge -- Bill
10 Runyon fell below the standard and said, you know,
11 that should have been argued, so be it, but that's
12 my feeling about it.

13 THE DEFENDANT: I hate that I don't
14 have the letter. I've made parole on the sentence.
15 I'm on a different sentence.

16 THE COURT: Sir, I realize that. And
17 the letter from Judge McDonald would not change my
18 opinion without her doing it. Whether she would or
19 wouldn't, I don't know whether that was brought up.

20 Was that brought up at the PCR hearing,
21 Judge McDonald's letter?

22 MS. CARTER: No, sir.

23 THE DEFENDANT: Yes. Yes, it was. It
24 was brought up, and the supreme court is the only
25 one who said anything because --

1 THE COURT: Well, all I'm saying is, if
2 that was brought out before Judge Henderson, then
3 he considered that and said it was not a failure.
4 And, frankly, I think when you look at the overall
5 picture, I get it; because, apparently, it must
6 have been a burg first.

7 But, anyway, that's not for me to
8 determine. I'm basing it on the record that I
9 have, and I'm basing it primarily on the fact that
10 Judge Henderson -- I did not -- was not aware that
11 he had had his PCR on this issue. Not necessarily
12 from the standpoint of Bill Runyon, but you say it
13 came out in the hearing that Judge McDonald said
14 Bill Runyon will contact you.

15 THE DEFENDANT: A letter was presented
16 by my PCR attorney too, and Mr. Runyon said that he
17 had not contacted her to set up a meeting.

18 THE COURT: I understand. So he
19 testified that basically he didn't do --

20 THE DEFENDANT: He hadn't done nothing.

21 THE COURT: All right. The judge heard
22 that and he ruled, so now it's before the Court.

23 My feeling is that here -- this is what
24 he is and he received all the credit that he's
25 entitled to.

1 If you will prepare the order to that
2 effect.

3 MR. ALFARO: Yes, sir.

4 THE COURT: And send it Ms. Carter.

5 Ms. Carter, if you will -- any changes
6 you want, just let us know.

7 MS. CARTER: Thank you.

8 THE COURT: Thank you so much for being
9 here.

10 Mr. Miles, good luck to you, sir.

11 THE DEFENDANT: Thank you.

12 (These proceedings were concluded at

13 2:59 p.m.)

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1 CERTIFICATE OF REPORTER

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3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

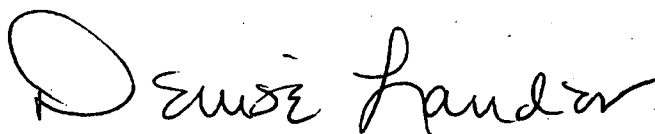
8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 16th day of August, 2019 at
13 Charleston, Charleston County, South Carolina.

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S/Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

FILED

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

2019 JUN -3 PM 12:49

STATE OF SOUTH CAROLINA

ORDER

vs.

CLERK OF COURT
OF BERKELEY COUNTY, S.

Arrest Warrant #K002255

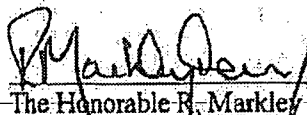
DERRICK JOSEPH MILES,

Indictment #2012GS0800255

DEFENDANT.

On May 28, 2019, the Defendant, represented by Wanda H. Carter, Esquire, and the State, represented by Deputy Solicitor Bryan A. Alfaro, appeared before the Court to determine if, in the Court's discretion, the Defendant should be given credit for time served on house arrest, pursuant to S.C. Code Ann § 24-13-40 (Supp. 2016), in accord with the South Carolina Supreme Court's Memorandum Opinion No. 2017-MO-012. After hearing from both parties, the Court, in it's discretion, declined to grant any additional time served credit beyond the original 365 days credit which was negotiated between the parties at the entry of the initial negotiated guilty plea and sentencing before Judge McDonald on July 25, 2013.

IT IS SO ORDERED!



The Honorable R. Markley Dennis, Jr.
Presiding Judge
Ninth Judicial Circuit

May 29th, 2019
Moncks Corner, South Carolina

RECEIVED

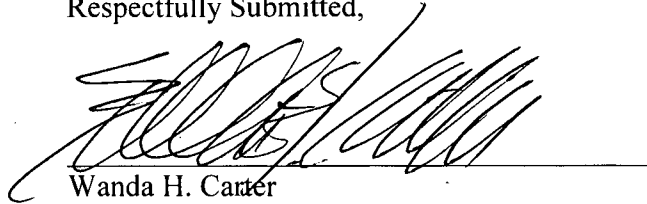
JUN 07 2019

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 2nd day of March, 2020.

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SC Court of Appeals