

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Aiken County

Honorable J. Cordell Maddox, Circuit Court Judge

JALEN T. BADGER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001183

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF AIKEN) CASE NO.: 2016-GS-02-1885, 1886,
 1892, and 1895

STATE OF SOUTH CAROLINA,)
)
)
 v.)
)
 JALEN TYREE BADGER)
)
)
 _____)

TRANSCRIPT OF RECORD

ORIGINAL

Monday, November 14, 2016

COMMENCING AT:
 Aiken County Courthouse
 Aiken, South Carolina
 Before The Honorable R. Lawton McIntosh, Judge

APPEARANCES:

For the State of South Carolina:
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 Court Reporter

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NO EXHIBITS INTRODUCED

1 (The proceeding began at 3:37 p.m.)

2

3 (The defendant, Jalen Tyree Badger, is duly sworn.)

4 THE COURT: Has the State seen this file?

5 AST. SOL. HARTE: Yes, Your Honor. I have a copy of
6 it.

7 THE COURT: You're -- what is it? Jalen?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Tyree Badger?

10 THE DEFENDANT: Jalen Tyree Badger. Jalen Tyree
11 Badger.

12 THE COURT: Tyree. Okay, excuse me. You're only 16?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Where were you in school before all this
15 took place?

16 THE DEFENDANT: Midland Valley High School. Midland
17 Valley High School.

18 THE COURT: What year?

19 THE DEFENDANT: Sir?

20 THE COURT: What year were you?

21 THE DEFENDANT: This year. I got kicked -- no, last
22 year, sir. Ninth grade.

23 THE COURT: Ninth grade?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Tell me what kind of activities you do

1 outside of going to school, or did you do while you were in
2 school.

3 THE DEFENDANT: Nothing really, sir.

4 THE COURT: I can't hear you, son.

5 THE DEFENDANT: Sir?

6 THE COURT: I cannot hear you.

7 THE DEFENDANT: I played basketball and that's really
8 it.

9 THE COURT: Did you play baseball on an organized team?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. What kind of grades did you receive
12 while you were in school?

13 THE DEFENDANT: A's, B's, and C's.

14 THE COURT: Now, you're pleading guilty to some
15 serious, serious, serious crimes right now.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand that. One, let me point out
18 that this is presented to me as being a negotiated sentence.
19 And my questions are going to be to your lawyer. It's my
20 understanding of the negotiated sentence is either I reject
21 them or I accept, but I can't modify them. Is that your
22 understanding?

23 MR. HAYES: Yes, sir.

24 THE COURT: Is that the State's understanding?

25 AST. SOL. HARTE: Yes, Your Honor.

1 THE COURT: Have you explained to your client that
2 every one of these would be considered most serious?

3 MR. HAYES: Yes, sir. As well as that ---

4 THE COURT: And as well as violent?

5 MR. HAYES: As violent. And after the time, he would
6 be released into a community supervision program for up to
7 two years.

8 THE COURT: Mr. Badger, do you ---

9 MR. HAYES: I'm sorry, and one more. And/or
10 85 percent.

11 THE COURT: Mr. Badger, do you understand what I went
12 over with your attorney?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And although burglary charges carry 15 to
15 life, armed robbery carries 10 to 30, and the carjacking
16 carries up to 20 years, whatever they tell me they have
17 negotiated between the State and your attorney, either I
18 will accept that and that's what will be your sentence, or I
19 will reject that and you'll go back to where you were housed
20 and you have to try to do it again. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you under the influence of any
23 medications, drugs, or alcohol today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Counsel, are you satisfied that Mr. Badger

1 is competent to plea?

2 MR. HAYES: Yes, sir.

3 THE COURT: Had anybody forced, threatened, promised
4 you anything to get you to plea to these charges?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you doing so on your own free will?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you need some water?

9 THE DEFENDANT: (No response.)

10 THE COURT: Get him some water. Take your time.

11 (Brief pause.) You okay?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You ready to proceed?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you understand, Mr. Badger, that you
16 have a right to a jury trial on each of these charges?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: If you go forward today, you will give up
19 your right to have a jury trial?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is that what you want to do?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do freely and voluntarily give up your
24 right to a jury trial for all four of these charges in favor
25 of pleading guilty today?

1 THE DEFENDANT: Excuse me. Yes, sir.

2 THE COURT: I'm sorry. I didn't hear you.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did you say yes?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Mr. Badger, if you were to elect to
7 exercise your right to have a jury trial on any of these
8 charges or all of them, during that trial you could exercise
9 the following constitutional rights: One, you would have
10 the right to confront and cross-examine and question any of
11 the witnesses who testify against you; you have a right to
12 present evidence in your own defense; you'd have a right to
13 subpoena people or require people to come to court to come
14 to testify on your behalf; and you'd have a right under the
15 Fifth Amendment to remain silent. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If you went to trial and you did not
18 testify, the trial judge would tell the jury or charge the
19 jury that they couldn't consider your failure to testify
20 whatsoever. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, if you go forward today, just like
23 with a jury trial, you'll give up the protections that I've
24 just gone over with you. Do you understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And in South Carolina, we have a strike
2 system. We have most serious and we have serious. I
3 assumed all of these would be considered one strike? One
4 most serious strike?

5 AST. SOL. HARTE: Yes, Your Honor.

6 THE COURT: So, Mr. Badger, you'll have one strike, a
7 most serious strike, against you. If you were to ever come
8 back and have a most serious strike, for you to ever come
9 back and have three serious strikes, you'd go to jail
10 without the possibility of parole. That means you would die
11 in jail.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And the judge wouldn't have any control
14 over it. Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Or you would have a control, maybe we would
17 stay. That's just what will happen. Do you understand
18 that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And the sentence imposed will be
21 85 percent. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Still want to go forward with your plea?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Under indictment 2016-1895, are you guilty

1 of burglary, first-degree?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Under indictment 2016-1880 -- excuse me --
4 the first one was 1895; this is 1885. Are you guilty of
5 armed robbery?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Under indictment 2016-1886, are you guilty
10 of carjacking?

11 THE DEFENDANT: No, sir. No, sir.

12 THE COURT: You're not?

13 THE DEFENDANT: No, sir.

14 THE COURT: Okay. Talk to your lawyer.

15 (Brief pause.)

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Hold on. Have you had time to talk to him?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand my question?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Let me do it again. Under indictment
22 2016-1886, are you guilty of the charge of carjacking?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Finally, under indictment 21016-1892, are
25 you guilty of the second count of burglary, first degree?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you satisfied with the services of your
3 attorney?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Has he reasonably done all that you asked
6 him to do?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: As we stand here today, do you have any
9 complaints with regard to the representation you've received
10 from your attorney?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Counsel, have you gone over the
13 elements of all these charges with Mr. Badger? Explained to
14 him the time he can get; whether or not he has any defenses
15 to these charges; as well explain to him his constitutional
16 rights?

17 MR. HAYES: Yes, sir. We're scheduled as second up on
18 the trialist. And we've gone over that for the carjacking,
19 the armed robbery, and then he would have the two burglaries
20 later to deal with. They would be tried separately.

21 THE COURT: But, today, he's pleading to all four?

22 MR. HAYES: Today, he's pleading to all four. Yes,
23 sir.

24 THE COURT: And you explained to him the violent nature
25 of the charges, the consequences of these being considered

1 violent as well as the most serious in the strike system in
2 South Carolina?

3 MR. HAYES: Yes, sir.

4 THE COURT: You agree with his decision to plead?

5 MR. HAYES: I do.

6 THE COURT: Okay. What is the recommendation, first of
7 all?

8 AST. SOL. HARTE: State and the defense have negotiated
9 a 17-year sentence, Your Honor, to run current on all four
10 charges.

11 THE COURT: Seventeen years?

12 AST. SOL. HARTE: Yes, sir.

13 THE COURT: All right. Tell me the facts of the cases,
14 please.

15 AST. SOL. HARTE: Your Honor, these are three separate
16 incidents. Beginning chronologically, on March 29, 2016,
17 law enforcement responded to [REDACTED] Stone Pass Drive in
18 Graniteville where they met with the victim, John Napier,
19 who stated that when he came home from work at about
20 5:50 p.m., he discovered the back door to his house was wide
21 open and the doorframe had been completely shattered as if
22 the backdoor had been kicked in. There were footprints
23 visible in the backyard. And Mr. Napier noted that the
24 following items had been taken from the house: A laptop, a
25 television, an Xbox game console, a Taurus 40-caliber

1 semiautomatic handgun, a 22 LR short-barreled revolver, and
2 cash totaling about \$120.

3 Other than the forced entry into the back door and the
4 footprints visible in the backyard, there really wasn't any
5 evidence to collect. There was no DNA, no fingerprints,
6 nothing else to really go on at that point. And so the case
7 was stalled out at that point. On April 14, 2016, at [REDACTED]
8 Stone Pass Drive, the same thing occurred. Between
9 10:30 a.m. and 4:00 p.m., a burglary occurred. The
10 homeowner came home, called the police. They came and
11 observed forced entry to the rear of the house. During that
12 incident, the following items were taken: 20-gauge
13 Remington shotgun, two flat screen TVs, a PlayStation 3 game
14 console, two Samsung tablets, and an iPod. Again, other
15 than the forced entry and the physical evidence of forced
16 entry, there was no DNA to collect, no fingerprints, nothing
17 like that. And that case stalled out.

18 On May 3rd of this year, law enforcement responded to
19 Sage Creek Subdivision in Graniteville at about 4:00/4:30 in
20 the afternoon. 911 had received four complaints of an
21 assault and what sounded like an armed robbery that was
22 occurring in that subdivision. Law enforcement met with the
23 two of the four complainants, the two that they were able to
24 identify. They were neighbors living adjacent to one
25 another who had heard some screaming outside. And a

1 ten-year-old boy looked outside and seen a woman being
2 dragged by an individual in the pavement outside of a red
3 Toyota Corolla. The ten-year-old had told his mother. The
4 two of them went and got in their car and tried to drive
5 around the subdivision to find that vehicle. When they did
6 find that vehicle, there was a woman named Megan Williams
7 who had suffered a laceration to her head and had sustained
8 a pretty serious beating. EMS was called. She was taken to
9 University Hospital in Augusta. The second complainant that
10 law enforcement was able to identify reported the same sort
11 of thing. She said she was sitting in her living room,
12 heard screaming, called the police, said that she saw an
13 individual. It looked like he had a gun in his hand and was
14 assaulting a woman in the street.

15 THE COURT: Let me ask you this: All these events you
16 relayed so far, just one person?

17 AST. SOL. HARTE: Your Honor, the two burglaries -- and
18 I apologize. I'm getting there. The two burglaries, law
19 enforcement was able to connect the defendant to -- because
20 of the time he committed them, he was wearing an ankle
21 monitor as a condition of this Department of Juvenile
22 Justice probation. Both of the burglaries in looking at his
23 physical GPS location showed that he was inside the
24 residence for both those two burglaries. And then with the
25 armed robbery/carjacking incident, he was wearing an ankle

1 monitor. And Megan Williams, the victim of the armed
2 robbery/carjacking, had been texting and Facebook messaging
3 back and forth with the defendant's older brother, James
4 Badger. They had arranged to meet up in the subdivision.
5 Law enforcement at the time thought they were just meeting
6 up to hang out, be friends. And the solicitor's office
7 investigation of that case, it came to light that she was
8 going to sell them some marijuana. And that during that
9 transaction, the defendant pulled out a silver handgun, put
10 it to the back of her head, and said, "Drive or I'll kill
11 you." And then she tried to get away from them when this
12 defendant got out and pistol-whipped her and then dragged
13 her and hit her with the pistol a couple of more times
14 before he got in the front seat of the vehicle and ordered
15 her to get in the backseat. When they got back in the
16 vehicle, the victim tried to get out as this defendant was
17 driving the car. And the older brother, James Badger,
18 sitting in the front seat was holding her by her hair
19 preventing her from getting out. When she got out of the
20 vehicle at the end of the subdivision, both this defendant
21 and the older brother got out and assaulted her again until
22 ---

23 (Disruption from member in gallery.)

24 FEMALE SPEAKER: That's not true.

25 THE COURT: Excuse me. Excuse me.

1 FEMALE SPEAKER: I'm sorry, sir.

2 THE COURT: No. Who said that?

3 FEMALE SPEAKER: I did.

4 THE COURT: Stand up. What's your name?

5 MS. BADGER: My name is Keisha Badger. I'm his mother.

6 THE COURT: Okay. Mom, I understand this is tough for
7 you, okay. But I'm going to ask that you not sound out
8 again, okay?

9 MS. BADGER: Yes, sir.

10 THE COURT: Okay. Thank you so much. Go ahead.

11 AST. SOL. HARTE: So that assault continued until both
12 this defendant and the older brother walked back to [REDACTED] Red
13 Rock Way, which is the address that appears on all of their
14 bond paperwork, DMV records, et cetera. Ms. Williams was
15 able to identify James Badger out of a photo lineup absent
16 any hesitation at all. When showed a photo lineup of this
17 defendant, she was 70 percent sure that that was the
18 individual that had the gun. But in addition to that, a
19 fingerprint impression was lifted from the front seat of the
20 car and the backseat of the car; one coming back to James
21 Badger, one coming back to this defendant. I think that
22 covers all of the elements, Your Honor. I think that's a
23 factual recitation of everything that happened.

24 THE COURT: Have the victims from the various charges
25 been notified of his hearing?

1 AST. SOL. HARTE: Your Honor, Megan Williams, the
2 victim of armed robbery/carjacking was on standby this week
3 to testify as a witness if this case were to go forward for
4 trial. We had discussed the plea offer that had been made.
5 She was in agreement with it. The two burglary victims have
6 not been notified of his plea because we had always planned
7 on going forward with those charges later. We did discuss
8 the plea offer that was being made. There was no objection
9 from them at that time. I feel comfortable going forward
10 having not notified them of this plea, and I feel
11 comfortable saying that they will be in agreement with the
12 direction this is headed.

13 THE COURT: Has anyone in any of these cases requested
14 restitution?

15 AST. SOL. HARTE: Not to my knowledge, Your Honor.

16 THE COURT: Are you aware of any, Counsel?

17 MR. HAYES: No, sir.

18 THE COURT: What kind of juvenile record -- what kind
19 of record did he have before these? I know it's juvenile.

20 AST. SOL. HARTE: In -- I'm sorry -- October of 2014,
21 he was adjudicated guilty -- I guess that's how the Family
22 Court terms it -- for a burglary in the third degree. In
23 January of 2015, he was charged with strong-arm robbery.
24 His probation for that October of 2014 burglary was revoked,
25 and he was sent to a facility, I believe, in Beaufort for a

1 period of eight or nine months. When he was brought back to
2 Aiken to deal with that strong-arm robbery, we was again
3 adjudicated guilty and was given probation again. In
4 October, he was elevated from a to 7:00 p.m. to 7:00 a.m.
5 curfew to some sort of house arrest. And then when he
6 failed to, again, maintain the terms of house arrest, was
7 placed on the ankle monitor.

8 THE COURT: All right. Counsel, glad to hear from you.

9 MR. HAYES: May it please the Court, Judge? This is
10 one that is hard to swallow being that he's 16 years of age,
11 and the agreement is a year longer than he's actually been
12 alive. But I understand the position of the State. We had
13 been in great depth over discovery, great depth as to
14 whether trial or plea. And the risk of the trial is just
15 too great. He would be potentially subject to an LWOP on
16 this trial afterwards because of the two burglaries and
17 facing potential life sentences on either one of those.

18 Judge, he was in the ninth grade. However, he wasn't
19 attending school. At the time, he had been kicked out due
20 to strict compliance with the alternative school having
21 issues. And I think in reading -- I pulled hid DJJ file
22 from our office. The last evaluation that he had done, I
23 asked the lawyer that represented him on it to send me that
24 report. And in reading that report, he was trying to catch
25 the -- the way he had to catch the bus he had to go from the

1 high school to the alternative school. There was a
2 confrontation. He was looking at his phone and they told
3 him give it up. And there was a discussion of whether he
4 was actually going to turn over the phone and they kicked
5 him out of school. And the suspension was upheld. So from
6 that point forward, I think he's been kind of bouncing
7 around.

8 Judge, while at DJJ, he's currently working on his GED.
9 He tells me he has taken two of the classes and passed, and
10 he's still working on the English literature and math. He
11 passed the social studies and science. Prior to that,
12 Judge, he's held one job at the Boys and Girls Club and that
13 was over the summer. He told me that just before being
14 brought to court, he was informed that he was accepted into
15 the Big Brother program at DJJ. He's been working with Dr.
16 Miller Bay. I talked to her in depth on the 3rd, and she
17 did say she wanted to be here. However, on Thursday and
18 Friday, I was having issues getting DJJ to call me back so I
19 could have a meeting with my client instead of having to
20 drive to Columbia so I could find out if we were going to be
21 pleading today or if we were going to court for trial. I
22 didn't want to have her here for trial and ask her to have
23 to come back later at sentencing. But she told me, and as
24 well as he's indicated to me, he's taken part in several of
25 the programs. He tells me he completed and he has a

1 certificate in his property in our office for Rebuilding
2 Individual Character Habits, and that he got that on
3 July 22, 2016.

4 Judge, I understand the State's position, and I
5 understand why we're standing here because of some bad
6 decisions. It sounds like he's trying to adjust. And I
7 handed up the letter that he wrote. I think since the
8 incident, he's had some reflection as to the decisions he
9 was making and the choices. I hate to cast stones in a
10 glass house, but I would point out that his brother is much
11 older than him. And according to the DJJ report, is the
12 oldest male in the house, the father figure. His actual
13 father is present. He's here. And he works as an over road
14 driver, truck driver, and is not home very often. And
15 according to the report from DJJ, his mother and him have
16 separated for quite some time because she's working two
17 jobs. She works during the day and then moonlights at night
18 at another job just trying to have the money to have them a
19 nice neighborhood to live in, clothing, and food. And that
20 she was struggling having control over the household
21 according to that report.

22 Judge, I don't know who made the plan or what the
23 situation was. I wasn't there. I do know that the victim
24 in the case was the first person to contact either one of
25 the two and was trying to sell marijuana, which she

1 ultimately fessed up to in a later investigation with the
2 solicitor -- to the solicitor. Can't say it makes anything
3 any better or right, but I can't say two rights make a wrong
4 either or two wrongs make a right. It's just a bad
5 situation all the way around. And the fact that it's caught
6 on video on home surveillance and there's multiple witnesses
7 saying what they saw when it happened, I don't think trial
8 is the right way. I think this is probably the best way,
9 and it's going to give him a chance to get everything
10 straight. And, hopefully, while he's still younger than I
11 am, get out and produce -- and be a productive citizen. I
12 know it's a negotiated sentence, but I'd ask the Court to
13 consider hearing from his mother and father if they would
14 like to address the Court.

15 THE COURT: I'd be glad to. Let me ask you this
16 before, and I wanted to clarify something for the record.
17 As far as when we were talking about 85 percent because of
18 the violent nature of this crime, you did explain to him
19 that 85 percent, there's no guarantee that he -- if he's
20 going forward, he needs to consider he'll spend
21 day-for-day ---

22 MR. HAYES: Yes, sir.

23 THE COURT: --- the sentence that has been agreed upon
24 as long as I agree to it.

25 MR. HAYES: Yes, sir.

1 THE COURT: Is that a true statement?

2 MR. HAYES: Yes, sir. That's a very true statement.

3 It also depends on his behavior at the Department of
4 Corrections. He does not technically earn credit, but he
5 does earn credit -- I don't know how that exactly works, but
6 it's a much, much, much smaller amount according to South
7 Carolina Department of Corrections. And it's not parole.

8 THE COURT: But the bottom line is the day-for-day
9 service, right? Potential.

10 MR. HAYES: Potentially, yes, sir.

11 THE COURT: Okay, sir. Whoever you would like to come
12 up and address me, I'd be glad to . . .

13 MR. HAYES: Judge, before I do that, I'd also like to
14 ask the Court to consider setting the begin date on all
15 charges. I think there was about a week or two weeks
16 difference from the time he was arrested on the carjacking
17 or armed robbery to the time he was actually served for
18 the -- for the burglaries. He's been incarcerated for 188
19 days since May 11th, and I'd ask that all charges receive
20 the same credit.

21 THE COURT: You don't seriously oppose that, do you?

22 AST. SOL. HARTE: No objection, Your Honor.

23 THE COURT: Ma'am, you may come around here.

24 MS. BADGER: Keisha Badger. I'm Jalen Badger's mother.
25 First of all, I would like to say I apologize for earlier.

1 THE COURT: I understand how tough this must be, and
2 that's quite all right. And I'm sorry, I didn't catch your
3 name.

4 MS. BADGER: Keisha Badger. Yes, sir.

5 THE COURT: Ma'am, I'd be glad to hear anything you may
6 want to say.

7 MS. BADGER: First of all, I would ask the Court to be
8 as lenient as genuine as possible. Jalen is not saying that
9 he did not do this. And he's, from my point of view, he's
10 taking the plea because of the other charges. And that's
11 just common, you know, common sense to take the plea. But I
12 just feel the police will -- because the situation did not
13 happen the way that they proclaimed it happened and the way
14 that she's telling them it happened. So I'm just asking
15 that you be lenient on Jalen. As he said, Jalen is getting
16 his GED. He's doing very well with it. Jalen wants to be a
17 chef someday. I'm a chef and he's trying to follow behind
18 his mother.

19 THE COURT: Take your time.

20 MS. BADGER: Basically, that's it, Your Honor. Thank
21 you.

22 THE COURT: Anything further?

23 MR. HAYES: Judge, just for the record, I know it's
24 negotiated, and I've indicated what Dr. Miller had indicated
25 to me. And she said that he was working with her and doing

1 many of the programs and that he was extremely scared. And
2 I think the Court can see that today.

3 THE COURT: Sure. Did you explain to your client he
4 has ten days, not counting today, to appeal my decision
5 today?

6 MR. HAYES: I will, Judge.

7 (Brief pause.)

8 THE COURT: Mr. Badger, I know this is very tough for
9 you. But you want to take a minute and try to gather your
10 thoughts and say anything you may want to add to what's been
11 stated already?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you understand what you lawyer just told
14 you about having ten days to appeal this sentence?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Anything further from the State?

17 AST. SOL. HARTE: Nothing from the State, Your Honor.

18 THE COURT: Anything from the defense?

19 MR. HAYES: No, sir.

20 THE COURT: All right. I'm going to accept the
21 negotiated sentence. I'm going to sentence you to 17 years
22 concurrently on all charges, credit for 188 days on all
23 charges. Mr. Badger, good luck to you.

24 MR. HAYES: Thank you, Your Honor.

25 AST. SOL. HARTE: Thank you, Judge.

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(The proceeding concluded at 4:09 p.m.)

2016A0210200760
2016A0210200761
2016A0210200809

2016A0210200810

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Aiken)
)
John T. Badger)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Aiken County / DJJ
2. Name and location of Court which imposed sentence Aiken County /
General session
3. Name(s) of co-defendant(s) (if any) James Badger
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Burglary - 1st, #indict 16-GS-0201895
 - (b) Burglary - 1st, #indict 16-GS-0201892
 - (c) carjacking #indict 16-GS-201886
 - (d) Armed Robbery # 16-GS-201885

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11-11-16, 17 years
 - (b) _____
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. Aiken County
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. didn't accept it
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. January or February of 2016
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. not available
 - 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) ineffective assistance of counsel
- (b) _____
- (c) _____

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

- (a) I was 16 at the time & my lawyer Bailey
- (b) didn't explained my charges and the time
- (c) I was facing

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

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

no

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

(a) which grounds have been presented:

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

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

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

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) Because I was doing this for the PER
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. David Hanyes Aiken, S.C.
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. plea
 - ii. _____
 - iii. _____

- 19. State clearly the relief you seek in filing this application:
effective assistance of counsel to warrant
a lesser sentence

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

STATE OF SOUTH CAROLINA)
)
 County of Aiken)

VERIFICATION

I, Jalen Badger, 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.

Jalen Badger

SWORN to and subscribed before me this 26th
 day of October, 2017.
Emily Haly (L.S.)
 Notary Public

My Commission Expires: 5-18-23

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

I, Jalen T. Badger, 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.

Jalen Badger
Applicant

SWORN or affirmed to and subscribed before me this
26th day of October, 2017.
Emily Hinds
Notary Public

My Commission Expires: 5-18-26

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)
)
 Jalen T. Badger, #371146,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEA
FOR THE SECOND JUDICIAL CIRCUIT

Case No.: 2017-CP-02-02593

RETURN

The State (Respondent), making its return to the application for Post-Conviction Relief (PCR) filed on October 30, 2017, would respectfully show this Court:

I.

Jalen T. Badger (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. In September 2016, the Aiken County Grand Jury indicted Applicant for two counts of first-degree burglary (2016-GS-0201895; -0201892), carjacking (2016-GS-0201886) and armed robbery (2016-GS-0201885). The charges resulted from four separate incidents over the course of three different days. The first burglary occurred on March 29, 2016, where Applicant forced entry into a residence in Graniteville, South Carolina, and removed a electronics, two handguns, and \$120 in cash. The second burglary occurred on April 14, 2016, on the same street in Graniteville, South Carolina. Applicant forced entry at the rear entrance of a residence and removed electronics, two twenty-two caliber rifles, and one twenty gauge shotgun. Applicant was identified in this crime by video and by an electronic monitoring device. On May 3, 2016, Applicant, while armed with a handgun, assaulted and robbed Victim of \$200.00 cash along with her cellular telephone. In the

same incident, Applicant committed a carjacking by robbing Victim of her 2014 Toyota Corolla while in operation. Tr. 11-15.

On November 14, 2016, Applicant appeared before the Honorable R. Lawton McIntosh and pled guilty to all four charges. Assistant Solicitor Robert Wilder Harte of the Second Circuit Solicitor's Office prosecuted this case. Applicant was represented by Assistant Public Defender Charles David Hayes, Esquire. Pursuant to a negotiated sentence, Judge McIntosh sentenced Applicant to imprisonment for seventeen years on each charge, to be served concurrently, with credit for one hundred and eighty eight days of time served in the Department of Juvenile Justice.

Applicant filed a timely notice of appeal. On January 27, 2017, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The remittitur was issued on February 16, 2017.

II.

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

1. Ineffective Assistance of Counsel
 - a. Applicant was sixteen at the time and Plea Counsel failed to explain his charges and the time he was facing.

Applicant is requesting that he receive a "lesser sentence". Respondent notes that, pursuant to the Uniform Post-Conviction Procedures Act, sentence reduction is not a form of relief which can be granted.

Attached to this return and incorporated by reference are the records of the Aiken County Clerk of Court regarding the subject of conviction, Applicant's records from the South Carolina

Department of Corrections, the guilty plea transcript, the records from direct appeal, and the post-conviction relief application.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. Applicants are afforded the right to effective assistance of counsel under the Sixth Amendment of the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984). The counsel of an attorney is granted to function as an assistant to the accused or convicted. See Strickland at 689. There follows, a representative's overarching duty to advocate for the cause on Applicant's behalf and inform them of important developments during the course of prosecution. Id. Applicant bears the burden of proving the allegations set forth in his application. Butler v. State, 286 S.C. 41, 334 S.E.2d 813 (1985). Where the applicant alleges ineffective counsel as grounds for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result". Strickland, 446 U.S. 668. The purpose of the Sixth Amendment guarantee to effective assistance of counsel is simply to ensure that criminal defendants [applicants] receive a fair trial. Id. at 689.

The test for analysis of counsel's duty and conduct under this standard is two pronged. Strickland at 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The proper measure for the performance of an attorney is a mere reasonableness standard, considering all circumstances, and as reflected in norms of practice and result of sensible professional judgement. Strickland at 688. Michel v. Louisiana, 350 U.S. 91, 100-101, 76 S.Ct. 158, 163-164, 100 L.Ed.83 (1955). Judicial scrutiny of counsel's performance is highly deferential by following a strong presumption that

counsel's conduct falls within the wide range of adequate and reasonable professional assistance. Strickland at 689. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must be shown to have prejudiced the applicant such that there is a "reasonable probability that, but for, counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-118. In cases involving guilty plea counsel, the applicant must be able to show that but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1982).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCPP. All claims should be made well in advance of the evidentiary hearing.

Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCPP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCPP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

V.

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

[signature page to follow]

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

Respectfully submitted,

ALAN WILSON
Attorney General

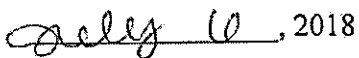
W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

 July 10, 2018

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN**

**COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT**

| | |
|--|--|
| <p>Jalen T. Badger #371146, Applicant vs. State of South Carolina, Respondent.</p> | <p>Case No.: 2017-CP-2-2593 AMENDMENT TO PCR APPLICATION</p> |
|--|--|

The Applicant, Jalen Badger (Badger), amends his PCR Application filed in the above captioned case as follows:

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

Badger amends his response to item 10 to add the following:

a. Ineffective assistance of trial counsel

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

Badger amends his response to Item 11 to add the following:

a.

i. Badger's guilty plea was not made with or based on advice of competent counsel.

ii. Badger's guilty plea was not intelligently made.

iii. Trial counsel did not prepare Badger's case for trial, and Badger was left with no choice but to plead guilty.

- iv. Trial counsel did not discuss potential defenses with Badger.
- v. Trial counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Badger so that Badger could make an informed choice of whether to enter a plea or try his case.
- vi. Trial counsel did not investigate Badger's case.

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

Badger amends his response to Item 19 to state the following:

Order vacating conviction and sentence.

Furthermore, Badger requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the hearing that have not been specifically addressed in the Application or this Amended Application.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

BY: 
ARTHUR K. AIKEN
2231 Devine Street, Suite 201
Columbia, SC 29205
Phone: 803-799-5205
Fax: 803-799-5206
Email: art@aikenandhightower.com
ATTORNEYS FOR APPLICANT

Columbia, South Carolina
August 13, 2018

| | | |
|-------------------------|---|------------------------------|
| State of South Carolina |) | In the Court of Common Pleas |
| |) | Second Judicial Circuit |
| |) | 2017-CP-02-02593 |
| County of Aiken |) | |

| | |
|--------------------------|---|
| Jalen T. Badger, |) |
| |) |
| Plaintiff, |) |
| |) |
| vs. |) |
| |) |
| State of South Carolina, |) |
| |) |
| Defendant. |) |

May 14, 2019

Aiken, South Carolina

B e f o r e:

J. Cordell Maddox, Judge

A p p e a r a n c e s:

Janell Gregory, Esquire
Attorney for the Plaintiff

Art Aiken, Esquire
Attorney for the Defendant.

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

| <u>WITNESS/DESCRIPTION</u> | <u>PAGE NO.</u> |
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| Case Called/Ms. Gregory | 4 |
| DIRECT CROSS REDIRECT RE-CROSS | |
| JALEN BADGER | |
| Mr. Aiken | 6 |
| Ms. Gregory | 13 |
| DAVID HAYES | |
| Ms. Gregory | 13 |
| Mr. Aiken | 24 |
| Certificate Page | 28 |

E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>I.D.</u> | <u>EV.</u> |
|------------|--------------------|-------------|------------|
|------------|--------------------|-------------|------------|

-- NO EXHIBITS ENTERED --

1 (On the record at 10:51 a.m.)

2 THE COURT: Okay. Which one are we doing first?

3 MS. GREGORY: Your Honor, we're gonna be doing Jalen
4 Badger first.

5 THE COURT: Okay. This is Jalen T. Badger. Are you
6 Mr. Badger?

7 THE APPLICANT: Yes, sir.

8 THE COURT: Okay. All right. Yes, ma'am.

9 MS. GREGORY: Applicant is currently incarcerated
10 with the South Carolina Department of Corrections,
11 pursuant to Aiken County Clerk of Court orders of
12 commitment. He was indicted in September, 2016, for two
13 counts of first degree burglary, carjacking and armed
14 robbery.

15 On November 14, 2016, Applicant appeared before Judge
16 McIntosh and pled guilty to all four charges. Pursuant to
17 a negotiated sentence, Judge McIntosh sentenced Applicant
18 to imprisonment for 17 years on each charge, to be served
19 concurrently. Applicant is ---

20 THE COURT: You say "negotiated"?

21 MS. GREGORY: Yes, sir.

22 THE COURT: Was it a negotiation?

23 MS. GREGORY: Yes, sir.

24 THE COURT: All right.

25 MS. GREGORY: Applicant was given credit for 188

1 days.

2 Applicant filed a timely notice of appeal on January
3 27, 2017. The South Carolina Court of Appeals dismissed
4 the appeal for failure to provide a sufficient explanation
5 as required by the rules.

6 Applicant filed a timely application for post-
7 conviction relief on October 30, 2017, alleging he was
8 being held in custody unlawfully based upon the following
9 reasons: Ineffective assistance of counsel, counsel
10 failed to explain the charges against him or the time he
11 was facing.

12 Applicant amended his return -- I'm sorry. Applicant
13 amended his application in October -- I'm sorry -- August
14 13, 2018, to allege the following: Applicant's guilty
15 plea was not made with or based on advice from competent
16 counsel; applicant's guilty plea was not intelligently
17 made; counsel did not prepare applicant's case for trial,
18 and applicant was left with no choice but to plead guilty;
19 counsel did not discuss potential defenses with applicant;
20 counsel never discussed the advantages or disadvantages of
21 trial versus taking the plea; and Applicant could not make
22 an informed decision on whether or not to plea or try the
23 case; and counsel did not investigate Applicant's case.

24 Applicant is present today and represented by Mr.
25 Aiken.

DIRECT EXAMINATION BY MR. AIKEN - JALEN BADGER

6

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

2 THE COURT: Yes, sir.

3 MR. AIKEN: The applicant calls Jalen Badger.

4 JALEN BADGER, after having first
5 been duly sworn, testifies as follows:

6 THE COURT: How you doing, Mr. Badger?

7 THE APPLICANT: Good. I go ahead -- can I go ahead
8 and state my name?

9 THE COURT: Yeah. And spell your last name for me.

10 THE APPLICANT: Jalen Badger, B-a-d-g-e-r.

11 DIRECT EXAMINATION

12 BY MR. AIKEN:

13 Q Mr. Badger, how old are you?

14 A Nineteen years old.

15 Q Now, I think you heard the Attorney General say that
16 you pled guilty to -- to some charges in Aiken County; is
17 that right?

18 A Yes, sir.

19 Q Okay. And was that in November, 2016?

20 A Yes, sir.

21 Q Okay. And I believe you pled guilty to -- in Aiken,
22 to armed robbery; is that right?

23 A Yes, sir.

24 Q And car-jacking?

25 A Yes, sir.

1 Q Now -- now, according to the Government's
2 allegations, in those two cases, those occurred in May of
3 2016; is that right?

4 A Yes, sir.

5 Q Okay. And then it looks like you pled to two charges
6 of burglary in the first degree; is that correct?

7 A Yes, sir.

8 Q Okay. In one of those, according to Government's
9 allegations, occurred in March of 2016; is that right?

10 A Say it one more time?

11 Q We -- we're talking about the two burglaries you
12 plead guilty to in Aiken County, okay?

13 A Yes, sir.

14 Q One of those, according to the Government's
15 allegations, occurred in March of 2016; is that correct?

16 A Yes, sir.

17 Q Okay. And the other burglary first, according to the
18 Government's allegations, occurred in April of 2016; is
19 that right?

20 A Yes, sir.

21 Q All right. Now, you understand that if you win your
22 PCR, the convictions and sentences for those Aiken County
23 charges get wiped out; you understand that?

24 A Yes, sir.

25 Q Okay. And when that happens, do you understand that

1 you go back to square one, facing all those charges,
2 correct?

3 A Correct.

4 Q Okay. And I have explained to you, have I not, that
5 there are multiple scenarios under which you could be
6 looking at life without parole on those charges?

7 A Yes, sir.

8 Q And you understand that?

9 A I understand.

10 Q And notwithstanding that, you -- you want to go
11 forward with your post-conviction relief case?

12 A Yes, sir.

13 Q Now, let's talk real quickly about your application.
14 You -- you filed an application initially, right?

15 A Yes, sir.

16 Q Okay. And you alleged ineffective assistance of
17 counsel, right?

18 A Yes, sir.

19 Q And your lawyer was David Hayes?

20 A Yes, sir.

21 Q From the Second Circuit Public Defender's Office?

22 A Yes, sir.

23 Q Okay. Now, on -- on the specifics of the allegation
24 of ineffective assistance of counsel, you said (as read):
25 "I was 16 at the time, and my lawyer really didn't explain

1 my charges and the time I was facing."

2 A Uh-huh.

3 Q Tell me about his failure to explain the charges to
4 you.

5 A Like, only thing -- only thing I remember about --
6 hold up. Say it -- say it one more time, I'm like ---

7 Q You -- you said in your application (as read): "I was
8 16 at the time." So you were 16 when you entered your
9 plea?

10 A Yes, sir.

11 Q All right. (As read): "... and my lawyer really
12 didn't explain my charges and the time I was facing."
13 Tell me what you mean by your lawyer failing to explain
14 the charges to you.

15 A Oh, well, basically, going over -- going over -- like
16 how you been going over it with me.

17 Q What ---

18 A And it ---

19 Q --- do you mean by how I've been going over it with
20 you?

21 A Sir?

22 Q You talking about the elements ---

23 A Yeah.

24 Q --- of the offense?

25 A The -- yeah.

DIRECT EXAMINATION BY MR. AIKEN - JALEN BADGER 10

1 Q What constitutes this crime?

2 A Uh-huh.

3 Q Did you ever have that conversation with Mr. Hayes
4 about all these charges that you pled guilty to in Aiken?

5 A Sir?

6 Q Did you ever have a conversation with Mr. Hayes about
7 all the charges you pled to in Aiken, about what
8 constituted those various offenses?

9 A Yes, but I didn't understand him.

10 Q You didn't understand it?

11 A Uh-huh. I didn't understand.

12 Q Did you explain to Mr. Hayes that you didn't
13 understand them?

14 A No, sir.

15 Q Now, you also say that (as read): "Mr. Hayes really
16 didn't explain the time I was facing." Tell -- tell me
17 what you mean by that.

18 A Only thing is just kept telling me I was gonna catch
19 life without parole type. You know, I was like -- he
20 wasn't telling me, like, that -- yeah, that's it, really.
21 Probably that's -- every time he came to see me, that's
22 all he been telling me.

23 Q He just told you, you were looking at life without
24 parole?

25 A Yeah. LWOP, LWOP.

1 Q And you were 16 at the time?

2 A Yeah. I need to take a plea because if I don't, I
3 will catch -- I -- it's a -- it's a strong possibility
4 I'll get the LWOP.

5 Q Did he explain to you that before you could be given
6 life without parole, you would be entitled to a hearing on
7 what's called "mitigation"?

8 A No, sir. I don't even know what that is.

9 Q All right. Did he explain to you that you would have
10 a opportunity, before being sentenced to potentially life
11 without parole; to present at a hearing reasons why the
12 Court shouldn't give you life without parole?

13 A No. No, not at all.

14 Q Did Mr. Hayes prepare your case for trial?

15 A No, sir.

16 Q Tell me why you know that.

17 A That he didn't prepare my case for trial?

18 Q Yes, sir.

19 A We didn't talk about going to trial at all.

20 Q There was no discussion about trying the case?

21 A No, sir.

22 Q That wasn't presented to you as an option?

23 A Sir?

24 Q That wasn't presented to you as an option ---

25 A Yeah, to try to ---

DIRECT EXAMINATION BY MR. AIKEN - JALEN BADGER 12

1 Q --- to try your case?

2 A --- get a plea offer, yeah. But if I didn't take a
3 plea, I had to go to trial. I ain't have no option.

4 Q Did you discuss any potential defenses with Mr.
5 Hayes?

6 A No, sir.

7 Q Did Mr. Hayes explain to you the advantages and
8 disadvantages of a trial, and the advantages and
9 disadvantages of a plea?

10 A I don't under ---

11 Q Well, did -- did Mr. Hayes explain to you, "Here's
12 what's good about a trial, here's what's bad about a
13 trial; here's what good about a plea, here's what's bad
14 about a plea." Did ---

15 A He told me what's good was about that. I -- like I
16 said, he told me -- only thing I -- he just told me if I
17 didn't take the plea, I'd be looking at life, brah.
18 That's the only reason why I took the plea because I mean,
19 I ain't wanna catch life.

20 MR. AIKEN: If I may have just one ---

21 THE COURT: Sure.

22 MR. AIKEN: --- moment, Your Honor.

23 THE COURT: Sure.

24 Q Thank you, Mr. Badger. If you would answer any
25 questions the Government might have.

1 CROSS-EXAMINATION

2 BY MS. GREGORY:

3 Q Morning, Mr. Badger. How many times did you meet
4 with your attorney?

5 A I can't remember.

6 Q You don't remember? Do you recall reviewing
7 discovery with Mr. Hayes?

8 A What's that?

9 Q The evidence the State had against you.

10 A Like, going over, like, my ---

11 Q What the State ---

12 A -- motions and stuff?

13 Q -- would present.

14 A Like, going over my motion of discovery?

15 Q Yes.

16 A Yeah.

17 Q You went ---

18 A He ---

19 Q -- over that with Mr. Hayes?

20 A (No audible response.)

21 Q Do you recall telling the plea judge you wished to
22 plead guilty?

23 A Yes, ma'am.

24 Q And that you were guilty of each of the charges the
25 State had against you?

CROSS-EXAMINATION BY MS. GREGORY - JALEN BADGER 14

1 A Yes, ma'am.

2 Q Do you recall waiving your constitutional rights?

3 A Yes, ma'am.

4 Q And that you didn't have any complaints against your
5 attorney?

6 A Yes, ma'am.

7 Q And that you were satisfied with your attorney?

8 A Yes, ma'am. I just did that though because I been --
9 I was -- I was emotional at the time. I just been ready
10 to go back to my cell. Like, I just -- I was 16; I just
11 caught 17 years. You know, I didn't really wanna talk to
12 nobody; I just been ready to go.

13 Q But you told the judge that the lawyer had done
14 everything that you wanted him to do.

15 A Yes, ma'am.

16 Q Right?

17 MS. GREGORY: No further questions, Your Honor.

18 THE COURT: Anything on redirect?

19 MR. AIKEN: No redirect, Your Honor.

20 THE COURT: I mean, it -- you have obviously had time
21 to talk with him and you have explained, I think, the way,
22 based upon your questions, that he is still looking at a
23 life without parole if I grant his PCR.

24 MR. AIKEN: Yes, sir.

25 THE COURT: And Mr. Badger, when you were talking to

1 your lawyer, a negotiated sentence, obviously something
2 that -- it's a little bit different from a recommendation
3 because when you negotiate a sentence, a judge can't up
4 the penalty or reduce the penalty. All they can do is say
5 I won't accept it. If they -- if the Solicitor's Office
6 recommends 17 years, a judge can change it without
7 allowing it to -- without allowing the person to withdraw;
8 you understand that?

9 I mean, your -- your case was a negotiated sentence.
10 The judge only had the option at that case -- in -- in
11 that moment of sentencing of giving you 17 years; you
12 understand that?

13 THE APPLICANT: Yes, sir.

14 THE COURT: And you've talked to your lawyer about
15 the possibility that if I grant your PCR, that the
16 possibility is that you'll be back in the very same boat
17 you were in before, which is looking at LWOP, life without
18 parole, or some sort of sentence negotiation; you
19 understand that?

20 THE APPLICANT: Yes, sir.

21 THE COURT: And you're willing to take that chance?

22 THE APPLICANT: Yes, sir.

23 THE COURT: Okay. All right. Okay. Thank you. You
24 can step down. Appreciate it.

25 (The witness complies.)

DIRECT EXAMINATION BY MS. GREGORY - DAVID HAYES 16

1 MR. AIKEN: Your Honor, that's the Applicant's case.

2 THE COURT: Okay.

3 MS. GREGORY: State would call David Hayes.

4 DAVID HAYES, after having first
5 been duly sworn, testifies as follows:

6 THE WITNESS: Charles David Hayes, H-a-y-e-s.

7 DIRECT EXAMINATION

8 BY MS. GREGORY:

9 Q Good morning, Mr. Hayes.

10 A Good morning.

11 Q How long have you been practicing law?

12 A Since two thousand -- I -- I took the bar in 2008,
13 and went back and -- came back and was employed in -- in
14 8, 2009, for the Public Defender's Office.

15 Q So how much of that has been in criminal law?

16 A All of it.

17 Q All of it? Okay.

18 How were you appointed to this case, like, from the
19 beginning?

20 A Yes.

21 Q Okay. And how long -- did you represent him the
22 whole time prior to the guilty plea?

23 A Yes.

24 Q How did the charges arise on Mr. Badger? What were
25 the facts of the case?

1 A It was a -- there were multiple charges. On 5/03/16,
2 the police were called to an armed robbery and a car-
3 jacking. The victim had contacted James Badger, which is
4 Mr. Badger's brother, asked him if he wanted to buy some
5 marijuana and some shoes. He had -- they arranged for the
6 meeting, and I was told that the plan was to snatch the
7 weed and run; however, she pulled a gun on him, according
8 to him, and he took the gun from her.

9 And on the video, you can see that he beat her with
10 the gun and drug her from the car. He hopped back in the
11 car in the drivers seat and she runs back to the car after
12 he drug her out of the pane of the camera and she jumped
13 in the back seat and then took off. And then after that,
14 9-1-1 was called when the car was abandoned at the back of
15 that subdivision.

16 Q And that's the car-jacking and armed robbery charges?

17 A Yes. On 03/29/16, James Napearce [phonetic] Holmes
18 was forcefully -- back door was forced open, the house was
19 entered, firearms, electronics, and cash was taken. It
20 was later identified, through the neighbor's video
21 surveillance and Mr. Jalen Badger's ankle monitor from
22 DJJ, that on that time he had gone into the house.

23 On 04/14/16, his ankle monitor again showed him in a
24 Christie Youngblood's home where he forced open the back
25 door and more than \$2,000 of electronics and fobs was

DIRECT EXAMINATION BY MS. GREGORY - DAVID HAYES 18

1 stolen. He was identified on May 6th -- May 17th of 2016,
2 when they asked for the ankle monitor information, and
3 that's what put him in both of those houses.

4 Q Did you obtain maps showing ---

5 A Yes.

6 Q -- that he was -- and he was on an ankle monitor for
7 another offense?

8 A Yes.

9 Q Did you discuss any possible defenses with Mr.
10 Badger?

11 A I told him that he had a right to trial. There's not
12 a whole lot we could do as a defense, that his dot was
13 inside of the house -- in the houses allegedly being
14 burglarized at the time -- and when you're on video
15 beating a young woman in the head with a firearm and
16 dragging her off on the car.

17 Q Did you discuss with him his version of the facts?

18 A Yes.

19 Q And what did -- what would -- what did he say?

20 A That would be in my notes. I went to DJJ on
21 07/29/16. We discussed burglary first, armed robbery,
22 car-jacking, assault, and battery second. I told him that
23 a burglary carried 15 to life, 85 percent, no parole, most
24 serious, and violent. I tell him what they -- armed
25 robbery was 10 to 30 as well, no parole, no suspendable

1 sentence on the mandatory minimal, 85 percent, no parole,
2 most serious, and violent. Car-jacking was 0 to 20 or 0
3 to 30 with great bodily injury, 85 percent, no parole,
4 violent, most serious. We went over possession of a
5 weapon during a violent crime, we went over assault and
6 battery in the second degree, we went over 24-13-100, no
7 parole, 17-25-45, most serious, serious and/or any
8 combination of the -- of the two would put him subject to
9 a life sentence. Over 16 -- 160 violent, as that car-
10 jacking, burglary first, and armed robbery are violent;
11 explained what violent meant versus non-violent and it's
12 effect how he was housed and where he was housed, and his
13 constitutional right to a jury trial.

14 Q And did he understand those conversations, too ---

15 A Yes. During the first conversation, we went over the
16 information. We talked about the monitor with the dots
17 and showing where he was at. And that he said he was by
18 himself on the burglaries.

19 As to the car-jacking, he said that his brother and
20 him was contacted by -- his brother was contacted by the
21 girl that he knew and wanted to know if she wanted to buy
22 weed, that they went to get the weed and some tennis
23 shoes; that she ended up being short, and the plan was to
24 snatch and run.

25 At that time he didn't say anything to me about a

DIRECT EXAMINATION BY MS. GREGORY - DAVID HAYES 20

1 firearm, just that he -- she didn't have scales, he did.
2 He weighed it. It was supposed to be an ounce and a half.
3 It didn't quite weigh an ounce, so it was short. He told
4 her, "You're dead. I ain't got no money," and that they
5 ran.

6 Q And in those discussions, you discussed the elements
7 of each ---

8 A Yes.

9 Q -- charge and the sentence he potentially faced?

10 A Yes.

11 Q Did that sentence include LWOP?

12 A Yes.

13 Q And what was that based on?

14 A The Solicitor's discussion with me was that -- that
15 he's facing a burg first and that he is facing a life on
16 both of those and it would be a most serious. If he tried
17 him on one, he would then turn around and try him and his
18 brother on the car-jacking and the armed robbery, and he
19 would seek a life sentence.

20 However, I don't believe he'd been able to under the
21 -- the Aiken case, but he's still subject to a defacto
22 life sentence because both the burglary first carries on
23 -- a life potential and there's two of those. And then
24 the armed robbery and car-jacking both carry up to 30
25 years if he ran them consecutive ---

1 Q He'd get aggregate, until it -- did you investigate
2 this case?

3 A I did.

4 Q What kind of investigation did you do?

5 A I looked over all the discovery and tried to make
6 contact with this alleged victim. I got the information.

7 My problem that I was having was that the mother had
8 gotten involved so deeply and I started finding out that
9 my discussions with him, as to trial and information, were
10 being passed along to brother's attorney. I warned him of
11 this and then, when I would go see him on time -- two
12 times at DJJ, he tells me he didn't wanna talk and that he
13 didn't have nothing to talk about. Well, come to find
14 out, mom had told him don't talk to me.

15 Q His mother?

16 A His mother.

17 Q Did you review his constitutional rights with him?

18 A Absolutely. On 10/10/16, I went up and I gave him a
19 copy of the discovery. I explained the offer, we
20 discussed armed robbery, car-jacking, burglary first
21 again. We looked at the discovery. Then -- I would spend
22 multiple hours, I would clear the afternoon and drive to
23 DJJ and go over all of this discovery.

24 Q Did he ever tell you he didn't understand something?

25 A No. On 10/10/16, we discussed plea deal versus

DIRECT EXAMINATION BY MS. GREGORY - DAVID HAYES 22

1 trial, that if he was convicted, that it meant most
2 serious, on February 1st; and that if notice for life on
3 the armed robbery means it don't win, life is all the
4 judge can give him.

5 Discussed could plea to deal offered as to armed
6 robbery and car-jacking, and then testify for brother at
7 later. Discussed that he does not want to share any
8 information with the Defendant's lawyer yet because that
9 one was always another question I was being asked by other
10 lawyers; did he wanna talk to me? My guess was, no.

11 Q Okay. How did the plea offer come about?

12 A The Solicitor contacted me, I think it was by email.
13 I just tried pulling it up. We've changed systems over
14 and I think it was marked by, and if I recall right,
15 originally the deal was more than 17 years.

16 Q Okay.

17 A And he was trying to push into a trial, if he didn't
18 wanna take the deal fairly quick and then just -- the case
19 -- resolved fairly quickly after having a discussion with
20 Michael Routzong, who was my partner in the office, we
21 teamed up.

22 And the Solicitor -- I -- my thing was -- is you're
23 trying to give somebody more time than they've even been
24 alive. They can't wrap their head around this.

25 So I asked him about the 17, I asked him to do 17

1 straight up, and was trying to leverage him -- give --
2 give me -- give the judge the ability to give him
3 something other.

4 I even asked him about going to Strom Thurmond and
5 getting Grant Gibbons involved, who are our -- both of our
6 bosses, to see if I could say, "Hey, you're trying to give
7 somebody more time than they've been alive. This is
8 ridiculous." Ultimately he came down to 17 negotiated and
9 would not budge.

10 Q And when you communicated that to Mr. Badger; what
11 was that conversation?

12 A He ultimately told me he wished to accept the -- the
13 offer and go forward; however, I do recall having a long
14 discussion with mother and father in the office right
15 outside the courtroom here and going over the discovery
16 with them, where they were repeatedly asking me what I was
17 doing to try to save their son or help their son.

18 And I explained that I was trying to save him from a
19 potential possibility where he was gonna have a life
20 sentence.

21 Q Do you believe, had he gone to trial, that would've
22 been the case, he would've received a higher sentence than
23 17 years?

24 A Yes.

25 Q And you communicated that to him?

1 A Yes.

2 Q Did you prepare this case for trial?

3 A I did.

4 Q Had he wanted to go to trial, would you have taken
5 the case to trial?

6 A Absolutely.

7 Q Did he ever indicate to you, after saying -- or prior
8 to the plea, that he changed his mind and wanted to go to
9 trial?

10 A No. He did indicate that he wished to file a appeal.
11 The appeal was timely filed. I explained to him the 203
12 letter that I would have to file, saying that as a plea,
13 I'm not aware of any potential objections or rulings that
14 would be appealable, and that he would have to let the
15 Court of Appeals know; that, that letter would be sent to
16 him in a timely manner. It was. It was sent and
17 ultimately the case was dismissed.

18 Q Did you believe pleading guilty was in his best
19 interest?

20 A I did. And I still do.

21 MS. GREGORY: No further questions, Your Honor.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. AIKEN:

25 Q Mr. Hayes, Mr. Badger was 16 at the time of this

1 plea?

2 A He was.

3 Q Well how old was he at the time of the alleged crime?

4 A Sixteen.

5 Q Sixteen?

6 A Uh-huh.

7 Q So he was 16 both times?

8 A I believe so.

9 Q Okay.

10 A One of his biggest questions is he -- why is it not
11 going back to family Court, and we had to explain to him
12 that because of the nature of his charges, it comes to
13 General Sessions. So ---

14 Q Without a waiver.

15 A And the Solicitor's office was not willing to send it
16 back out.

17 Q Right. Right. And you went over Mr. Badger's
18 constitutional rights?

19 A Yes, sir, multiple times.

20 Q Now, all these discussions about serious/most
21 serious, life without parole, constitutional rights, were
22 you satisfied he understood all that given his age?

23 A I was. We -- we discussed it more than once. Every
24 bit of it. We went over it, if he had a question, I
25 answered it, and I believe he fully understood what we

1 were discussing.

2 Q You think he understood all that?

3 A I do.

4 Q Well --

5 MR. AIKEN: May I have one second, please, Your
6 Honor?

7 THE COURT: Yes, sir.

8 Q Thank you, Mr. Hayes.

9 MR. AIKEN: That's all I have, Judge.

10 THE COURT: Anything on redirect?

11 MS. GREGORY: No, sir.

12 THE COURT: You can step down, thanks.

13 (The witness complies.)

14 THE COURT: Anything further from either party?

15 MS. GREGORY: No, sir, Your Honor.

16 MR. AIKEN: No, sir.

17 THE COURT: Okay. All right. Mr. Badger, what I'm
18 gonna do is -- I was given this morning this, which is a
19 copy of your transcript. Also all of the pleadings in
20 this matter. I'm want to read everything before I rule.
21 I don't think it's fair to you for me to just take the
22 testimony and rule. So I'll take it under advisement,
23 I'll let the parties know probably next week.

24 You'll -- I've got to read everything that I hear
25 this week, so don't get too frantic if you haven't heard

1 in a couple of weeks. It'll take me a little time.

2 THE APPLICANT: Yes, sir.

3 THE COURT: All right. Be careful.

4 (Off the record at 11:21 a.m.)

5 -- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE

1
2 I, the undersigned, Bonnie H. Kelly, Official Court
3 Reporter for the Fifth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate transcript of record of all the proceedings
6 had and evidence introduced in the hearing of the
7 captioned cause, relative to appeal, in the Circuit Court
8 for Aiken County, South Carolina, on the 14th day of May,
9 2019.

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

12
13
14 E/Bonnie H. Kelly

15 Bonnie H. Kelly, CVR

16 Court Reporter

17
18 Columbia, South Carolina

19 January 9, 2020
20
21
22
23

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2017-CP-02-02593

Jalen T. Badger, #371146,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

ORDER OF DISMISSAL

FILED 10-17 2019 12:30 SP
Robert J. White
C.C.P. & J.S.
Shadell Parks
Deputy Clerk

This matter comes before the Court by way of an application for post-conviction relief filed on October 30, 2017, by Jalen T. Badger (Applicant) and later amended through counsel on August 13, 2018. The State (Respondent) filed a Return on July 9, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on May 14, 2019, at the Aiken County Courthouse. Applicant was present at the hearing and represented by Arthur K. Aiken, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. At the hearing, Applicant testified on his own behalf. Assistant Public Defender Charles David Hayes of the Second Circuit Public Defender's Office (Counsel) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Aiken County Clerk of Court's order of commitment. During its September 2016 term, the Aiken County Grand Jury indicted Applicant for two counts of first-degree burglary (2016-GS-02-01895, 01892), carjacking (2016-GS-02-01886), and armed robbery (2016-GS-02-01885). Counsel represented Applicant on the charges. Assistant Solicitor

Robert Wilder Harte of the Second Circuit Solicitor's Office prosecuted the case. On November 14, 2016, Applicant pled guilty as indicted to all four charges before the Honorable R. Lawton McIntosh. Pursuant to a negotiated sentence, Judge McIntosh sentenced Applicant to imprisonment for concurrent terms of seventeen years on each charge with credit for one-hundred and eighty-eight days.

Applicant filed a timely notice of appeal. On January 27, 2017, the South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules. The remittitur was issued on February 16, 2017.

SUMMARY OF FACTS

First-Degree Burglary

On March 29, 2016, officers responded to a residence on Stone Pass Drive in Graniteville. (GP Tr. 11.) The homeowner reported when he returned home from work he discovered the back door to his house was open and the doorframe was kicked in and shattered. (GP Tr. 11.) Footprints were visible in the backyard. (GP Tr. 11.) The homeowner noted numerous items had been taken from his residence including a 40-caliber Taurus firearm and a 22 LR short-barreled revolver. (GP Tr. 11.) The investigation into this burglary stalled as there was no fingerprint or DNA evidence located at the scene. (GP Tr. 12.)

On April 14, 2016, officers responded to another residence on Stone Pass Drive where forced entry was also made through the rear door. (GP Tr. 12.) The homeowner reported numerous items were taken from the residence including a 20-gauge shotgun. (GP Tr. 12.) Again, no fingerprints or DNA were located at the scene and the investigation stalled. (GP Tr. 12.)

Applicant was eventually connected to both burglaries because he was wearing a GPS ankle monitor as a condition of his Department of Juvenile Justice probation. (GP Tr. 13.) The

physical GPS location showed Applicant was inside the residence of both burglaries at the time they occurred. (GP Tr. 13.)

Carjacking and Armed Robbery

On May 3, 2016, officers responded to the Sage Creek subdivision to a report of an armed robbery. (GP Tr. 12.) Upon arrival, officers spoke with two callers who stated they heard screaming outside and a juvenile witnessed a woman being dragged out of a Toyota Corolla. (GP Tr. 13.) The juvenile reported what he observed to his mother and they got in their vehicle and drove around the neighborhood. (GP Tr. 13.) They eventually located the vehicle and Megan Williams (Victim) inside. (GP Tr. 13.) Victim had sustained a laceration on her head and a "pretty serious beating." (GP Tr. 13.) Victim was transported to the hospital. (GP Tr. 13.) Another witness came forward and explained she observed a male with a gun in his hand assaulting Victim in the street. (GP Tr. 13.)

Prior to the carjacking and robbery, Victim was Facebook messaging and texting Applicant's older brother. (GP Tr. 14.) During the investigation, it was revealed that Victim was going to sell Applicant and his older brother marijuana. (GP Tr. 14.) During the transaction, Applicant was armed with a weapon and put it to the back of Victim's head and stated, "Drive or I'll kill you." (GP Tr. 14.) Victim attempted to get away and Applicant pistol whipped her numerous times. (GP Tr. 14.) Victim was held in the car by her hair and Applicant drove the car away from their initial location. (GP Tr. 14.) Applicant and his brother continued to assault Victim before walking back to their residence on Red Rock Way. (GP Tr. 15.) Victim was able to pick out Applicant's brother from a photo line-up without hesitation. (GP Tr. 15.) Victim was 70% sure of her identification of Applicant- the suspect with the gun - when she picked him out of a photo line-up. (GP Tr. 15.) Officers were able to recover a fingerprint of Applicant and his brother inside Victim's vehicle. (GP Tr. 15.) Additionally, Applicant also had the GPS monitor on at the

time of this incident and it confirmed he was in the location of the carjacking and assault at the time it occurred. (GP Tr. 13.)

ALLEGATIONS RAISED

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

- 1) Ineffective Assistance of Counsel
 - a) Applicant was sixteen at the time and Counsel failed to explain his charges and the time he was facing.

On August 13, 2018, Applicant, through counsel, amended his application to allege the following:

- 2) Ineffective Assistance of counsel:
 - a) Counsel did not investigate Applicant's case.
 - b) Counsel did not discuss potential defenses with Applicant.
- 3) Involuntary Guilty Plea
 - a) Counsel did not prepare Applicant's case for trial, and Applicant was left with no choice but to plead guilty.
 - b) Applicant's guilty plea was not made with or based on advice of competent counsel.
 - c) Applicant's guilty plea was not intelligently made.
 - d) Counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Applicant so that Applicant could make an informed choice of whether to enter a plea or try his case.

On May 14, 2019, an evidentiary hearing was convened. Applicant proceeded with the hearing on all of the allegations set forth in his application and amended application.

APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the

trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 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. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show 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, 59 (1985).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom.

Applicant was sixteen at the time and Counsel failed to explain his charges and the time he was facing.

Applicant alleges Counsel was ineffective for failing to explain the charges Applicant was facing and his potential sentences. Applicant testified Counsel told him the elements of his charges, but he did not understand the conversation and told Counsel he did not understand. Applicant testified Counsel only explained that he could get life without the possibility of parole. Applicant testified Counsel told him he would get life without parole if he did not take the plea offer.

Counsel testified he explained to Applicant his charges and the potential sentence he could face on each charge. Counsel testified he reviewed Applicant's constitutional rights with him as well. Counsel testified he believes Applicant understood those conversations and Applicant never told him he did not understanding something they discussed.

Upon review of this record, it is clear Applicant was also informed of his charges and possible sentences by the plea judge prior to entering his guilty plea. (GP Tr. 5.) Additionally, Applicant's sentence was negotiated and that was also explained to Applicant by the plea judge prior to proceeding with his guilty plea. (GP Tr. 5.)

This Court finds Counsel's testimony with respect to this allegation very credible, whereas Applicant's testimony is not credible. This Court finds Applicant has failed to establish how Counsel was deficient for failing to explain Applicant's charges and potential sentences as Counsel testified he did explain to Applicant his charges and possible sentences and believes Applicant

understood those conversations. Additionally, Applicant has failed to establish any resulting prejudice from any alleged deficiency as Applicant was clearly aware of his charges and negotiated sentence prior to entering his guilty plea. Based on the forgoing, Applicant has failed to meet his burden set forth in Strickland and this allegation must be denied and dismissed with prejudice.

Counsel did not investigate Applicant's case. Counsel did not discuss potential defenses with Applicant.

Applicant alleges Counsel was constitutionally ineffective for failing to investigate his case and discuss potential defenses with him prior to his guilty plea. Applicant testified he did not discuss taking his case to trial with Counsel. Applicant testified trial was never presented as an option. Applicant testified Counsel never discussed any potential defenses with him.

Counsel testified he made a motion for and obtained discovery in Applicant's case. Counsel testified Applicant told him he did the burglaries by himself and admitted to planning and robbing Victim. Counsel testified he told Applicant he can go to trial but that the video of the assault and the GPS ankle monitor evidence were pretty damning for his case. Counsel testified Applicant did not have any defenses for his actions. Counsel testified he explained to Applicant his right to a jury trial. Counsel testified Applicant's mother got involved and Applicant then refused to cooperate and meet with Counsel. Counsel testified the State was talking about seeking life without the possibility of parole and, had it not been for Applicant's young age, he believes the State would have pursued that sentence at trial.

This Court addressed Applicant during the hearing to explain the authority of this Court was limited to putting Applicant back to where he was prior to entering his guilty plea. This Court made it clear to Applicant that he could still face a life sentence if his post-conviction relief application is granted. Applicant indicated he understood and wanted to proceed with his post-conviction relief hearing.

This Court finds Counsel's testimony with respect to these allegations very credible whereas Applicant's testimony is not credible. This Court finds Applicant has failed to establish how Counsel was deficient as Counsel obtained discovery in his case, reviewed it with Applicant, and did not see any credible defenses available for Applicant. Additionally, Applicant has failed to establish any resulting prejudice from the alleged deficiency. Based on the foregoing, Applicant has failed to meet his burden set forth in Strickland and these allegations must be denied and dismissed with prejudice.

Involuntary Guilty Plea

Counsel did not prepare Applicant's case for trial, and Applicant was left with no choice but to plead guilty. Applicant's guilty plea was not made with or based on advice of competent counsel. Applicant's guilty plea was not intelligently made. Counsel never discussed the advantages and disadvantages of a trial versus the advantages and disadvantages of a plea with Applicant so that Applicant could make an informed choice of whether to enter a plea or try his case.

Applicant alleges Counsel did not prepare his case for trial and was, therefore, forced to enter a guilty plea. Applicant alleges his guilty plea was not intelligently entered into because his decision to enter his plea was based on incompetent advice from Counsel. Applicant testified Counsel never discussed going to trial with Applicant and that trial was never presented to him as an option. Applicant testified he only took the plea because he did not want to get life without the possibility of parole. Applicant testified he told the judge he was satisfied with Counsel because he was upset at his sentence.

Counsel testified he went over Applicant's constitutional rights multiple times. Counsel testified he told Applicant he could go to trial or plead guilty. Counsel testified when Applicant's mother got involved Applicant became uncooperative, which made his job difficult. Counsel testified Applicant did not have any defenses and the evidence against him was strong. Counsel testified Applicant never told him he did not understand their conversations. Counsel testified he discussed the advantages and disadvantages of going to trial with Applicant and believes Applicant

would have received a higher sentence if he had proceeded to trial. Counsel testified he believed – and still believes – it was in Applicant's best interest to plead guilty. Counsel testified he attempted to negotiate a better offer from the State as they were threatening to seek a life without parole sentence. Counsel testified, because of Applicant's age, he does not think the State would have sought life, but could have sought a de facto life sentence at trial. Counsel testified he got the State down to seventeen years and that was their final offer. Counsel testified he would have taken Applicant's case to trial had Applicant wanted to proceed to trial.

This Court finds Applicant's guilty plea was freely and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntary. The records before this Court, and particularly

the transcript of Applicant's plea proceeding, show Applicant engaged in a thorough colloquy with the court before electing to forgo his constitutional rights and knowingly, voluntarily, and intelligently enter a plea of guilty. This Court finds Applicant knew the charges he was facing and understood the plea he was entering, including the negotiated sentence of seventeen years. This Court also finds Applicant was properly and fully advised of his constitutional rights and knowingly and voluntarily waived those rights to accept a favorable negotiated plea based on the advice of competent Counsel.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant's plea was freely, voluntarily, and intelligently made. Based on these findings, Applicant's allegations regarding his plea being involuntary are denied and dismissed with prejudice.

CONCLUSION

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

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

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 12th day of June, 2019.



J. CORDELL MADDOX, JR.
Presiding Judge
Second Judicial Circuit

Anderson, South Carolina

WITNESSES

Aiken County Sheriff

Inv. Chuck Cain

Law Enforcement Case #: 16-025194

DOCKET NO. 2016GS0201885

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2016

THE STATE

vs.

JALEN TYREA BADGER

ARREST WARRANT NUMBER

2016A0210200760

FILED September 8 2016

Liz Hodard
S.C.C.P. & G.S.
James Sanderson
CLERK

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: September 8, 2016

VERDICT

Foreperson of Petit Jury
Date:

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on September 12, 2016, the Grand Jurors of Aiken County present upon their oath:

That **JALEN TYREA BADGER** along with another, did in Aiken County on or about May 3, 2016, while armed with a deadly weapon, or while alleging either by action or words that he, or another, was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: handgun, feloniously take from the person or presence of [REDACTED] by means of force or intimidation goods or monies of [REDACTED] such goods or monies being described as follows: monies, all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

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

Elizabeth B. Young

J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Inv. Chuck Cain

Law Enforcement Case #: 16-025194

DOCKET NO. 2016GS0201886

The State of South Carolina

County of Aiken

RWH

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

SEPTEMBER TERM 2016

2016A0210200761

FILED September 8 2016

Liz Badger
C.C.P. & G.S.
Amie Badger

THE STATE

vs.

JALEN TYREA BADGER

ACTION OF GRAND JURY

Tom Bill

[Signature]
Foreperson of Grand Jury
Date: September 8, 2016

CDR #: 2599

VERDICT

Indictment for

CARJACKING

§ 16-03-1075(B)(1)

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
CARJACKING
§ 16-03-1075(B)(1)

At a Court of General Sessions, convened on September 12, 2016, the Grand Jurors of Aiken County present upon their oath:

That **JALEN TYREA BADGER** did in Aiken County on or about May 3, 2016, unlawfully take or attempt to take a motor vehicle from [REDACTED] by force and violence or by intimidation, to wit: presenting a pistol and pointing it at the victim while she was operating or in the vehicle. All in violation of Section 16-3-1075 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.

Elizabeth B. Young

J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Inv. James Criscillis

Law Enforcement Case #: 16-021092

RWH

ARREST WARRANT NUMBER

2016A0210200809

FILED September 8 2016

J. Badger
U.C.P. & G.S.

Ann Sanderson
PROBATION

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: September 8, 2016

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS0201892

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2016

THE STATE

vs.

JALEN TYREA BADGER

CDR #: 0079

Indictment for

BURGLARY FIRST DEGREE

§ 16-11-0311

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
BURGLARY FIRST DEGREE
§ 16-11-0311

At a Court of General Sessions, convened on September 12, 2016, the Grand Jurors of Aiken County present upon their oath:

That **JALEN TYREA BADGER** did in Aiken County, South Carolina on or about April 14, 2016 did knowingly and willfully enter a dwelling, to wit: [REDACTED] Stone Pass Drive Graniteville, SC being the dwelling of [REDACTED] without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, he/she or another participant in the crime, was armed with a deadly weapon or explosive. All in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended.

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

Elizabeth B. King

J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Inv. James Criscillis

Law Enforcement Case #: 16-017856

DOCKET NO. 2016GS0201895

The State of South Carolina

County of Aiken

RWH

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

SEPTEMBER TERM 2016

2016A0210200810

FILED September 8 2016

[Signature]
C.C.P. & G.S.
[Signature]
DEPUTY CLERK

THE STATE

vs.

Jalen Tyrea Badger

ACTION OF GRAND JURY

[Signature] Bill

Foreperson of Grand Jury
Date: September 8, 2016

CDR #: 0079

VERDICT

Indictment for

BURGLARY FIRST DEGREE

§ 16-11-0311

Foreperson of Petit Jury
Date:

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
BURGLARY FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on September 12, 2016, the Grand Jurors of Aiken County present upon their oath:

That **JALEN TYREA BADGER** did in Aiken County on or about March 29, 2016, wilfully and unlawfully enter the dwelling of [REDACTED] located at [REDACTED] Stone Pass Drive Graniteville, SC, without consent and with the intent to commit a crime therein and the defendant, while effecting entry or while in the dwelling or while in immediate flight therefrom, was armed with a deadly weapon, all in violation of §16-11-311, Code of Laws of South Carolina (1976), as amended.

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

Elizabeth B. Hung
J. STROM THURMOND, SOLICITOR