

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Robert J. Bonds, Circuit Court Judge

ASHLEY PRIOR,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000564

APPENDIX

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1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions

3 Indictment Number: 2018GS0201898
4

5
6 State of South Carolina,)
Plaintiff.)
7)
8 vs.) Transcript of Record
9)
10 Ashley Tavelle Prior,)
Defendant.)

11
12
13 August 20, 2018
Aiken, South Carolina
14

15
16 B E F O R E:

17 The Honorable William P. Keesley, Judge.
18

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

20 Heather M. Deloach, Assistant Solicitor
Attorney for the State

21 Barry L. Thompson II, Assistant Public Defender
22 Attorney for the Defendant
23

24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable Courtney Clyburn Pope
25 P.O. Box 206, Jackson, South Carolina 29831

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GUILTY PLEA

MS. DELOACH: Ashley Tavelle Prior.

ASHLEY TAVELLE PRIOR was duly sworn.

THE CLERK: He's been sworn, Your Honor.

THE COURT: Are you Ashley Tavelle Prior?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Prior, I've been handed some papers that indicate that you're charged with grand larceny greater than \$2,000 but less than \$10,000 and burglary in the first degree. And it indicates that you wish to plead guilty to these charges. Is that right?

THE DEFENDANT: Yes, sir.

THE COURT: I've also been handed some papers which indicate that you were ordered to be evaluated for your competency to stand trial and make decisions about your charges. And whenever a judge orders somebody to be evaluated the first thing I have to do is go through a hearing called a Blair Hearing. So I need to ask you some questions.

BLAIR HEARING

THE COURT: Do you know who that is to your left?

THE DEFENDANT: Yes, sir.

THE COURT: Who is that?

THE DEFENDANT: My lawyer, Barry Thompson.

THE COURT: What's his job, Mr. Prior?

1 THE DEFENDANT: To represent me.

2 THE COURT: You know what the solicitor does?

3 THE DEFENDANT: She's a -- prosecutes me.

4 THE COURT: What about a witness? You understand
5 what a witness does?

6 THE DEFENDANT: Yes, sir, somebody, I guess
7 speaking up for you.

8 THE COURT: Okay.

9 THE DEFENDANT: Or against you, I guess.

10 THE COURT: Okay. Do you know what a jury is?

11 THE DEFENDANT: Yes, sir. That's somebody who
12 finds you guilty or not guilty.

13 THE COURT: You know how many people are on the
14 jury?

15 THE DEFENDANT: Twelve.

16 THE COURT: Do you know what my job is?

17 THE DEFENDANT: Your job is, I guess to find me --
18 whatever sentence I get. You give me my sentence.

19 THE COURT: All right. You feel like you
20 understand what's going on here today?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: They have you on any medication?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you know what you're taking?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: What?

2 THE DEFENDANT: I take Geodon, psychiatric for, I
3 hear voices. I take Remeron for depression. And I take --
4 well, I take twelve different pills. I take Amantadine for
5 the side effects. I take Cogentin. I take --

6 THE COURT: Okay.

7 THE DEFENDANT: I take more medicines for
8 depression.

9 THE COURT: All right.

10 THE DEFENDANT: So I can't remember the name of it.

11 THE COURT: I understand.

12 THE DEFENDANT: Anything, I take it.

13 THE COURT: I understand. That's fine.

14 THE DEFENDANT: For multiple personality disorder.

15 THE COURT: Okay. Do you think those medicines
16 hurt your ability to think clearly or help your ability.

17 THE DEFENDANT: They help me. If I don't take
18 them, I can't remember what happens.

19 THE COURT: All right. So you've taken them like
20 the doctor told you to?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you feel like you understand what's
23 going on here today?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Does the State have

1 anything else on competence?

2 MS. DELOACH: No, Your Honor.

3 THE COURT: Defense?

4 MR. THOMPSON: No, Your Honor.

5 THE COURT: We'll make the competency report a
6 court's exhibit. I don't really need the --

7 MR. THOMPSON: Actually, I had handed this past
8 Thursday, the State a copy of the voluminous medical record
9 that I got from SCDC. Mr. Prior's currently housed in the
10 psychiatric unit at Kirkland Correctional. But these are
11 essentially medical records that I'm not planning to make a
12 part of the record.

13 THE COURT: All right. Well, he was also evaluated
14 under the M'Naghten standard.

15 MR. THOMPSON: Yes, sir.

16 THE COURT: I don't normally need to make these
17 part of the record. Do y'all want me to?

18 MR. THOMPSON: There's not -- I don't believe
19 that's necessary.

20 (Court's Exhibit Number 1 was marked for
21 identification.)

22 THE COURT: Based on what's been presented, the
23 Court finds beyond a reasonable doubt that Mr. Prior is
24 competent and is capable of making rational choices
25 concerning the charges against him. He's competent and

1 capable of assisting counsel in his own defense. The
2 report indicates and in my observations and questioning of
3 Mr. Prior indicates that he understands sufficiently to go
4 forward in this guilty plea if he so desires.

5 All right. Mr. Prior, the grand larceny charge
6 alleges that in Aiken County on or about February 28th of
7 2015 you feloniously took and carried away personal
8 property valued at more than \$2,000, but less than \$10,000
9 belonging to Steven Haines, H-A-I-N-E-S, with intent to
10 deprive the owner permanently of that property. And it
11 appears that you want to plead guilty to that; is that
12 right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: The other indictment is for burglary in
15 the first degree and it charges that in Aiken County on or
16 about February 28, 2015, you willfully and unlawfully
17 entered the dwelling of Steven Haines without consent and
18 with intent to commit a crime therein and that you have a
19 prior record of two or more convictions for burglary or
20 housebreakings or a combinations of those things. And it
21 appears that you wish to enter a plea of guilty to burglary
22 in the first degree; is that right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Thompson, have you fully explained
25 to your client the nature and elements of the offenses, the

1 possible punishment and his constitutional rights,
2 including trial by jury?

3 MR. THOMPSON: I have, Your Honor.

4 THE COURT: Are you satisfied there's a factual
5 basis for both pleas?

6 MR. THOMPSON: There is, Your Honor.

7 THE COURT: Do you agree with his decision?

8 MR. THOMPSON: I do, Your Honor.

9 THE COURT: Mr. Prior, when you plead guilty, you
10 give up very important rights, including your right to
11 remain silent and your right to a jury trial. You know
12 that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, if you wanted a jury trial, you'd
15 be presumed innocent. You understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And the State would have the entire
18 burden of proof and the State would have to prove that
19 you're guilty beyond a reasonable doubt in order for you to
20 be convicted of anything. You know that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And in order for you to be found guilty
23 of anything, all twelve jurors would have to agree that the
24 State had proven you guilty beyond a reasonable doubt. You
25 understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: In a jury trial, you get to confront
3 the witnesses against you, which means you sit at the table
4 over there and you get to see the witnesses testify; you
5 get to hear what they say; and your lawyer gets to question
6 them. You understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And if you wanted to testify, you could
9 testify. If you wanted to call witnesses in your behalf,
10 you could, but you have no obligation to testify. You have
11 no obligation to present any witnesses. And if you chose
12 not to testify, I would tell the jury they cannot hold your
13 silence against you in any way at all. You know all that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, if you plead guilty, obviously,
16 you're giving up your right to remain silent because you're
17 admitting your guilt. You understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You're giving up your right to a jury
20 trial. You know that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You're giving up any defenses you might
23 have in your case.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You're giving up any challenges you may

1 have to the evidence. You understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you admit the charge is true. You
4 know that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You want a jury trial on either case?

7 THE DEFENDANT: No, sir.

8 THE COURT: Okay. What I need you to do is I need
9 you to listen to the solicitor. When she finishes, I'm
10 going to ask you if you're guilty of what she told me. All
11 right?

12 MS. DELOACH: Thank you, Your Honor.

13 On February 28th, 2015, officers responded to [REDACTED]
14 Richardson Lake Road, which is here within Aiken County, in
15 reference to a burglary. The officer met with the victim
16 and the victim explained that he was about 100 feet in his
17 shop working on a vehicle and there was a lot of noise
18 going on. When he came out, he noticed that his side
19 window was broken into.

20 He, at first, believed that it was a deer that
21 might have been in his house. He walked in, noticed that
22 there was a computer cord on the floor and there was some
23 jewelry on the floor as well, which immediately triggered
24 him into leaving the premises, or leaving the house, and
25 calling 9-1-1.

1 The officers did look through the house and saw a
2 number of pieces of jewelry in front of the window that was
3 broken. The victim was able to itemize approximately what
4 he believed was stolen at the time. To his knowledge, a
5 laptop was taken, \$300 worth of U.S. currency out of his
6 wallet, along with his wallet, two handguns were taken, a
7 Ruger 22 and a Smith and Wesson 357, along with a Russian
8 Santa Claus, a statue, that was valued at approximately
9 \$1,100.

10 The premises did have a surveillance video that
11 showed a silver Honda CRV drive erratically onto the
12 premises, come in between the shop and house where the
13 window was broken and you could see on the video somebody
14 get out of the vehicle. The vehicle backed up and then
15 approximately 17'ish minutes later, they leave the
16 premises. This vehicle did have identifying markings as
17 the front panel of the vehicle had a green fender on the
18 front of it.

19 The officers were able to locate the vehicle and
20 identify whose vehicle it was. They went and spoke with
21 him, with the owner of the vehicle, who ultimately gave the
22 defendant's name as the one riding in the vehicle.

23 There was blood that was found on the curtain in
24 the house and that was taken to SLED to be tested. Once it
25 was tested, in February 2016, there was a hit for Mr. Prior

1 that it was his -- it was possibly his DNA. So
2 investigators went and spoke with him. He, Mr. Prior did
3 ultimately give a full confession about breaking into the
4 side window, going through the house and taking jewelry and
5 other items such as the handguns that they were never able
6 to locate.

7 The officers did take a buccal swab of the
8 defendant and took it back to SLED to which they were able
9 to confirm within a very large number that it was, in fact,
10 Ashley Prior, his DNA, that was on that curtain at the
11 time. The investigator with Aiken County Sheriff's Office
12 is present in the courtroom, and I don't believe he wishes
13 to speak at this time. The victim is not present today,
14 but you has been fully cooperative in preparing this case
15 for trial. He said if you were to ask him how he felt
16 about this case in the very beginning, he would have said
17 bury him underneath the jailhouse, but now he's moved on
18 with his life. He's taken extreme measures in protecting
19 his home by putting bars on the windows, bars on the door
20 and even installing a electric fence on the outside of his
21 premise.

22 He, again, is not present in the courtroom.

23 The defendant does have a significant record and
24 I'll be happy to give that to you when you're ready.

25 THE COURT: Go ahead.

1 MS. DELOACH: In 1990, burglary first degree and
2 grand larceny; 1992, burglary second degree nonviolent;
3 1998, drinking alcohol in public; 1999, failure to stop for
4 blue lights and two counts of driving under suspension;
5 2000, open container, contributing to the delinquency of a
6 minor, disorderly conduct; 2003, four counts of receiving
7 stolen goods and possession of burglary tools; 2006, two
8 counts of petit larceny, two counts of grand larceny, and
9 burglary second degree; 2007, pointing and presenting and
10 unlawful carrying of a pistol; 2008, burglary second degree
11 violent, possession of burglary tools, and possession of a
12 weapon during a violent crime; 2015, public disorderly
13 conduct; 2016, burglary second degree and carrying a
14 concealed weapon.

15 THE COURT: Thank you.

16 Okay, Mr. Prior, you admit you're guilty of this
17 charge of burglary and grand larceny?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. And you admit the value of the
20 property was greater than \$2,000? The property that was
21 taken?

22 THE DEFENDANT: I think so.

23 THE COURT: You have any doubt about it?

24 THE DEFENDANT: Sir?

25 THE COURT: You have any doubt about it?

1 THE DEFENDANT: No, I don't think so. No, sir.

2 THE COURT: All right. Has anybody forced you,
3 threatened you, made you plead guilty against your will?

4 THE DEFENDANT: No, sir.

5 THE COURT: Any plea agreement the State might have
6 made with you, any kind of plea bargain like dropping a
7 charge, reducing a charge, recommending a sentence, they
8 have to tell me what it is or I don't know about it and the
9 law says you lose a what they don't tell me, you understand
10 all that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is there a plea agreement here?

13 MR. THOMPSON: No, sir, there is not.

14 THE COURT: So has anybody promised you anything to
15 get you to plead, Mr. Prior?

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you fully satisfied with your
18 lawyer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Anything you want him to do on the case
21 he hasn't done?

22 THE DEFENDANT: No, sir.

23 THE COURT: You have complaints against your
24 attorney, law enforcement officers, anybody who dealt with
25 your case?

1 THE DEFENDANT: No, sir.

2 (There was a pause in the proceedings.)

3 MS. DELOACH: Your Honor, I apologize. There was
4 some concern about whether or not there was a charge being
5 dropped. My understanding is that possibly the burglary
6 first charge for which we're before you on looks like the
7 indictment may have been amended. That would not have been
8 something that would have been in my knowledge, but we are
9 pleading guilty to one count of burglary in the first
10 degree and one count of grand larceny.

11 THE COURT: Okay. All right. Mr. Prior, you had
12 enough time to meet with Mr. Thompson and go over things so
13 he can represent you properly?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Anything that you want him to do on
16 your case he hasn't done for you?

17 THE DEFENDANT: Your Honor, I don't guess, just
18 help me get a lesser sentence.

19 THE COURT: Okay. So other than talk for you, is
20 there anything you wanted him to do like talk to witnesses,
21 look into any kind of issues, like that that he didn't do?

22 THE DEFENDANT: No, sir.

23 THE COURT: Okay. And have you had enough time to
24 make up your own mind about all that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Now, burglary second
2 degree --

3 MR. THOMPSON: First degree.

4 THE COURT: I apologize. I meant to say the grand
5 larceny.

6 The grand larceny charge, \$2,000 to \$10,000 is a
7 felony. It carries up to 5 years in prison. You
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: The burglary in the first degree is a
11 felony that carries not less than 15 years and up to life
12 in prison. You understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, the burglary is graduated. If you
15 get the right combination of burglaries, you can do life in
16 prison. You understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Even for a lesser burglary, you would
19 have to do life in prison. You understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, that is classified as a violent
22 crime. You know that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And it's classified as a no-parole
25 offense. You understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You cannot possibly be released from
3 prison sooner than serving 85 percent of the sentence
4 day-for-day. You know that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: That's not a guarantee you get out in
7 85 percent, that's the least time you could possibly do.
8 You understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: When you come out on community
11 supervision, you automatically -- I'm sorry. When you come
12 out on no parole, you automatically come out on community
13 supervision. You have to successfully complete community
14 supervision or you can be sent back to prison. You
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, I think there's an error on the
18 sentence sheet. It's checked as serious. I think it's
19 most serious, isn't it? Isn't it most serious?

20 MR. THOMPSON: It is, Your Honor.

21 MS. DELOACH: Yes, Your Honor, I apologize about
22 that.

23 (There was a pause in the proceedings.)

24 MR. THOMPSON: Your Honor, I apologize for some of
25 the stray marks on the paper. Mr. Prior, we'll get into

1 this later, but Mr. Prior is having some vision problems.

2 THE COURT: That's no problem at all.

3 All right. Mr. Prior, the legislature has
4 classified some crimes under what's called two strikes
5 you're out, three strikes you're out. Those things are
6 really called most serious offenses and serious offenses.
7 Burglary in the first degree is a most serious offense.
8 It's a strike. You get the right combination of strikes
9 you could be required to do life in prison without any
10 possibility of parole. You understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And I told you this is a violent crime.
13 I told you it's a no-parole offense. On a second violent
14 crime, a person becomes parole ineligible. You understand
15 that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understand everything we've been
18 over now?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You sure you want to give up your
21 rights and plead guilty?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Mr. Prior's made a free,
24 knowing, and voluntary and intelligent decision to waive
25 his rights and plead guilty. He's done so upon the advice

1 of Counsel with whom he's fully satisfied. There's a
2 factual basis for both pleas.

3 Mr. Thompson.

4 MR. THOMPSON: Your Honor, may it please the Court?

5 THE COURT: Yes, sir.

6 MR. THOMPSON: Ashley's 46 years old. In my
7 conversations -- I don't have documents to this effect, but
8 in my conversations with him and in my conversations with
9 one of his family members, his aunt, I'm told he had a very
10 traumatic childhood. He started doing crack cocaine with
11 his father at 12 years old. He was in special education in
12 public school, made it to the ninth grade primarily due to
13 some promotion and not due to performance. He had extreme
14 behavioral issues in school and was in self-contained
15 education. When I asked him what that meant, he said it
16 meant that I'm in a room by myself.

17 Your Honor, he started getting in trouble with the
18 law at about 12 years old. He was in contact with the
19 Department of Juvenile Justice and was in custody, I don't
20 believe they use the word incarcerated, but was in custody
21 in the juvenile justice system starting at 12.

22 He's been in multiple mental health facilities over
23 the span of his life. He has a rather extensive mental
24 health record which was reviewed by the psychiatrists.

25 Your Honor, he's currently, right now, in the, for

1 lack of a better word, the mental hospital portion of the
2 Kirkland Correctional Institution and I don't necessarily
3 want to make this part of the record, but there are
4 extensive SCDC medical records having to do with various
5 assundry psychotic episodes over, not just periods that he
6 has been incarcerated, but over his lifetime.

7 He tells me that when he doesn't take his
8 medication correctly, that he has extreme difficulties and
9 that that's essentially the, one of the root causes of why
10 we're before you today. He has multiple personality
11 disorder.

12 I've talked, again, with his aunt and she's given
13 me some documents to show that he's currently on
14 disabilities for mental health problems. In the last
15 several months, in addition to that, he's experienced some
16 extreme difficulty with his eyes and has been told that
17 glasses won't help and that he's probably going to go blind
18 in the near future. I would submit to the Court when we
19 were back in the back, he almost tripped and fell over a
20 chair that he couldn't see as he was trying to walk and he
21 has difficulty spotting things on those forms.

22 Your Honor, his defense, he was cooperative with
23 the police. I don't know that he fully appreciated the
24 gravity of his conversations with the police, but he did
25 give them a full confession. He, as part of his legal

1 team, I've been assisted by Mr. David Hayes. Mr. Hayes
2 previously, earlier in my representation of Mr. Prior,
3 Mr. Hayes informed both me and Mr. Prior that he had
4 represented the codefendant in this matter a Mr. Grady
5 Owensby, who was the other burglar in this matter that was
6 previously sentenced. And Mr. Hayes tells me that
7 Mr. Prior's confession was a, to a great degree, a root
8 cause of why Mr. Owensby actually pled guilty.

9 Your Honor, I would also, just for the record,
10 indicate that Mr. Hayes ands Mr. Prior and I have discussed
11 that and we didn't believe it was an actual existing
12 ethical conflict, which is why we went forward with
13 Mr. Prior and waived any kind of conflict with Mr. Hayes.

14 Your Honor, this Mr. Owensby stole everything that
15 were the fruits of the burglary. Mr. Prior would love to
16 give the stuff back, but he just doesn't have it to give.
17 He, he was incarcerated on an unrelated matter on February
18 the 5th, 2016 and was served with warrants in this matter
19 on June 20th of 2017.

20 (There was a pause in the proceedings.)

21 MR. THOMPSON: I may be incorrect about the date of
22 the, his initial incarceration, but he, he was served with
23 the warrants here June 20th, 2017 according to the
24 warrants.

25 Your Honor, we'd like to ask that the Court

1 consider possibly a 15-year-concurrent sentence in this
2 matter. He's very likely to go blind. I would think that
3 would severely decrease his likelihood to reoffend if he
4 were to, you one of these days, to get out and with that
5 type of sentence he probably wouldn't be released until he
6 was like 60 years old or something. And I don't believe I
7 have anything further.

8 THE COURT: You want to say something, Mr. Prior?

9 MS. DELOACH: Yes, sir.

10 THE COURT: Yes, sir.

11 THE DEFENDANT: I just wanted to say that, yeah, my
12 mental health medication, I wasn't taking it, I don't
13 guess, properly. And I didn't remember all of these crimes
14 that I've done. I know it was me because my blood was
15 there and I do remember some bits and pieces of it, but
16 I'm, you know, I'm kind of a, I guess I'm a follower, you
17 know and I sometimes I do things I'm not supposed to do and
18 I don't really realize what I'm going to get into. So I
19 just want you to be lenient on me, whatever you can do to
20 help me.

21 THE COURT: Thank you, sir.

22 You remember enough to know you're guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: He mentioned that David Hayes helped a
25 little bit with the defense of the case and he also

1 represented another guy, Owensby?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You want a different lawyer than
4 Mr. Thompson?

5 THE DEFENDANT: No, sir.

6 THE COURT: You sure?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If there's nothing else, the Court
9 renews the findings previously made. Mr. Prior's made a
10 free, knowing, voluntary, and intelligent decision to waive
11 his rights and plead guilty. He's done so upon the advice
12 of Counsel with whom he's fully satisfied and he does not
13 wish to pursue any type of issue concerning conflict of
14 interest. He's indicated some lapse of memory, but he
15 recalls enough that the essential elements of the offense
16 had been committed by him.

17 With regard to burglary, the sentence is you be
18 committed to the South Carolina Department of Corrections
19 for 20 years, plus costs and assessments. The grand
20 larceny is five years. The sentences run concurrently.
21 You're given credit for jail time under 24-13-40 to be
22 calculated and applied by the department of corrections.
23 Restitution is deferred. Good luck to you, sir.

24 MS. DELOACH: Thank you, Your Honor.

25 * * * * * END OF TRANSCRIPT * * * * *

1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, Brenda J. Sigwald, Official Court Reporter for
7 the Second Judicial Circuit of the State of South Carolina,
8 do hereby certify that the foregoing is a true, accurate,
9 and complete Transcript of Record of the proceedings had
10 and evidence introduced in the trial of the captioned case,
11 relative to appeal, in the Court of General Sessions in and
12 for the State of South Carolina on the 20th day of August
13 2018.

14 I FURTHER CERTIFY that I am neither kin, counsel,
15 nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal at Aiken County, this 18th day of October 2019.

18

19

20

21

22

23

24

25

Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

WITNESSES

Aiken County Sheriff

Greg Savell

Law Enforcement Case #: 15-011737

DOCKET NO. 2018GS0201898

The State of South Carolina

County of Aiken

HMD

ARREST WARRANT NUMBER

FILED

August 2nd 18

18-DI02-0039

Robert L. White
C.C.D.P. & G.S.

LSFH

Deputy Clerk

COURT OF GENERAL SESSIONS

AUGUST TERM 2018

THE STATE

vs.

ASHLEY TAVELLE PRIOR

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: August 2, 2018

CDR #: 0079

Indictment for

BURGLARY FIRST DEGREE

§ 16-11-0311

VERDICT

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 August 6, 2018, the Grand Jurors of Aiken County present upon their oath:

That **ASHLEY TAVELLE PRIOR** did in Aiken County on or about February 28, 2015, wilfully and unlawfully enter the dwelling of Steve Haines located at [REDACTED] Richardsons Lake Road, without consent and with the intent to commit a crime therein, and the defendant has a prior record of two or more convictions for burglary or housebreaking or a combination of both, 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. Young
J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Greg L Savell

Law Enforcement Case #: 15-011737

DOCKET NO. 2018GS0200530

The State of South Carolina

County of Aiken

HMD

ARREST WARRANT NUMBER

2016A0210200432 FILED 8 March 2018

Robert J. Harte
C.C.P. & G.S.

Angel Miles am
Jury Clerk

ACTION OF GRAND JURY

True Bill

Robert J. Harte
Foreperson of Grand Jury
Date: March 8, 2018

VERDICT

Foreperson of Petit Jury
Date:

COURT OF GENERAL SESSIONS

MARCH TERM 2018

THE STATE

vs.

ASHLEY TAVELLE PRIOR

CDR #: 3420

Indictment for

GRAND LARCENY

§ 16-13-30(B)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
GRAND LARCENY

§ 16-13-30(B)

At a Court of General Sessions, convened on March 12, 2018, the Grand Jurors of Aiken County present upon their oath:

That **ASHLEY TAVELLE PRIOR** did in Aiken County on or about February 28, 2015, feloniously take and carry away personal property valued at more than Two Thousand Dollars but less than Ten Thousand Dollars and belonging to Steven Haines with intent to deprive the owner permanently of such property. All in violation of §16-13-30, 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.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Greg L Savell

Law Enforcement Case #: 15-011737

HMD

ARREST WARRANT NUMBER

2016A0210200433

FILED 8 March 2018

Robert L. White
C.C.P. & G.S.

Angel Miles am
County Clerk

ACTION OF GRAND JURY

True

Bill

Ronda Oliver
Foreperson of Grand Jury
Date: March 8, 2018

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018GS0200531

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

MARCH TERM 2018

THE STATE

vs.

ASHLEY TAVELLE PRIOR

8/20/18 Nolle prosequi
Pled to some charge
as this warrant

CDR #: 0079

Indictment for

BURGLARY FIRST DEGREE

§ 16-11-0311

J. STROM THURMOND, SOLICITOR

Greeneville

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
BURGLARY FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on March 12, 2018, the Grand
Jurors of Aiken County present upon their oath:

That **ASHLEY TAVELLE PRIOR** did in Aiken County on or about February 28,
2015, wilfully and unlawfully enter the dwelling of Steve Haines located at [REDACTED]
Richardson Lake Road, without consent and with the intent to commit a crime therein
and the defendant entered dwelling during nighttime hours, 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.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
STATE VS.
Ashley Tavelle Prior

INDICTMENT/CASE#: 2018GS0201898A/W#: 18-DI02-0039Date of Offense: 7/28/2015S.C. Code §: 16-11-0311CDR Code #: 0079

AKA:

Race: White Sex: M Age: 46

DOB: [REDACTED]

Address: [REDACTED]

City/State: [REDACTED]

DL#: [REDACTED]

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

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

TO: Burglary / Burglary (After June 20, 1985) - First degree☐ CONVICTED OF or ☒ PLEADSIn violation of § 16-11-0311of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

102686

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$, provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable; the balance is suspended with probation for

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

probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 36-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (If paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

\$

\$

\$ 100.00

\$

\$

\$

\$

\$

\$

\$

\$

\$ 3.75

\$ 128.75

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge

Judge Code:

Sentence Date:

William P. Sherry2050AUGUST 29, 2018

SENTENCE SHEET

NLT 15yr -
Life

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Aiken

VS.

Ashley Tavelle Prior

AKA:

Race: White Sex: M Age: 46

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Ascauga Lake Rd.

City, State, Zip: North Augusta, SC 29841

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒In disposition of the said indictment comes now the Defendant who was
TO: Grand larceny >\$2,000<\$10,000

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS0200530

A/W#: 2016A0210200432

Date of Offense: 2/28/2015

S.C. Code § : 16-13-30(B)

CDR Code #: 3420

SENTENCE SHEET 0-5 yrs

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-13-30(B) of the S.C. Code of Laws, bearing CDR Code # 3420

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

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor

102688 [Signature] SC Bar#

[Signature] Defendant

[Signature] Attorney for Defendant SC Bar# 72900

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDOP.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

[Signature] Shannon D. Rozenkrantz

Court Reporter:

Brenda Sigwald

SCCA/217 (04/2018)

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 205D

Sentence Date: AUG. 20, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF AIKEN	)	CASE NO.
	)	
State of South Carolina,	)	
	)	
	)	MOTION TO RECONSIDER
vs.	)	2016A0210200432, 2016A0210200433
Ashley Prior,	)	
	)	
DEFENDANT	)	

This matter comes before the Court on Defendant's Motion to Reconsider pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. Defendant, by and through his undersigned counsel, moves this court reconsider his sentence imposed on the above captioned warrants on August 20, 2018. Defendant has been continually incarcerated since served with the warrants in this matter at the South Carolina Department of Corrections on June 20, 2017. Defendant understands and believes that since he was incarcerated at SCDC on separate charges at the time he was served with these warrants, that he will not receive credit for any of the time he has been incarcerated while awaiting trial in this matter.

Defendant specifically moves that he be given credit for time served on his sentence from the date he was originally incarcerated in this matter. Defendant also specifically moves that his sentences on above captioned warrants run concurrent with the sentence for which he was originally incarcerated at the time these warrants were served. That sentence was for Burglary in the 2nd degree on indictment # 08GS020785.

In the alternative the defendant asks that he be given credit for time served on his sentence from the date he was served with the warrants in this matter.

The Defendant pled guilty, said guilty plea occurring on August 20, 2018. The Court imposed sentencing on the Defendant as follows:

- On one count of Burglary 1ST degree (2016A0210200433), the Court imposed sentence of twenty years
- On one count of Grand Larceny (2016A0210200432), the Court imposed sentence of five years
-

After the events described above, defense counsel was contacted by the Mr.

Ashley Prior, who requested I file this motion on his behalf.

CONCLUSION

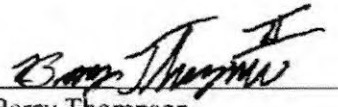
FILED August 23 20 18
Robert J. White
 C.C.P. & G.S. **LSFH**
Latha J. Thomas
 Deputy Clerk

3 Cert. Copies to PD

2018-GS-02-00530

Based on the above, the Defendant respectfully requests that the Court reconsider the sentence imposed in this matter.

Respectfully submitted,


Barry Thompson
Attorney for Defendant
2nd Judicial Circuit Public Defender's Office
P. O. Drawer 2247
Aiken, SC 29802

August 23, 2018

2018-GS-02-00530

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

State of South Carolina,)

vs.)

Ashley Prior,)

DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
CASE NO.**MEMORANDUM IN SUPPORT
OF MOTION TO RECONSIDER**

2016A0210200432, 2016A0210200433

FILED 11 January 2019Robert J. White
C.C.P. & G.S.Angel Miles am
Deputy Clerk**SYNOPSIS OF FACTS**

Mr. Ashley Prior is 46 years old. He burglarized a home in Aiken County on February 28, 2015. At the time, the police were unable to develop a suspect, and Mr. Prior was not arrested.

On May 9, 2015 Mr. Prior was arrested for burglarizing a second unrelated home. The police continued to be unaware of his involvement in the earlier incident. On January 25, 2016 he pled guilty to Burglary in the Second Degree Non-Violent and Grand Larceny (\$2,000-\$10,000) for the May 9th burglary. He was sentenced to 6 years for Burglary Second Degree Non-Violent and 90 days for Grand Larceny. These sentences were to run concurrently, and Mr. Prior was given pre-sentencing jail credit for 262 days.

On June 20, 2017, while Mr. Prior was an inmate at the South Carolina Department of Corrections, he was served with warrants related to the earlier February 28, 2015 burglary.

On August 20, 2018, he pled guilty to Burglary in the First Degree and Grand Larceny (\$2,000-\$10,000). He was sentenced to 20 years for Burglary First Degree and 5 years for Grand Larceny (\$2,000-\$10,000). These sentences were to run concurrent with each other, but there was no mention of them running concurrent with his earlier sentences.

On August 23, 2018, Mr. Prior, by and through counsel, timely filed a Motion to Reconsider his sentence.

CLARIFICATION OF THE ISSUE

Mr. Prior's motion for relief is not based on case law or statute. Instead, it is an appeal in equity to the mercy of the Court.

Mr. Prior requests he be given pre-sentencing credit for time served for the entire time he has been incarcerated. He further requests the Court order all his sentences run concurrent with each other. If this relief is granted, his effective sentence on all charges will be 20 years. The start date of all sentences will be May 9, 2015. This is the day he was taken into custody. He has been continuously incarcerated for the entire time. His earliest release date will be in the year 2032. He will be at least 60 years old.

If the Court is unwilling to grant the relief requested in full, Mr. Prior would at the very least request that the time for all four of his charges be ordered to run concurrent.

Respectfully submitted,



Barry Thompson
Attorney for Defendant
2nd Judicial Circuit Public Defender's Office
P. O. Drawer 2247
Aiken, SC 29802

January 10, 2019

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF AIKEN)

State of South Carolina,)

ORDER TO AMEND SENTENCE

vs.)

2018GS0200530, 2018GS0201898

Ashley Prior,)

DEFENDANT)

WPK
#1

Defendant pleaded guilty in the Aiken County Court of General Sessions on the above-captioned indictments on August 20, 2018. Present at the hearing were Assistant Solicitor Heather DeLoach of the Second Circuit Solicitor's Office and counsel for the Defendant, Barry Thompson of the Second Circuit Public Defender's Office. The Court imposed sentencing on the Defendant as follows:

- Twenty (20) years concurrent on one count of Burglary 1ST degree on indictment number 2018GS0201898
- Five (5) years concurrent on one count of Grand Larceny on indictment number 2018GS0200530

Through his counsel, Defendant timely filed a Motion to Reconsider his sentence for the Court to clarify how any credit for time served should be applied.

Mr. Ashley Prior burglarized a home in Aiken County on February 28, 2015. That burglary and the associated grand larceny would eventually be the factual basis for Mr. Prior's sentences outlined above, but at the time, the police were unable to develop a suspect, and Mr. Prior was not arrested. On May 9, 2015 Mr. Prior was arrested for burglarizing a second unrelated home. The police continued to be unaware of his

FILED February 18 20 19
Robert J. White
 C.C.P. & G.S.
Katie S. Williams
 Deputy Clerk

involvement in the earlier incident. On January 25, 2016, he pleaded guilty to Burglary in the Second Degree Non-Violent, Burglary Second Degree Violent, and Carrying a Concealed Weapon on indictment numbers 2008GS020785, 2015GS0201383, and 2015GS0201384. He was sentenced to 6 years for Burglary Second Degree Non-Violent, 6 years for Burglary Second Degree Violent, and 90 days for Carrying a Concealed Weapon. These sentences were to run concurrently, and Mr. Prior was given pre-sentencing jail credit for 262 days. On June 20, 2017, while Mr. Prior was an inmate at the South Carolina Department of Corrections, he was served with warrants related to the earlier February 28, 2015 burglary.

On August 20, 2018, he pleaded guilty before me and was sentenced as outlined above, 20 years for Burglary First Degree and 5 years for Grand Larceny. These sentences were to run concurrently with each other, but the court did not specifically rule on whether they should run concurrently with Defendant's earlier sentences.

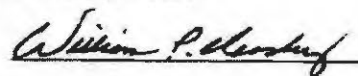
Mr. Prior's motion for relief is an appeal in equity to the mercy of the Court. Mr. Prior requests that he be given pre-sentencing credit for time served for the entire time he has been incarcerated. He further requests the Court to order all his sentences to run concurrently with each other. If this relief is granted, his effective sentence on all charges will be 20 years. The start date of all sentences will be May 9, 2015. This is the day he was taken into custody. He has been continuously incarcerated for the entire time. His earliest release date will be in the year 2032. He will be at least 60 years old.

The Defendant's request is appropriate. The State **CONSENTS** to this relief.

THEREFORE, with the **CONSENT** of the State,

IT IS ORDERED, that credit for time served on indictment numbers 2018GS0200530 and 2018GS0201898 shall be calculated from Defendant's initial incarceration date of May 9, 2015. Defendant's sentences on these indictments shall run concurrently with each other and concurrently to Defendant's earlier sentences on indictment numbers 2008GS020785, 2015GS0201383, and 2015GS0201384.

AND IT IS SO ORDERED this 13th day of February, 2019.



William P. Keesley
Presiding Judge

#3

FORM 5

2019CP0202013

STATE OF SOUTH CAROLINA)
)
 County of AIKEN)
)
SOUTH CAROLINA)
 Full name and prison number (if any) of Applicant)
ASHLEY TENELE PRIOR)
 v.)
STATE OF SOUTH CAROLINA)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

FILED

8-8-2019 11:05 SP

Robert J. White
 C.C.P. & G.S.
Shadell Parks
 Deputy Clerk

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention KIRKLAND CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence AIKEN COUNTY
CIRCUIT COURT
3. Name(s) of co-defendant(s) (if any) GRADY OWENSBY
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018 GS 0201898 BURGLARY FIRST DEGREE
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 20, 2018 20 yrs
- (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. COURT OF APPEALS SOUTH CAROLINA
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MAY 8TH 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. APPELLATE CASE NO 2019-000307
- 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) GUILTY PLEA NOT KNOWINGLY INTELLIGENTLY MADE
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL
- (c) MENTALLY INCOMPETENT TO MAKE PLEA
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT
- (b) SEE ATTACHMENT
- (c) SEE ATTACHMENT
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (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? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- 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) _____
(b) _____
(c) _____

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

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

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. BARRY L THOMPSON II

ii. _____

iii. _____

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

i. Guilty PLEA

ii. APPEAL

iii. _____

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

A VACATION OF CONVICTION AND SENTENCE
OR THE SAME SENTENCE THAT MY
CO-DEFENDANT GOT

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, Ashley Prior, 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.

Ashley Prior

SWORN to and subscribed before me this 26th
 day of July, 2017.

Beth A. Mangold (L.S.)
 Notary Public

BETH A. MANGOLD
 My Commission Expires: Notary Public, State of South Carolina
My Commission Expires 8/10/2028

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

I, Ashley Prior, 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.

Ashley Prior
Applicant

SWORN or affirmed to and subscribed before me this

26th day of July, 2017.

Beth A. Mangold
Notary Public

BETH A. MANGOLD

Notary Public, State of South Carolina

My Commission Expires: My Commission Expires 8/10/2028

I DID NOT KNOW BEFORE PLEADING GUILTY THAT THE INDICTMENT WAS SUPPOSE TO GIVE ME AND THE COURT NOTICE THAT THE BREAKING AND ENTERING WAS DONE AT NIGHT IN ORDER FOR THE OFFENSE TO CONSTITUTE FIRST DEGREE BURGLARY.

"TIME" IS MATERIAL TO THE OFFENSE. THE RECORD "ARREST WARRANT", WOULD REFLECT THAT THE OFFENSE WAS COMMITTED IN THE DAY TIME 0900 HRS SEE EXHIBIT 'A' WARRANT

II

COUNSEL WAS INEFFECTIVE BECAUSE HE SHOULD HAVE BEEN AWARE OF THE "ELEMENT" OF TIME TO CONSTITUTE THE OFFENSE AND MADE A TIMELY OBJECTION TO THE SUFFICIENCY OF THE INDICTMENT. DUE TO A LACK OF NOTICE HIS FAILURE TO TAKE NOTICE, AND OBJECT, PREJUDICE THE APPLICANT, BECAUSE THE ISSUE WAS NOT PRESERVE FOR APPEAL, BUT ALSO ALLOW THE APPLICANT TO BE CONVICTED FOR AN OFFENSE NOT INDICTED FOR.

III

THE APPLICANT WAS UNDER HEAVY MEDICATION AND WAS NOT "STABLE" ENOUGH TO ASSIST HIS COUNSEL IN DEFENDING HIMSELF OR TO MAKE A PLEA.

EXHIBIT A

7/37

ARREST WARRANT

2016A0210200433

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

THE STATE

15011737

Ashley Tavelle Prior

Address: Ascauga Lake Rd.

North Augusta, SC 29841-

Phone: SSN: [REDACTED]

Sex: M Race: W Height: 5 7 Weight: 180

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0020000

Prosecuting Agency: Aiken County Sheriff

Prosecuting Officer: Inv. Greg Savell - 4976

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Ashley Prior

on 6/20/17

R. Bracey

Signature of Sheriff or Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

P O Box 583

109 Park Avenue

Aiken, SC 29802

8036421712

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

AFFIDAVIT

DEFENDANT COPY

Inv. Greg Savell

Ashley Tavelle Prior

2/28/2015

Aiken

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

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

On February 28, 2015 at approx. 0930 hours Ashley Prior accompanied by another individual forcefully enter the residence located at 1279 Richardson Lake Rd. in Aiken, Aiken County, SC. In order to steal guns, jewelry and cash from within the residence without consent or permission. The value of the stolen property is estimated at approx. \$1000. Fingerprint and DNA from within the residence confirms Prior's participation in this incident.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Aiken

Affiant's Address 420 Hampton Avenue North East

Aiken, SC 29801-

Affiant's Telephone (803)642-1763

ARREST WARRANT

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

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

on or about 2/28/2015 defendant Ashley Tavelle Prior

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

☒ County/ ☐ Municipality of Aiken), as set forth below.

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

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

Sworn to and subscribed before me

on 3/17/2016

(L.S.)

Judge's Address 435 Wire Road

Aiken, SC 29801-

Judge's Telephone (803)-64-2-20 x 44

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

Judge Code: 7264

DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY DEFENDANT COPY

2017 JUN -9 PM 3:27

HIGH AND COUNTY

CENTRAL COURT

JURY 001 07

WITNESSES

Judge M. Mauser
 on 6-20-17
 Type and Amount: _____
 Name of Surety: 10,000 CALSB
CONC

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
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Name: _____
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Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS



EXHIBIT "A"

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Ashley Tavelle Prior, #290973	)	Case No.: 2019-CP-02-02013
	)	
Applicant,	)	
	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State ("Respondent"), making its Return to the application for Post-Conviction Relief filed on August 8, 2019, would respectfully show this Court:

I. Procedural History

Ashley Prior ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. During the August 2018 term, the Aiken County Grand Jury indicted Applicant for first-degree burglary and grand larceny. (2018-GS-02-01898). Barry L. Thompson II, Assistant Public Defender, ("Counsel") represented Applicant. Assistant Solicitor Heather Deloach of the Second Circuit Solicitor's Office prosecuted the case.

On August 20, 2018, Applicant pleaded guilty as indicted before the Honorable William P. Keesley. Judge Keesley sentenced Applicant to twenty years' imprisonment for burglary and a concurrent five-year sentence for grand larceny.

Applicant timely filed a notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal for failing to provide a sufficient explanation for a guilty plea appeal. The Remittitur was issued May 28, 2019.

II. Factual Background

The facts of Applicant's case were articulated by the Assistant Solicitor at Applicant's guilty plea hearing as follows:

"On February 28, 2015, officers responded to [the victim's home], [in Aiken County], in reference to a burglary. The officer met with the victim and the victim explained that he was about 100 feet in his shop working on a vehicle and there was a lot of noise going on. When he came out, he noted that his side window was broken into.

He, at first, believed that it was a deer that might have been in his house. He walked in, noticed that there was computer cord on the floor and there was some jewelry on the floor as well, which immediately triggered him into leaving the premises, or leaving the house, and calling 9-1-1.

The officers did look through the house and saw a number of pieces of jewelry in front of the window that was broken. The victim was able to itemize approximately what he believed was stolen at the time. To his knowledge, a laptop was taken, \$300 worth of U.S. currency out of his wallet, along with his wallet, two handguns were taken, a Ruger 22 and a Smith and Wesson 357, along with a Russian Santa Claus, a statue [sic], that was valued at approximately \$1,100.

The premises did have a surveillance video that showed a silver Honda CRV drive erratically onto the premises, come in between the shop and house where the window was broken, and you could see on the video somebody get out of the vehicle. The vehicle backed up and then approximately 17'ish minutes later, they leave the premises. This vehicle did have identifying markings as the front panel of the vehicle had a green fender bender on the front of it.

The officers were able to locate the vehicle and identify whose vehicle it was. They went and spoke with him, with the owner of the vehicle, who ultimately gave [Applicant's] name as the one riding in the vehicle.

There was blood found on the curtain in the house and that was taken to SLED to be tested. Once it was tested, in February 2016, there was a hit for [Applicant] that it was his—it was possibly his DNA. So investigators went and spoke with him. [Applicant] did ultimately give a full confession about breaking into the side window, going through the house and taking jewelry and other items such as the handguns that they were never able to locate.

The Officers did take a buccal swab of the defendant and took it back to SLED to which they were able to confirm within a very large number that it was, in fact, [Applicant], his DNA, that was on that curtain at the time.”

(GP Tr. 10-12).

III. Allegations Raised and Relief Sought

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. Failure to understand the elements of first-degree burglary / failure to challenge the indictment.
- (2) Involuntary Guilty Plea

As requested relief, Applicant requests “a vacation of conviction and sentence or the same sentence that [his] co-defendant got.”

Attached to this Return and incorporated by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, the appellate record, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegation of Ineffective Assistance of Counsel

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

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. With respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors,

he would not have 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 for the ineffective assistance of counsel allegation. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Involuntary Guilty Plea

Applicant also asserts his plea was involuntary. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, “[a] guilty plea is a solemn, judicial admission of the truth of the charges” against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 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)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In this case, the record refutes any allegation Applicant did not knowingly and voluntarily enter his guilty plea. At the guilty plea hearing, Judge Keesley conducted a thorough colloquy with Applicant, including a Blair hearing to evaluate Applicant's competency. (GP Tr. 3-6). Judge Keesley found Applicant was competent to “make rational choices” regarding his charges. (GP Tr. 6). Applicant was also advised of his constitutional rights he would waive by pleading guilty, including the right to a trial, which Applicant testified he understood. (GP Tr. 8-9). Furthermore,

Applicant testified he was not threatened or promised anything in exchange for his guilty plea. (GP Tr. 14). Counsel stated on the record at Applicant's guilty plea hearing that he discussed the elements of the offense and the possible consequences of the charges with Applicant. (GP Tr. 7, 8). Applicant testified he had enough time to make up his mind regarding whether he wanted to plead guilty. (GP Tr. 15). Judge Keesley went over Applicant's possible sentences and other consequences regarding his guilty plea. (GP Tr. 17-18). When Judge Keesley asked Applicant, "[Do] you understand everything we've been over now?" Applicant responded, "Yes, sir." (GP Tr. 18).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to

continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VI. Response to All Other Allegations

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

VII. Request for an Evidentiary Hearing

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

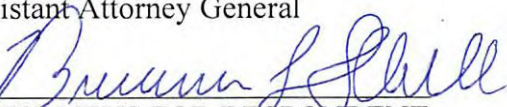
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BRIANNA L. SCHILL
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

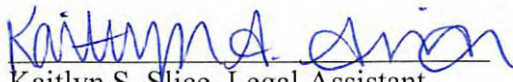
December 13th, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2019-CP-02-02013
	)	
ASHLEY TAVELLE PRIOR, #290973,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Nancy C. Fennell, Esquire
Post Office Box 2176
Irmo, South Carolina 29063

DATED this the 13th day of December, 2019.


Kaitlyn S. Slice, Legal Assistant
For Respondent

?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	CASE NO. 2019-CP-02-02013
	)	
	)	
Ashley Tavelle Prior, #290973	)	AMENDMENT TO PCR APPLICATION
	)	
Applicant,	)	
	)	
v.	)	
	)	
State of South Carolina	)	
	)	
Respondent.	)	
_____	)	

The Applicant, by and through appointed counsel, hereby amends his PCR application filed on August 8, 2019, to add the following grounds and/or facts on which Applicant bases his allegations that he is being held in custody unlawfully:

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

Ineffective assistance of counsel for failing to move to quash the indictments in accordance with S.C. Code Ann. § 17-19-90. The indictment for burglary first was insufficient in that it did not inform Applicant of the time element related to burglary first or the charge being based on prior burglary convictions. Furthermore, there are discrepancies in the indictments showing action by the grand jury on August 2, 2018 when the indictment informs that the grand jury convened on August 6, 2018. The indictment for grand larceny shows action by the grand jury on March 8, 2018, when the indictment informs that the grand jury convened on March 12, 2018.

Ineffective assistance of counsel for advising Applicant that he would receive a ten year sentence if he entered into a guilty plea.

Applicant's plea of guilty was not knowingly and voluntarily made because he was informed by his defense counsel that there was a plea agreement of ten years.

Applicant's plea of guilty was not knowingly and voluntarily entered into because he was under the influence of multiple medications to treat various psychiatric issues he was experiencing, and the effect of the drugs rendered him unable to assist in his defense or to understand the consequences of entering into a guilty plea.

The above deficiencies prejudiced Applicant in that there is a reasonable probability that, but for those circumstances, Applicant would not have entered into a guilty plea and would have insisted on going to trial. Furthermore, Applicant would not have entered into a guilty plea to charges for which there were no sufficient indictments.

Respectfully submitted,

s/ Nancy C. Fennell
Nancy C. Fennell
Law Office of Nancy C. Fennell, LLC
P.O. Box 2176
Irmo, South Carolina 29063
(803) 553-1772
nancyfennell1@gmail.com
SC Bar No. 69729
Attorney for Applicant

Irmo, SC
January 24, 2022

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this Amendment to PCR Application was served upon the following this 24th day of January, 2022, via email to:

Megan Jameson
Senior Assistant Deputy Attorney General
mjameson@scag.gov
P.O. Box 11549
Columbia, SC 29211

Michael Neubauer
Assistant Attorney General
michaelneubauer@scag.gov
P.O. Box 11549
Columbia, SC 29211

s/ Nancy C. Fennell
Nancy C. Fennell
Attorney for Applicant

1 State of South Carolina) Court of Common Pleas
2 County of Aiken) Second Judicial Circuit
3
4 Ashley Prior,) Transcript of Record
5)
6 Petitioner/Applicant,)
7)
8 vs.) 2019-CP-02-02013
9)
10 State of South Carolina,)
11)
12 Respondent.)
13
14
15
16 February 4, 2022
17
18 Aiken, South Carolina
19 Via WebEx Videoconferencing
20
21
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23
24
25
B E F O R E:
The Honorable Robert J. Bonds, Judge
A P P E A R A N C E S:
Nancy C. Fennell, Esquire
On behalf of the Petitioner/Applicant
Megan H. Jameson, Assistant Attorney General
On behalf of the State of South Carolina
Reported by: Stacy S. Johnson,
Circuit Court Reporter

I N D E X

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Jackie Bartley	
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Barry Thompson	
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1	<u>E X H I B I T S</u>			
2			<u>ID.</u>	<u>EVD.</u>
3	Respondent's 1	Administrative Order	9	9
4	Respondent's 2	Administrative Order	9	9
5	Respondent's 3	Administrative Order	9	9
6	Respondent's 4	Terms of Court March 2018	9	9
7	Respondent's 5	Terms of Court August 2018	9	9
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1 (The following proceedings were held February 4,
2 2022, via WebEx, beginning at 9:05 AM.)

3 THE COURT: Hey, Mr. Prior. Good morning.

4 MR. PRIOR: Good morning.

5 THE COURT: I'm Judge Bonds, and thank you for being
6 here. And we are ready, I think, to proceed on your PCR
7 application that you've filed, sir, and so I'm gonna have
8 Attorney General Jameson -- is that --

9 MS. JAMESON: Yes.

10 THE COURT: -- I'm gonna have Attorney General
11 Jameson call this case for me, please.

12 MS. JAMESON: Thank you. May it please the Court?

13 This is the PCR matter of Ashley Prior versus the
14 State. Docket Number 2019-CP-02-02013.

15 On February 28, 2015, Mr. Prior and a co-defendant
16 broke into a home in Aiken County and stole firearms,
17 money and other items of personal property. Mr. Prior
18 was not immediately identified as a suspect in this
19 burglary, however, he later committed another unrelated
20 burglary and as a result pled guilty and was sentenced
21 to the Department of Corrections for that unrelated
22 burglary and while in the Department of Corrections he
23 was identified as a suspect in this underlying burglary
24 based on a DNA match from blood recovered at the scene
25 of the burglary. He also gave a statement admitting to

1 his involvement in the burglary and his co-defendant
2 also implicated him. Mr. Prior has five prior burglary
3 convictions other than this one.

4 He was originally indicted by the Aiken County
5 Grand Jury in March of 2018 for first degree burglary
6 and grand larceny. In August of 2018, the Aiken --
7 Aiken County Grand Jury issued an amended indictment for
8 the first degree burglary, specifically based on his five
9 prior burglary convictions.

10 He was evaluated for both competency and criminal
11 responsibility and found to be both competent and
12 criminally responsible. On August 20th of 2018, Mr. Prior
13 appeared before Judge Keesley alongside counsel, Barry
14 Thompson, and pled guilty as indicted to first degree
15 burglary and grand larceny without any negotiations or
16 recommendations as to a sentence.

17 Following a thorough plea colloquy with Mr. Prior,
18 Judge Keesley determined that the plea was knowing,
19 intelligent and voluntarily entered, accepted his pleas
20 and sentenced Mr. Prior to twenty years imprisonment for
21 first degree burglary and five years imprisonment for the
22 grand larceny indictment with both sentences to be served
23 concurrently.

24 On August 23, 2018, Applicant through his counsel,
25 Barry Thompson, filed a motion to reconsider his sentence

1 seeking for the sentences to run concurrently with his
2 active unrelated sentences in SCDC, but -- for which he
3 was incarcerated at the time of his plea and to give him
4 credit for the entire time he had been in the Department
5 of Corrections.

6 On January 10th of 2019, Mr. Prior, again, through
7 Counsel Thompson, filed a memorandum in support of his
8 position to reconsider his sentence and give him that
9 additional credit. The State consented to this relief
10 and on February 13th of 2019, Judge Keesley entered an
11 order giving Mr. Prior credit for the entire he was
12 in the Department of Corrections on this unrelated
13 burglary.

14 He filed a timely notice of appeal, which was
15 subsequently dismissed for failing to provide a
16 sufficient explanation of a preserved issue for
17 appellate review from his guilty plea and the remittitur
18 was returned to the circuit court on May 28th of 2019.
19 He then timely initiated this underlying post-conviction
20 relief action on August 8th of 2019 challenging only
21 his first degree burglary plea asserting that he was
22 being held in custody unlawfully based on claims of
23 involuntary guilty plea due to a lack of competency and
24 an insufficient indictment for failing to state the
25 crime was committed at night and ineffective assistance

1 of counsel for failing to object to the indictment based
2 on the insufficiency of the indictment for failing to
3 adequately put him on notice of the time of the crime.
4 The State made a return and requested an evidentiary
5 hearing be convened.

6 Thereafter, Ms. Fennell was appointed to represent
7 him, and on January 24th of this year Ms. Fennell served
8 an amended application adding the following claims of
9 ineffective assistance of counsel. First, failing to
10 move to quash the indictment for first degree burglary
11 for failing to inform Mr. Prior of the time element or
12 being based on prior convictions. Second, for failing
13 to move to quash both the burglary and the grand larceny
14 indictments for discrepancies on dates on the indictments.
15 Third, for failing to advise -- for advising Mr. Prior
16 that he'd received a 10-year sentence, which also
17 rendered his plea involuntary. And, fourth, involuntary
18 guilty plea based on the numerous medications he was on
19 at the time of his plea which he asserts rendered him
20 incompetent.

21 And prior to the start of this hearing, the Court
22 has been provided with a full record of Applicant's case,
23 including the previously attached exhibits to the return,
24 including his General Sessions record, his appellate
25 record, his plea transcript and all of the records of

1 this current actions.

2 The State, I believe by consent, has five exhibits
3 we'd like to move in at this time which have been
4 previously provided to the court reporter and the Court.

5 The first exhibit is an administrative order from
6 then Chief Justice Toal dated February 4th -- excuse me
7 -- February 4, 2001 -- excuse me -- 2011. The second
8 exhibit is an administrative order from Judge Early
9 setting the terms for grand jury in Aiken County for the
10 first six months of 2018. Applicant -- or excuse me --
11 Respondent's Exhibit Number 3 is an administrative order
12 from Chief Administrative Judge Keesley setting terms for
13 grand jury to convene for the last six months of 2018.
14 Respondent's Exhibit Number 4 is a screen shot of the
15 judicial department website showing the terms of court
16 for the second circuit for the month of March 2018. And
17 then the fifth exhibit Respondent would like to introduce
18 and move into evidence is a screen shot from the judicial
19 department website showing the terms of court for the
20 second circuit for August of 2018.

21 And I believe there is no objection from Applicant
22 as to those five exhibits.

23 THE COURT: Counsel, any objection to these five
24 exhibits being entered into evidence?

25 MS. FENNELL: No objection, Your Honor.

1 THE COURT: All right. Admitted without objection.
2 Thank you. 1 through 5.

3 MS. JAMESON: Thank you, Your Honor.

4 (Respondent's Exhibit Numbers 1 through 5 were
5 marked and admitted into evidence.)

6 MS. JAMESON: And the State would also ask the
7 Court to take judicial notice of some specific things
8 regarding these exhibits.

9 Regarding Respondent's Exhibit Number 1, by order
10 of the Supreme Court through the Chief Justice that
11 the chief administrative judge of the circuit has the
12 responsibility for setting the grand jury terms;
13 specifically, Item Number 9 of that administrative order,
14 to consult with the circuit solicitor as soon as the
15 effective date of this order to determine the dates for
16 convening the grand jury in the various counties within
17 the judicial circuit for ensuring -- for the ensuing six
18 months period. Where feasible, the grand jury shall be
19 convened at times other than the opening day of the Court
20 of General Sessions in order to maximize the effective
21 use of each term of the Court of General Sessions.

22 Second, Respondent would like the Court to take
23 judicial notice that Judge Early, as the chief
24 administrative judge, rendered an administrative order
25 setting the -- March 8, 2018, as the date that the grand

1 jury would convene.

2 Regarding Respondent's Exhibit Number 3,
3 Respondent asks the Court to take judicial notice that
4 Judge Keesley, as the new administrative judge, issued an
5 administrative order that the grand jury should convene
6 on August 2, 2018.

7 Regarding Exhibit Number 4, that Court
8 Administration set a General Sessions term in Aiken
9 County or the Second Circuit for the week of March 2,
10 2018.

11 And then finally regarding the -- Respondent's
12 Exhibit Number 5, that Court Administration set a
13 General Sessions term for Aiken County for the week of
14 August 6, 2018.

15 THE COURT: You know, what I'm gonna say is the
16 documents speak for themselves and so, I mean, as far
17 as judicial notice, I would just say that the documents
18 have been admitted into evidence without objection and
19 I -- I think clearly the documents speak for themselves
20 and as a result of them being entered into evidence I
21 certainly can read and would apply Number 9 as I see
22 fit, as well as the other matters that you have pointed
23 out.

24 That's -- so if you want to call that judicial
25 notice, you can, but I've taken judicial notice as to

1 what these documents are, they're admitted into evidence,
2 and the plain meaning and reading of those documents as
3 I would interpret them in this hearing.

4 All right, ma'am?

5 MS. JAMESON: Thank you, Your Honor.

6 At this time, the State moves to dismiss the
7 allegations 1 and 2 pertaining to the indictments for
8 failing to state a claim upon which relief can be granted
9 as a matter of law. It's clear from the face of the
10 indictments that they are proper notice as required by
11 Gentry and because they are facially valid indictments
12 any pre-trial motion to quash would have been improper
13 and so as a matter of law relief cannot be granted as to
14 those first two issues.

15 For the first issue as to the burglary indictment
16 which Applicant pled guilty, which was the amended August
17 indictment, it clearly states the correct statute under
18 which he was indicted, Code Sec -- South Carolina Code
19 Section 16-11-311, and clearly states that it's based on
20 two or more prior burglary convictions; therefore, it's
21 proper as a matter of law and this claim should be
22 dismissed as a matter of law.

23 Furthermore, the March indictment was still legally
24 sufficient pre-indictment. That's not the one that he
25 pled guilty to, but any dispute regarding time would be

1 a factual challenge that is not appropriate for a
2 pre-trial motion to quash pursuant to State v. Massey,
3 and so this claim fails as a matter of law is the
4 State's position as to issue number one.

5 As to allegation number two pertaining to the
6 indictments, as to the purported date discrepancies,
7 both indictments for grand larceny and first degree
8 burglary were properly issued by the grand jury. They
9 were true billed on the dates that were set by the
10 chief administrative judge pursuant to Respondent's
11 Exhibits 2 and 3 setting forth those dates and the
12 chief administrative judge had express authority and
13 responsibility to set the dates of the grand jury and
14 pursuant to Respondent's Exhibit Number 1 used that
15 authority as suggested by the Court to set them outside
16 of the term of General Sessions.

17 If the Court would draw attention to Respondent's
18 Exhibits 4 and 5, these dates that the grand jury
19 convened are the Thursday before the General Sessions
20 term the next week and the sentence at the top of the
21 indictment references the General Sessions term the
22 following week and it does not invalidate the indictment
23 or have any bearing on its sufficiency, so these are
24 facially valid indictments.

25 The Applicant has failed to cite to any authority

1 that the indictments are irregular based on these
2 different dates between when the indictment was true
3 billed and when the General Sessions term started the
4 next week. Moreover, he is unable to establish prejudice
5 as a matter of law pursuant to Code -- Code
6 Section 14-7-1140. He was not injured by any purported
7 irregularity and so as a matter of law he can also not
8 establish prejudice and because both of these issues fail
9 as a matter of law, the State asks the Court to summarily
10 dismiss these -- these two allegations.

11 THE COURT: All right. Counsel, I'm happy to hear
12 from you.

13 MS. FENNELL: Thank you, Your Honor.

14 As far as the allegation relating to the dates on
15 the indictments and the validity of the indict --
16 indictments based on the dates that the grand jury
17 convened, we -- we don't have any objection to the
18 dismissal of that particular allegation, but as to the
19 allegation regarding the issue of the substance of the
20 indictment we believe that is an evidentiary issue the
21 Court should hear. I think Applicant has testimony
22 relevant to the indictment that he was presented with and
23 -- and the substance of that indictment.

24 THE COURT: But, Counsel, let me ask you something.
25 It looks like there was one burg first indictment that

1 didn't include the information about, say, nighttime or
2 guns or -- or the prior convictions; is that correct?

3 MS. JAMESON: That's correct.

4 MS. FENNEL: That's correct, Your Honor.

5 THE COURT: Okay. And so is -- all right. And so
6 to that extent, would --

7 MS. JAMESON: Well, Your Honor, hold on. I'm sorry.
8 If I may interject, I think Your Honor said that it
9 didn't include nighttime hours. The indictment that was
10 issued in March by the grand jury on -- true billed on
11 March 8th, includes that he entered the dwelling during
12 nighttime hours and then it also cites to the code
13 Section 16-11-311, and the State's position is that
14 pursuant to case law such as State v. Nichols, the code
15 section alone is enough to put him on notice of the --
16 the elements for enhancement for first degree burglary
17 and so as a matter of law this indictment is facially
18 valid and any motion to quash the indictment based on
19 factual disputes as a matter of law would be improper
20 pursuant to the recent case of State v. Massey and --
21 and other cases.

22 THE COURT: Okay. Well, all right. Thank you for
23 that information.

24 So let me ask you this, Counsel. So it did --
25 the initial indictment in March for burg first, it did

1 include or allege information about breaking into the
2 nighttime -- breaking into a dwelling at nighttime?

3 MS. JAMESON: Yes, sir.

4 THE COURT: Okay. So let me ask, wouldn't including
5 those allegations be enough to put somebody on notice
6 even if they were incorrect that he's looking at a burg
7 first charge?

8 MS. FENNELL: Is that question directed to me,
9 Your Honor?

10 THE COURT: Yeah. Yes, ma'am.

11 MS. FENNELL: Okay. I'm sorry. My -- it was
12 cutting in and out.

13 THE COURT: Yes, ma'am.

14 MS. FENNELL: So that particular -- well, Mr. Prior
15 has -- would like to provide testimony regarding the
16 indictment that he received, but I -- I do believe the
17 indictment cited the particular statute for first degree
18 burglary, but it did not -- the initial indictment did
19 not cite the reason that Mr. Prior was being charged
20 with burglary first was based on his prior convictions.

21 THE COURT: Right. And then they go and they issue
22 a new indictment, say, in August, I think, and in that
23 indictment that's when they ended up putting the
24 information about the two prior convictions. Is that
25 right.

1 MS. FENNELL: That is correct, Your Honor.

2 THE COURT: That would -- of course, that would in
3 theory give him notice that this is a burg first -- that
4 he's facing a burg first charge here at a minimum because
5 he had two prior convictions. Is that right?

6 MS. FENNELL: That's correct, Your Honor.

7 THE COURT: So -- so if he knows -- even though he
8 wasn't charged -- I say charged, even though the initial
9 indictment in March -- I mean, it put him on notice,
10 but not for the reason as it relates to the -- to the
11 two prior convictions and then in August he gets the
12 information about the two prior convictions, so what's
13 his -- what's his prejudice here? I'm try -- I'm trying
14 to understand.

15 MS. FENNELL: Well, Your Honor, I believe it's his
16 testimony that he didn't receive that -- that later
17 amended indictment.

18 THE COURT: Okay.

19 MS. FENNELL: That is the basis of his allegations.

20 THE COURT: All right. I understand.

21 And so as relates to the dates and the information
22 that's -- that the Attorney General provided me and what
23 you just indicated a minute ago, are you -- are you --
24 are you conceding slash abandoning the argument as it
25 relates to the -- to the dates that were discussed in --

1 in your -- in your amended application?

2 MS. FENNEL: Your Honor, I can't concede or abandon
3 that allegation as -- as Applicant would like to move
4 forward on that -- on that application and provide
5 testimony regarding the same.

6 THE COURT: All right. I tell you what I'm gonna
7 do. So is there anything -- and I didn't mean to cut
8 you off. Is there anything else you want to tell me
9 about either one of the attorney general's motions to,
10 I guess, dismiss? Anything you want to tell me?

11 MS. FENNEL: I would just add, Your Honor, that
12 I think it is relevant that Mr. Prior did not have that
13 amended indictment at the time that he, you know, entered
14 his plea and certainly he was not on notice for the basis
15 of the first degree burglary charge based on the prior
16 convictions.

17 THE COURT: Okay.

18 All right. Attorney General, I'm gonna deny your
19 motions at this point. I -- I want to go -- I tell you,
20 I want to hear the rest of the -- I want to hear the
21 testimony in this matter before I make any rulings there,
22 but -- well, I say that. I'm just gonna deny your motion
23 at this point. Let's move forward and let me hear the
24 testimony, okay, ma'am?

25 MS. JAMESON: Thank you, Your Honor.

1 THE COURT: Yes, ma'am. Sure.

2 All right. So, Ms. Fennell, you've got the burden
3 of proof in this matter and as such are you ready to
4 proceed?

5 MS. FENNELL: Yes, Your Honor.

6 THE COURT: In that case, do you want to move
7 forward and call your first witness?

8 MS. FENNELL: Yes. I would call Ashley Prior.

9 THE COURT: Okay. Mr. Prior, how about raise
10 your right hand for me, Mr. Prior.

11 Mr. Prior, do you swear to tell the truth, the
12 whole truth and nothing but the truth so help you God?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. You need to speak up, sir.

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you, Mr. Prior. You can put
17 your hand down.

18 Your witness, Counsel.

19 MS. FENNELL: Thank you, Your Honor.

20 ASHLEY PRIOR,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. FENNELL:

24 Q. Now, Mr. Prior, you -- you've heard so far the
25 Attorney General's summary of the allegations you're going

1 forward on today. Now what sentence are you currently
2 serving?

3 A. Twenty years.

4 Q. You're serving a 20-year sentence?

5 A. Yes, ma'am.

6 Q. Okay. And --

7 THE COURT: Mr. Prior, how about see if you can
8 get a little closer and speak up. We've had a bunch of
9 technical problems, but I want to make sure that we get
10 a recording of this and that the court reporter gets
11 everything down --

12 THE WITNESS: All right.

13 THE COURT: -- because it's a very important day
14 to you, it's a very important day to the State, okay,
15 sir?

16 THE WITNESS: Okay.

17 THE COURT: Good. Yes, sir. Go ahead.

18 MS. FENNELL: Thank you.

19 BY MS. FENNELL:

20 Q. And you filed your post-conviction relief application
21 on August 8, 2018?

22 A. I think so.

23 Q. Okay. And you understand that if you are successful
24 in your post-conviction relief application, that you could
25 be subjecting yourself to a sentence greater than the

1 sentence that you're already serving?

2 A. Yes, ma'am.

3 Q. And based on that information and with that knowledge,
4 you still would like to go forward with your application?

5 A. Yes, ma'am.

6 Q. Okay. Now you're serving a -- your sentence as a
7 result of a guilty plea; is that right?

8 A. Yes, ma'am.

9 Q. And what did you plead guilty to?

10 A. First degree burglary and grand larceny.

11 Q. And who represented you in that -- in those charges?

12 A. Barry Thompson and David Hayes.

13 Q. Now was Barry Thompson appointed to represent you?

14 A. Yes, ma'am.

15 Q. And do you recall when he was appointed to represent
16 you?

17 A. No, ma'am.

18 Q. Now when you were charged with the -- with these --
19 with these crimes, were you already serving a sentence?

20 A. Yes, ma'am.

21 Q. Okay. And -- and what -- where were you when you were
22 indicted on these charges?

23 A. Here at Kirkland.

24 Q. Okay. And when -- when were you indicted on these
25 particular charges?

1 A. I'm not really sure. I can't really remember. It's
2 been a while back, so.

3 Q. Okay. And when were you -- do you recall how long
4 after the indictment on these charges that you were
5 assigned Mr. Thompson to represent you?

6 A. I don't know. He came up here and seen me. I was
7 under the influence of medication. I can't really remember
8 everything going on at the time, mental health medication,
9 and I -- I can't really recall the years or the days.

10 Q. Okay. Well, so you met with Mr. Thompson while you
11 were there at Kirkland?

12 A. Yes, ma'am.

13 Q. And were you at Kirkland during the entire time when
14 you met with him?

15 A. I met with him at Aiken County jail when he brought
16 David Hayes to see me.

17 Q. Okay. So let's talk about the times that you met with
18 Mr. Thompson when you were at Kirkland. About how many
19 times did you meet with him?

20 A. Once.

21 Q. So you only met --

22 A. That I can recall once.

23 Q. -- with Mr. Thompson one time at Kirkland?

24 A. Yes, ma'am.

25 Q. Okay. And when you met with him, what did y'all

1 discuss?

2 A. We discussed the -- I guess what -- what was -- what
3 I was facing on the first degree burglary.

4 Q. Okay.

5 A. And, yeah, I -- I wanted to plead not guilty to the
6 charges.

7 Q. So -- so you -- you discussed the first degree
8 burglary charge. Did he tell you what the elements were
9 of that crime?

10 A. Now he was saying that the reason it was first degree
11 burglary was because of the weapons, but in the first
12 statement from the man's house that was broke into he had
13 no -- no weapons were involved, no weapons were stolen.

14 Q. Okay. So -- so you-all discussed and he told you that
15 there were no weapons involved?

16 A. Well, no, that's -- the first -- the first statement
17 from when the burg -- from when the alarm went off or
18 whatever at the man's house, he stated that he lost \$300
19 and a wallet, jewelry and a laptop. No guns.

20 Q. Okay.

21 A. And he didn't have a serial number for any of them.

22 Q. So when you -- when you were discussing that with
23 Mr. Thompson, did you-all discuss what defenses you would
24 have to that allegation of -- of burglary first?

25 A. Well, mental health is what -- you know, because I

1 can't really even remember the crime really that day. I
2 was not taking my medication correctly.

3 Q. So -- so are you saying that you -- you-all discussed
4 a defense that you were not competent?

5 A. Right. You know, I -- before these crimes took place,
6 I turned myself into the Aurora mental hospital several
7 times trying to get help, but they just threw me right back
8 in the streets and it happened --

9 Q. Okay. Okay. And so what did -- what did Mr. Thompson
10 tell you regarding that as a -- as a defense?

11 A. It wasn't no good defense. He said if I plead not
12 guilty that they'd find me guilty and give me, you know,
13 forty, fifty years.

14 Q. Okay. And did that advice influence your decision to
15 enter into a guilty plea?

16 A. No, when he -- I was still pleading not guilty all
17 the way. I went -- when I got to the county jail on that
18 Friday and I was supposed to go to court, I think, on
19 Monday, when I got there he brought David Hayes and David
20 Hayes and him -- in other words, David Hayes was my
21 co-defendant's lawyer and the reason they brought him in
22 is so I could plead guilty because he said he'd help me
23 along, so I thought that I would probably get around the
24 same amount as my co-defendant being that I had his lawyer,
25 too. That -- that's the only reason I pled guilty.

1 Q. Okay. So -- so the day that Mr. Hayes came, he came
2 to speak with you along with Mr. Thompson when you were at
3 Aiken County?

4 A. Yes, ma'am.

5 Q. And was -- was this the day that you were set to go to
6 trial?

7 A. Yes, ma'am.

8 Q. Okay. And so let's still -- let's focus right now on
9 the time prior to that day and so before that day had you
10 discussed with Mr. Thompson what your strategy was going to
11 be for trial?

12 A. Yes, ma'am.

13 Q. And what did --

14 A. Yes, ma'am.

15 Q. I'm sorry. Did I --

16 A. No, I said yes, ma'am. I didn't know if you heard me
17 or not.

18 Q. Okay. And so what did he tell you was the strategy of
19 going forward on a trial?

20 A. Well, he said that, you know, the State of South
21 Carolina don't really regard mental health being a problem
22 with crime, you know, but I wanted the jury to see that I
23 -- you know, I was mental health. You know, the guy who
24 said I was competent at the time of the burglary, well, how
25 would he know that? That happened four years before I ever

1 seen him, but -- and I wanted the jury to hear that I was
2 mental and I still am mental -- still am in mental health,
3 so I wanted them to -- maybe they would feel for me and
4 maybe get a lesser sentence. I didn't plan on getting away
5 with it and, you know, stop breathing, but twenty years is
6 a little lengthy for me when my co-defendant got eight.

7 Q. Okay. Now when you were discussing that defense
8 strategy with Mr. Thompson, did you inform him that you
9 were taking certain medications?

10 A. Yes, ma'am.

11 Q. And what medications did you inform him that you were
12 taking?

13 A. Geodon for schizophrenia, amantadine for spasms,
14 Depakote for a mood stabilizer, Remeron for depression and
15 anxiety, promalolol -- propranolol for anxiety, Effexor for
16 anxiety, prazocin for nightmares. And, yeah, I still have
17 bad anxiety. I have real bad anxiety problems.

18 Q. And -- and during your plea hearing you also told the
19 Court that you were on those medications; is that correct?

20 A. Yes, ma'am.

21 Q. Okay. And did those medications affect your ability
22 to think clearly on that day in entering your plea?

23 A. Yes, ma'am. I haven't -- my mind has hasn't been
24 clear in the last twenty or thirty years. I've taken
25 medicine and the medicine wasn't working. I finally got

1 here and what Mr. Holiman, my doctor here, came up with
2 was Zyprexa, an antipsychotic, and it changed my life. I
3 could really think now. But, yes, when I was taking that
4 medicine, no, I wasn't reliable in what I was saying or
5 what I was doing.

6 Q. And -- and you -- you informed Mr. Thompson of all
7 those medications that you were taking?

8 A. Oh, yeah.

9 Q. Okay. Now other than that particular defense, did
10 -- did Mr. Thompson let you know or did you-all discuss any
11 other defenses that you had?

12 A. No, but he said, you know -- you know, they may go
13 lightly on you, you know, being what my co-defendant got.

14 Q. Okay. And -- and what do you mean by that?

15 THE COURT: What did he say?

16 What did you say? Repeat that for me.

17 THE WITNESS: I said Mr. -- Mr. Thompson, he said
18 that being that my co-defendant got so much -- so less
19 that I should get, you know, not a -- not twenty years.

20 BY MS. FENNELL:

21 Q. And -- and was that a conversation that you had with
22 Mr. Thompson at Aiken County?

23 A. Yes, ma'am.

24 Q. And was that the day that Mr. Hayes also came to Aiken
25 County to discuss this with you with Mr. Thompson?

1 A. Yes, ma'am.

2 Q. And so what was the purpose of Mr. Hayes coming to
3 speak with you that day?

4 A. To get me to plead guilty.

5 Q. And -- and why do you believe that he was there to get
6 you to plead guilty?

7 A. Well, because he was best friends with the man's house
8 that got broke into -- his brother was best friends with
9 David Hayes. I guess he -- my co-defendant wasn't mental
10 health, so he knew what was going on, so they couldn't get
11 him so they put it on me what happened.

12 Q. So Mr. Hayes represented --

13 A. And I -- I told him I'd plead guilty because he -- he
14 was my co-defendant, so I didn't figure no way I'd get any
15 more than him if I had the same lawyer. I don't know.

16 Q. Okay. So Mr. -- who was your co-defendant?

17 A. Grady Owensby.

18 Q. And so Mr. Hayes represented Mr. Owensby?

19 A. Yes, ma'am.

20 Q. And so Mr. Owensby had already entered a guilty plea
21 at the time that you entered your plea?

22 A. Yes, ma'am. He had already been -- got eight years
23 before I went up.

24 Q. Okay. So the day that Mr. Thompson came to you to
25 speak to you with Mr. Hayes, they informed you of what

1 your co-defendant -- the sentence your co-defendant had
2 received?

3 A. Yes, ma'am.

4 Q. And did they give you an opinion as -- based on that
5 sentence what sentence you would receive?

6 A. Well, supposedly fifteen non-violent or less.

7 Q. And -- and you say "supposedly". What do you -- what
8 do you mean by "supposedly"?

9 A. Well, I didn't get it.

10 Q. Okay. But -- but they told you that's the sentence
11 that you were looking at?

12 A. Right.

13 Q. And so --

14 A. And the solicitor -- and the solicitor, you know,
15 before this, before court and all, he offered me fifteen
16 violent. No way I would have took that.

17 Q. Okay. Now you said that you wanted to go to trial,
18 but you ended up entering into a guilty plea?

19 A. Yes, ma'am.

20 Q. Why did -- why did you -- what changed your mind?

21 A. Well, David Hayes changed my mind.

22 Q. And --

23 A. You know, I mean, I'm not -- I'm not a lawyer or
24 anything, so I don't know the law that well and my mental
25 state, you know, but I -- I just thought things would go

1 good being that this lawyer represented my co-defendant and
2 all.

3 THE COURT: You broke up. You've got to repeat that
4 again and speak louder, sir.

5 THE WITNESS: I said yeah, the reason I pled guilty
6 was because of Barry Thompson -- I mean, because of David
7 Hayes and he represented my co-defendant, so I thought
8 that, you know, there's -- I thought that that was a good
9 thing for him to come and represent me trying to get me a
10 lesser sentence than fifteen violent.

11 BY MS. FENNELL:

12 Q. Okay. And so Mr. Thompson was there with you while
13 you were discussing this with Mr. Hayes?

14 A. Yes, ma'am.

15 Q. Okay. And what is -- what is your educational
16 background?

17 A. I made it to the ninth grade, but I didn't actually
18 probably go to school until about the sixth grade.

19 Q. I'm sorry. You were cutting out -- in and out on my
20 end. I don't know if anyone else heard that. Can you
21 repeat that?

22 A. I made it to the ninth grade by sorts of motions. I
23 didn't go to school probably from the sixth grade.

24 Q. Okay. Now you -- we've talked about the -- the
25 defenses that Mr. Thompson discussed with you, but did he

1 go over with you the -- the evidence that the State had
2 against you regarding these charges?

3 A. Yes, ma'am.

4 Q. And what -- what evidence did he tell you that the
5 State had?

6 A. He said they had a -- a blood spot on a curtain I
7 think he said that matched my blood -- blood sample or
8 whatever, but when they came here to -- detectives came to
9 see me here years ago, they -- they told me -- well, they
10 told me that my blood was found on the scene and they asked
11 me to work with them and they would help me out and not
12 give me any more and they'd speak for me to try to get me
13 to six years non-violent running concurrent with the six I
14 was already doing, and they told me what to say. That's
15 the only reason guns got involved. They asked me to say
16 that, you know, and -- I think I got off -- I think I got
17 off the road here, but -- and the blood sample, you know, I
18 don't understand why they needed to swab me if they already
19 had my evidence, you know? Why didn't they just bring a
20 warrant to me right away? Why did they have to wait for my
21 statement to bring a warrant and to get saliva from me
22 unless they wanted to put that in the -- in the file and
23 into the warrants or whatever for evidence. I'm not saying
24 anybody did anything wrong. I'm just saying that there's
25 a lot of discrepancies that I -- that I think.

1 Q. Okay. Did -- when you were discussing the evidence
2 that the State had against you, did -- did Mr. Thompson
3 feel like you should go to trial or did he give you any
4 opinion as to whether he thought you should go to trial?

5 A. Yeah, he said that if I went to trial I would be
6 looking to get forty years.

7 Q. Okay. And so you made the decision to enter the
8 guilty plea. Now, again, when you entered into that guilty
9 plea, what were you under the impression that you would be
10 receiving as a sentence?

11 A. Fifteen non-violent or less.

12 Q. Okay. And why did you think that?

13 A. That's what they told me.

14 Q. And "they" is who?

15 A. David Hayes and Barry Thompson.

16 Q. Okay. And they told you that on the day that you
17 entered your guilty plea?

18 A. Yes, ma'am.

19 Q. Okay. And it was --

20 A. And I'm a little fuzzy from back then, too, you know,
21 so. I mean, I'm doing the best I can here.

22 Q. Okay. And it was your understanding that -- that
23 that's what you would get because -- because Mr. Hayes had
24 represented your co-defendant?

25 A. Yes, ma'am. And also I was pleading to the charges.

1 Q. Okay. And did Mr. Hayes assist in your represent --
2 representation on the day of the plea hearing?

3 A. Well, he was in the courtroom, but I don't think he
4 ever said anything. I don't know if he ever said anything
5 or not. I think he said he was helping represent me and
6 had said his name I think I saw.

7 Q. Okay. And -- and you had only met with him that one
8 time at Aiken County?

9 A. Yes, ma'am, and then the day of court.

10 Q. Okay. Now while Mr. Thompson represented you, did he
11 speak with any of your family members while -- while you
12 were incarcerated?

13 A. He talked to my aunt, I think, several times.

14 Q. Okay. So you gave him permission to -- to speak with
15 her about your defense?

16 A. I guess I did.

17 Q. Okay. And did she actively engage with Mr. Thompson
18 during that time?

19 A. Yeah, she spoke to him. Yeah, you know, she -- they
20 told her -- I wanted her to come to court --

21 MS. JAMESON: Objection. Hearsay.

22 THE COURT: I'm gonna sustain that.

23 Sir, you can't testify as to what somebody else
24 told you, okay?

25 THE WITNESS: Well, can I --

1 THE COURT: Other than your lawyer -- your lawyer
2 in this proceeding you can, but you can't tell -- say
3 what somebody told the aunt, okay?

4 THE WITNESS: All right. Well, I can't say then,
5 you know, what they told her the offer was? Where she
6 didn't have to come to court? I mean --

7 MS. FENNELL: No.

8 BY MS. FENNELL:

9 Q. No, let me ask you a different question, Mr. Prior.

10 A. All right.

11 Q. Did you ever have any conversations with your aunt
12 regarding whether or not you were gonna enter a guilty
13 plea?

14 A. Yes, ma'am.

15 Q. And --

16 A. I told her I was gonna plead not guilty. Excuse me.

17 Q. Okay. And did you -- did you ever have a conversation
18 with her about the sentence you would receive if you did
19 enter into a guilty plea?

20 A. I don't think so because the day that they got me to
21 plead guilty at the county -- when they met me at the
22 county jail on Friday, I never got to talk to her again
23 until after court was over with because I couldn't get the
24 phones to work, so I couldn't call to see what was going on
25 on her end.

1 Q. Okay. So you -- you never spoke to her between the
2 timeframe that you spoke to Mr. Hayes and Mr. Thompson at
3 Aiken County that day? Between that time and the time you
4 actually entered into your guilty plea, you never spoke to
5 your aunt?

6 A. Just a minute.

7 Q. I'm sorry, what was that?

8 A. They -- they got -- somebody's hollering right now.
9 They've got him on speaker. Okay. Go ahead they were
10 putting something over the speaker.

11 Q. Okay. I'll repeat the question. So from the time
12 period that you met with Mr. Hayes and Mr. Thompson at
13 Aiken County and the time period when you entered into
14 your guilty plea, you didn't speak with your aunt at any
15 time during -- during those two times -- between those two
16 times?

17 A. I think I may have called her before they took me to
18 the back and -- I think I did. Yeah, I did talk to her.
19 Yes, I did before I got sent to the back, and she told me
20 they had got in touch with her.

21 Q. Okay. Okay. And so do you recall what you talked
22 about with her that day?

23 A. I don't --

24 MS. JAMESON: Objection. Hearsay.

25 MS. FENNELL: Your Honor, I'm asking him what --

1 what he said during that conversation.

2 THE COURT: I'm gonna -- I'm gonna -- I'm gonna
3 overrule it. I think it's part of the res gestae. Let's
4 just -- I'm gonna overrule your objection.

5 Go ahead, ma'am.

6 BY MS. FENNELL:

7 Q. So do you recall the conversation you had with her
8 that day?

9 A. I do a little bit. I told her that the -- my attorney
10 brought up David Hayes, which was my co-defendant's lawyer,
11 so I told her that, you know, things might go well.

12 Q. And did you tell her that you were gonna enter into a
13 guilty plea?

14 A. I don't know if I did or not. I can't remember. I
15 don't know. I don't know if I did or not.

16 THE COURT: And, Attorney General, I'll just note
17 your on-going objection as relates to the -- the hearsay,
18 ma'am.

19 MS. JAMESON: Thank you, Your Honor.

20 THE COURT: Yes, ma'am.

21 BY MS. FENNELL:

22 Q. Okay. Now you said that the -- the solicitor had
23 prior to that day offered you fifteen years; is that
24 correct?

25 A. Violent. Yes, ma'am.

1 Q. Fifteen years violent. And you had informed
2 Mr. Thompson that you would not accept that?

3 A. Yes, ma'am.

4 Q. Okay. And so at the time you entered into your --
5 into the plea, Mr. Thompson was aware that fifteen years
6 was not acceptable to you?

7 A. Right.

8 Q. Okay.

9 A. Though I did break into a house, nobody was home or
10 anything. I wouldn't have harmed anybody if they would
11 have been home.

12 Q. Okay. So is it -- it's your testimony that it was --
13 the promises made to you -- essentially the statements made
14 to you by Mr. Thompson and Mr. Hayes that lead you to enter
15 into the guilty plea on that day?

16 A. Yes, ma'am.

17 Q. Okay. And at that time you did not -- did you --
18 well, let me strike that. At that -- at the time when you
19 did enter the guilty plea, what did you think your sentence
20 was going to be?

21 A. Fifteen non-violent or less.

22 Q. Okay.

23 A. I thought that they would probably turn it into a
24 second degree burglary, you know. I think that's what they
25 did to my co-defendant.

1 Q. And had Mr. Thompson told you a specific number as far
2 as years?

3 A. He said he -- he was gonna try to get fifteen
4 non-violent or less at that point. I mean, even fifteen,
5 if they -- even if I would have got fifteen non-violent
6 would have been okay.

7 Q. Okay. Now let's -- let's turn to the allegations
8 regarding the indictments. So you -- you allege that --
9 that Mr. Thompson should have made a motion to quash the
10 indictment for burglary first and what -- what is the basis
11 of that allegation?

12 A. Well, it started out with weapons involved made it
13 first degree and then they sent me something saying it
14 happened after nighttime hours, something added to, and
15 now they came up with a new thing that since there wasn't
16 weapons involved I guess that's why they dropped that and
17 went to the nighttime burglary and then now they've gone
18 to more than one burglary -- first degree burglary.

19 Q. Okay. At the time that you -- well, when you were
20 meeting with Mr. Thompson, did he explain to you why they
21 were charging you with first degree burglary?

22 A. He told me because of weapons.

23 Q. Okay. Did you ever discuss with him your prior
24 convictions?

25 A. No. No, ma'am.

1 Q. Did you ever discuss with him the impact of the fact
2 that you had prior convictions for burglary?

3 A. Well, he knew that I was already incarcerated for a
4 burglary and doing a six-year non-violent sentence for
5 that, so he knew that, but, I mean, we -- we didn't discuss
6 it.

7 Q. Okay. So you didn't discuss anything about the impact
8 of your prior burglary convictions on -- on your plea or on
9 going to trial?

10 A. No, ma'am.

11 Q. Okay. Is that the only -- well, did he -- so he never
12 showed you that indictment?

13 A. No, ma'am.

14 Q. Were you aware of that indictment when you filed your
15 post-conviction?

16 A. I didn't know what was going on. All I knew was when
17 I filed my post-conviction, it was saying guns, and I don't
18 remember everything, but I don't think there were any guns
19 involved, but, anyway, and the first statement from the
20 victim is no guns are involved either, but that's what I --
21 I filed on that, it wasn't nighttime burglary, so that's
22 what I filed on, and insufficient counsel.

23 Q. Okay. So you -- you believed that because they didn't
24 make an allegation that the burglary occurred during
25 nighttime hours that the indictment was insufficient?

1 A. Yes, ma'am, I thought it was insufficient.

2 Q. Okay. Did you ever raise that issue with
3 Mr. Thompson?

4 A. No, I just recently found out about the nighttime
5 burglary. My aunt sent me some papers that she had and it
6 had nighttime burglary on it. The warrant -- I think the
7 warrant clearly says is 9:40 AM when the alarm went off, I
8 think.

9 Q. Okay. So you never discussed that with Mr. Thompson?

10 A. No, ma'am.

11 Q. Okay. Did you ever discuss with him any other
12 deficiency regarding your indictments?

13 A. No, ma'am. I started finding out all kind of
14 different stuff afterwards. You know, I was real -- my
15 vision when I went to court, I could barely see in front
16 of me, so I couldn't read certain things, read through my
17 stuff or anything, but then my aunt started sending me
18 stuff that they were sending her and whatever and it
19 started building up, you know, it was nighttime burglary.
20 I don't know where that even came from.

21 Q. Okay.

22 A. So I just started -- you know, once my eyes got a
23 little better I could start putting things together, you
24 know.

25 Q. And what issues were you having with your eyes at that

1 time?

2 A. The amantadine, the medication I was taking, it
3 scarred my eyes and they -- I went to an outside doctor,
4 Dr. Carlson, a specialist, and he said yeah, I don't see
5 how you could see in front of you, you know, because my
6 eyes were so bad. They talked about putting a new cornea
7 in and he said that the medication that they were giving me
8 caused my eyes to do that, so he took off the amantadine
9 and they did get better, and I still now -- I wear reading
10 glasses, but I still can't read small writing. It still
11 caused, you know, problems indefinitely.

12 Q. Okay. So, Mr. Prior, you've testified to all of the
13 reasons that you have filed your post-conviction relief
14 application. Are there any -- are there any items that we
15 have not covered that -- that you believe are relevant to
16 your application?

17 A. I don't -- I don't think so. I think you've pretty
18 much covered it. All I -- all I wanted to know was, was it
19 -- you know, first degree was the guns or was it nighttime
20 or was it daytime or was it, you know, burglary and priors?
21 You know, which one? They can't charge me for all three, I
22 don't think.

23 Q. And so sitting here today, do you know the answer to
24 that question?

25 A. Not really, no.

1 Q. Okay. So --

2 A. I mean, now -- I hear now you -- you told me that it
3 was prior con -- prior burglaries is why it's first degree.
4 That's the first I'd heard of that when I talked to you. I
5 ain't even got any papers on that or anything or my aunt
6 hasn't either.

7 Q. Okay. So Mr. Thompson never discussed that with you?

8 A. No, ma'am.

9 Q. Okay.

10 A. He said weapons. That's it.

11 MS. FENNEL: Okay. I don't have any further
12 questions for you, but please answer any questions that
13 Ms. Jameson has.

14 THE COURT: Attorney General Jameson, do you have
15 cross-examination?

16 MS. JAMESON: Yes, Your Honor. Thank you.

17 THE COURT: Your witness.

18 MS. JAMESON: Thank you.

19 CROSS-EXAMINATION

20 BY MS. JAMESON:

21 Q. Good morning, Mr. Prior. How many prior burglary
22 convictions do you have other than this one?

23 A. I think -- let's see, one, two -- I can't remember,
24 but about three. I think I -- yeah, let's see. One, two
25 -- yeah, this would be the third one I was thinking, but

1 I -- I had some when I was a juvenile, too, or something,
2 I don't know, but I've been bad as far back as I can
3 remember.

4 Q. Okay. Do you have a first degree burglary conviction
5 from 1990?

6 A. No, I don't have any first degree burglaries except
7 for this one.

8 Q. Okay. Were you present at your plea when the
9 assistant solicitor read your prior record --

10 A. Yes, ma'am.

11 Q. -- to Judge Keesley?

12 A. I think so. Yes, ma'am.

13 Q. Do you recall her telling Judge Keesley that in 1990
14 you were convicted of burglary first degree and grand
15 larceny?

16 A. I don't remember that. No, ma'am.

17 Q. Okay. And then, let's see, in 2003 you were convicted
18 of possession of burglary tools, correct?

19 A. I don't -- I don't remember that now.

20 Q. And in 2006 you were convicted of two counts of petit
21 larceny, two counts of grand larceny and burglary in the
22 second degree. Do you recall that?

23 A. Yes, I think so. I -- I remember two second degree
24 burglaries and grand larceny, receiving stolen goods.

25 Q. And then in 2008, you have another conviction for

1 burglary second degree violent along with possession of
2 burglary tools and possession of a weapon, correct?

3 A. Right, that was -- that was a shed that I broke into.

4 Q. Okay. And then in 2016, you also have another
5 burglary second degree and carrying a concealed weapon
6 conviction, correct?

7 A. Well, this -- now the concealed weapon, what year was
8 that?

9 Q. 2016 you pled. It's the burglary for which you were
10 in custody when you pled guilty.

11 A. I don't remember. I'm sorry.

12 Q. Okay. And you were in the Department of Corrections
13 on a burglary sentence at the time of this plea, correct?

14 A. Yes, ma'am.

15 Q. Okay. And I think you said that Mr. Thompson came to
16 visit you at Kirkland, correct?

17 A. Yes, ma'am.

18 Q. Okay. So he was aware that you had prior burglary
19 convictions, correct, because you were currently
20 incarcerated for them?

21 A. Yes, ma'am.

22 Q. And I believe you testified before that you never
23 discussed your prior record with Mr. Thompson, correct?

24 A. I don't think so. No, ma'am. The prior burglary I
25 was in for, I guess that one.

1 Q. But you never discussed those other four prior
2 burglaries and the rest of your prior record with
3 Mr. Thompson?

4 A. I don't think so. He may have said that I had more
5 prior burglaries or something, I can't remember, but we
6 never discussed them.

7 Q. Well, you said you might have and then you couldn't
8 remember and I believe you testified on direct that the
9 past few years have all been a bit hazy and you don't
10 remember much, correct?

11 A. I for -- I forget a lot, yes, ma'am.

12 Q. So can you testify to a certainty that you never
13 discussed your prior record with Mr. Thompson?

14 A. I can't -- no, I can't say for sure, no.

15 Q. Can you dis -- can you testify to a certainty that you
16 never reviewed that August indictment based on your prior
17 records with Mr. Thompson?

18 A. August of what -- which burglary are you talking
19 about?

20 Q. The burglary for which you pled guilty, you testified
21 that you never discussed with Mr. Thompson that that was
22 based on your five prior burglary convictions.

23 A. Oh, okay. Yeah, he -- I never discussed five
24 burglaries with him I'm pretty sure.

25 Q. Okay. But you can't testify to a certainty because

1 you can't recall a lot from these years, correct?

2 A. Correct.

3 Q. So you might have discussed that with Mr. Thompson?

4 A. Well, I could have. I don't think that would have
5 swayed my decision in any way.

6 Q. Pardon me? I'm sorry. I didn't -- I didn't hear that
7 last part.

8 A. I said yes, ma'am. I -- I may have discussed them
9 with him and if I did it wouldn't have swayed my decision
10 of wanting to plead not guilty.

11 Q. And you gave law enforcement a statement admitting
12 your guilt in this burglary, correct?

13 A. They told me that if I was to give them infor -- the
14 information that they asked for that they would give me a
15 six year non-violent running with the one I was already
16 doing, that they didn't want me, they wanted the other guy,
17 and that's where the guns came up. They told me to say --
18 they told me exactly what to say in order to get the plea
19 bargain. They said they would go to bat for me with the
20 solicitor's office and so I told them what they said, you
21 know.

22 Q. Okay. So you told law enforcement that there were
23 guns that were removed from the home during this burglary?

24 A. Yes, ma'am. That's what they asked me to say.

25 Q. Did you --

1 A. I can't remember.

2 Q. Did you take guns from the home?

3 A. I don't think so.

4 Q. But you're not sure because your memory is hazy,
5 correct?

6 A. Kind of.

7 Q. So you don't really know what you told --

8 A. No, that day -- that day whenever I guess this -- this
9 happened, I wasn't taking my medication and I spent the
10 night with Grady Owensby and the next morning he was gonna
11 take me home, but we stopped at a liquor store and I got
12 drunk and, I guess, that's what sent me on a blackout or
13 the start of a blackout coming on.

14 Q. So you were blacked out at the time of the burglary?

15 A. Somewhat. As things go, I don't remember much of it.
16 When I woke up the next morning, I didn't have any cuts on
17 me or anything and I didn't have any guns. I didn't have
18 anything stolen and I didn't have the \$133 that I had in my
19 pocket before this happened, so I don't know. If we did do
20 the crime, when I got home then and when I passed out, then
21 Grady robbed me, you know.

22 Q. Okay. You were also identified by DNA from blood
23 found on a curtain at the scene, correct?

24 A. That's what they say. Yes, ma'am.

25 Q. Okay. And your co-defendant Grady, he gave a

1 statement to law enforcement implicating you in the crime,
2 correct?

3 A. I guess so. I would think.

4 Q. Before your plea you were evaluated by the Department
5 of Mental Health, correct?

6 A. Yes, ma'am.

7 Q. For both competency and criminal responsibility?

8 A. Yes, ma'am.

9 Q. And the evaluator found that you were competent,
10 correct?

11 A. Right.

12 Q. And found that you criminally responsible, so you
13 could distinguish right from wrong at the time of the
14 crime, correct?

15 A. Well, I don't know how they can figure at the time of
16 the crime when it happened so long ago that only God would
17 know that.

18 Q. But you were found criminally responsible, correct?

19 A. That's what they say, yeah. Yes, ma'am.

20 Q. And, again, you blacked out during the crime so you're
21 not really sure what happened?

22 A. Well, I was -- yeah, whenever they seen me -- the
23 doctor seen me to re-evaluate me, I'd been in GPH, Gilliam
24 Hospital. I mean, there had to be something wrong with
25 me. That's a maximum security hospital that's here and you

1 wouldn't go there unless you had a mental health problem.

2 Q. Yes, sir. And at the start of your guilty plea, do
3 you remember Judge Keesley questioning you about your
4 mental health?

5 A. Yes, ma'am.

6 Q. And Judge Keesley determined that you were competent,
7 correct?

8 A. Well, he asked me and I said well, I'm not really sure
9 and he said well, you know, we've got to -- have to be for
10 sure and I told him yes, that I was competent.

11 Q. Okay. Do you remember Judge Keesley asking you if you
12 were on any medication at the time of your plea?

13 A. I think so, yes, ma'am. I don't know if I told him --
14 I don't know if I knew what I was taking at the time or
15 not, but I -- I definitely was on medication, yeah, and I
16 told him.

17 Q. Do you remember telling Judge Keesley that the
18 medicine you were on helped you and if you didn't take the
19 medication you didn't remember what happened?

20 A. Well, the medication helped a lot, but it still wasn't
21 up to par or I wouldn't have been turning myself into the
22 hospital when I was on them because I definitely wouldn't
23 want to lock myself up, you know, so I definitely had
24 problems with my medicine. But, yes, they helped me a lot.
25 Not fully or not as -- not as -- not like a normal person,

1 no.

2 Q. And you told Judge Keesley that you understood what
3 you were doing there today, correct, at the time of the
4 plea?

5 A. Well, they -- yeah, they -- they told me I had to say
6 that or I wouldn't be able to get the plea in front of the
7 judge.

8 Q. Do you remember telling Judge Keesley that there was
9 no plea agreement, you understood that there was no
10 agreement?

11 A. With the solicitor, yes, ma'am.

12 Q. Do you remember telling Judge Keesley that you knew
13 you were facing a mandatory minimum of fifteen years for
14 your guilty plea?

15 A. Yes, ma'am. I think so.

16 Q. And telling Judge Keesley that you understood the
17 maximum sentence you could receive was life in prison?

18 A. Yes, ma'am. I knew what first degree burglary
19 carried, yes, ma'am.

20 Q. And you told Judge Keesley you knew you were pleading
21 guilty to first degree burglary, correct?

22 A. Right.

23 Q. After your plea Mr. Thompson filed a motion to get
24 you credit for all the time you'd been in the Department
25 of Corrections on the unrelated burglary, correct?

1 A. Well, I thought we did that in the courtroom that day.
2 I thought he granted running concurrent with the sentence
3 already dated -- backdated. I thought this happened in
4 court. I heard nothing after that on the thing.

5 Q. Are you aware that you are getting credit for the
6 entire time you've been in SCDC on the unrelated burglary,
7 not just since when you were served with the warrants, but
8 credit for the entire time?

9 A. Yes, ma'am.

10 Q. And is that something you wanted Mr. Thompson to do
11 for you?

12 A. Well, I don't remember because I thought it was
13 already done in court that day. No, I never talked to him
14 about that. Not that I recall I didn't. I thought it
15 happened in the courtroom that day. I thought the judge
16 granted the -- backdated the sentence.

17 MS. JAMESON: A moment's indulgence, Your Honor.

18 THE COURT: Yes, ma'am.

19 THE WITNESS: Excuse me?

20 THE COURT: No, we're good, sir. Just one second.

21 THE WITNESS: Okay.

22 BY MS. JAMESON:

23 Q. You testified on direct examination that the assistant
24 solicitor had previously offered you fifteen years,
25 correct?

1 A. Yes, ma'am.

2 Q. And that you had turned it down because you didn't
3 want fifteen years, correct?

4 A. Yes, ma'am.

5 Q. Okay. You testified a little bit later that you told
6 your attorney, Mr. Thompson, that if he could get you
7 fifteen years to burglary second non-violent, you would
8 accept that plea, correct?

9 A. Yes, ma'am.

10 Q. So fifteen years was an acceptable sentence to you,
11 correct?

12 A. Not violent. Violent you have to do fourteen years.
13 Non-violent you do about half of fifteen, a little over
14 half, 65 percent.

15 Q. And, again, you told Judge Keesley during your plea
16 you understood the mandatory minimum sentence you could get
17 was fifteen years, correct?

18 A. Yes, ma'am.

19 Q. Up to life in prison, correct?

20 A. Yes, ma'am.

21 Q. And you understood you were pleading guilty to first
22 degree burglary, correct?

23 A. Yes, ma'am. I was advised to say that.

24 MS. JAMESON: No further -- no further questions,
25 Your Honor.

1 THE COURT: All right. Counsel, do you have any
2 redirect?

3 MS. FENNELL: No, Your Honor.

4 THE COURT: All right. Thank you.

5 All right. Mr. Prior, thank you. Thank you very
6 much.

7 THE WITNESS: Okay.

8 (Witness excused.)

9 THE COURT: Ms. Fennell, you can call your next
10 witness.

11 MS. FENNELL: Thank you, Your Honor.

12 Applicant would call Jackie Bartley.

13 THE COURT: Okay. Is that Ms. Bartley right there
14 with maybe a gray shirt on?

15 Ms. Bartley, can you hear me?

16 MS. FENNELL: It looks like she's muted.

17 THE COURT: All right. Let's see.

18 All right. Ms. Bartley?

19 MS. BARTLEY: I got it. I got it.

20 THE COURT: Hold on. Ms. Bartley, are you there?

21 MS. BARTLEY: I'm here.

22 THE COURT: Great. Thank you for waiting, ma'am.

23 We are ready for your testimony and Mr. Prior's
24 lawyer is gonna ask you some questions in just a moment.

25 First, what I need to do -- I'm Judge Bonds, by

1 the way, I need you to raise your right hand and I want
2 to swear you in, okay, ma'am?

3 MS. BARTLEY: Okay.

4 THE COURT: Do you swear to tell the truth, the
5 whole truth and nothing but the truth so help you God?

6 MS. BARTLEY: I do.

7 THE COURT: All right. Thank you. You can put
8 your hand down.

9 And, Ms. Fennell, your witness.

10 MS. FENNELL: Thank you, Your Honor.

11 JACKIE BARTLEY,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. FENNELL:

15 Q. Ms. Bartley, what is your relationship to Mr. Prior?

16 A. He's my nephew. He's my younger brother's -- one of
17 his two sons.

18 Q. Okay. And during Mr. Prior's life, have you
19 consistently been involved in his life?

20 A. A lot. Not a whole lot. When he started getting into
21 trouble when he was a teenager, I wasn't.

22 Q. Okay. And when he was incarcerated at Kirkland on
23 previous charges for burglary, did you have an opportunity
24 to speak with his attorney, Barry Thompson?

25 A. I talked to him several times on the phone.

1 Q. And what was your purpose in speaking with him?

2 A. Just to know that he knew all the facts about Ashley
3 and trying to get him a better sentence maybe, that he was
4 mentally incompetent most of the time, especially when he
5 wasn't taking his medicine.

6 Q. And so that was -- did you contact Mr. Thompson?

7 A. Yes, I did. Yes.

8 Q. Okay.

9 A. When I found out he was the attorney.

10 Q. Okay. And about how many times did you speak to
11 Mr. Thompson?

12 A. Oh, at least five times I know.

13 Q. Okay. And did you understand that Mr. Prior was going
14 to proceed to trial?

15 A. Well, he told me that he would be going to trial --

16 MS. JAMESON: Objection to hearsay.

17 THE COURT: All right. I'm gonna note your
18 objection for the record. I'm gonna overrule it. I
19 just think it's part of the whole res gestae.

20 Let -- let's move forward. And as it relates to
21 that, I'm gonna note an ongoing objection to the hearsay.

22 I would encourage counsel to try to do everything
23 she can do to phrase the questions in such a way that
24 we can try to avoid that, but I just -- I want to go
25 ahead and try to move forward on this as quickly as we

1 can --

2 MS. FENNELL: Thank you, Your Honor.

3 THE COURT: -- but giving everybody the opportunity
4 to state their case and whatever they want to do.

5 So I don't want anybody to think I'm forcing anybody
6 to rush. After yesterday afternoon you-all know I'm not,
7 okay?

8 MS. JAMESON: Thank you.

9 BY MS. FENNELL:

10 Q. So, Ms. Bartley, so you reached out to Mr. Thompson?

11 A. Yes.

12 Q. And what information did you provide Mr. Thompson?

13 A. Well, I told him that he had -- has mental problems
14 -- has had mental problems for years, was on mental
15 disability, and that he was seeing a psychiatrist at the
16 mental health place and I have been taking care of him and
17 taking care of his money for him and -- and wanted him to
18 have -- you know, not sentenced to forever in jail, but I
19 had nothing -- you know, no influence on that.

20 Q. Okay.

21 A. I wanted him to know he was men -- had mental problems
22 for years.

23 Q. Okay. And were you present when Mr. Prior entered
24 into the guilty plea on August 20, 2018?

25 A. All I know is that was -- it was like that Friday or

1 that Thursday before he went before the judge and pleaded
2 that Mr. Thompson said well, if he pleads guilty, then
3 he'll get ten years. That's the last thing I talked to
4 him about and then he was supposed to let me know when the
5 trial was gonna come up and I'd go over and I never heard
6 anything after that until Ashley told me what happened.

7 Q. Okay. And at that point he had already entered into
8 a guilty plea?

9 A. I guess some time that -- that Friday or something
10 when I talked to Mr. Thompson. I don't know exactly when
11 because I wasn't there.

12 Q. Did you ever meet with Mr. Thompson in person?

13 A. No. I took papers over there, mental health records
14 and stuff, to his office.

15 Q. Okay. Did he also make phone calls to you?

16 A. Yes.

17 Q. Okay. So you were in communication with Mr. Thompson
18 regarding Mr. Prior's defense?

19 A. Yes.

20 Q. Okay. And so it was your understanding that if -- if
21 Mr. Prior did enter into a guilty plea, he was going to be
22 receiving a 10-year sentence?

23 A. That's what I understood.

24 Q. Okay. And do you know what sentence he is serving?

25 A. Burglary violent, fifteen to twenty years or

1 something. At least twenty years I know.

2 Q. Okay. Do -- do you know who David Hayes is?

3 A. I found out later on when Ashley told me later on that
4 they were both in there with him trying to get him to plead
5 guilty. I found out later on who he was after I went to --
6 later on and got records from the -- the police records
7 and the indictments that he was Gary -- Grady Owensby's
8 attorney.

9 Q. But you never --

10 A. I didn't know who this Grady Owensby was until I went
11 to the police and got those records about -- and then
12 looked him up and got the -- his indictments.

13 Q. You got Mr. Owensby's indictments?

14 A. Yeah, a copy of that, yes, because I really didn't
15 know how to spell his name. Finally I figured out who he
16 was and stuff.

17 Q. And you've never spoken to Mr. Hayes?

18 A. No.

19 Q. Okay. Is there anything that we have not covered that
20 you wanted to testify to today?

21 A. Well, I just want to know -- want him to know that in
22 2018 before -- when he was talking to Barry Thompson in
23 jail, from 2-26-18 to 3-07-18, he was locked up in a cell
24 and his records say he didn't know what he was doing or
25 what he was saying, he was talking to people that weren't

1 there and wasn't allowed clothes, and -- and I -- and that
2 he talked to an attorney around that period or right after
3 that. I don't think he was mentally competent to go -- to
4 talk to an attorney or anything --

5 MS. JAMESON: Your Honor, objection.

6 THE COURT: All right. I'm gonna -- I'm gonna --
7 I'm gonna sustain the objection. I think she's relying
8 upon records that haven't been documented and also is
9 giving an opinion as it relates to competency, so I'm
10 gonna sustain that objection, Ms. Fennell.

11 Any -- anything else?

12 THE WITNESS: I thought I sent these records to
13 Ms. Fennell.

14 THE COURT: Well, ma'am, that -- I appreciate that,
15 but at this point the way it works now is I move to
16 Ms. -- Ms. Fennell and ask her if she has any questions
17 -- additional questions for you, okay?

18 THE WITNESS: Okay.

19 THE COURT: Thank you, ma'am.

20 Ms. Fennell.

21 BY MS. FENNELL:

22 Q. Okay. Ms. Bartley, is that -- was that your main
23 purpose today, to testify regarding Mr. Prior's mental
24 health issues that he's had?

25 A. Yeah, and the parts that they told me he'd only get

1 ten years if he pleaded guilty.

2 Q. Okay.

3 MS. FENNELL: I don't believe I have any further
4 questions for you, but please answer any questions
5 Ms. Jameson has.

6 THE COURT: All right.

7 MS. FENNELL: Thank you, Your Honor.

8 MS. JAMESON: May it please the Court?

9 THE COURT: Yes, ma'am.

10 CROSS-EXAMINATION

11 BY MS. JAMESON:

12 Q. Ms. Bartley, you testified that you talked to
13 Mr. Thompson and he told you that your nephew would get a
14 10-year sentence, correct?

15 A. Yes.

16 Q. When specifically was this conversation?

17 A. It was like the Thursday or the Friday before he went
18 before the judge.

19 Q. Did he tell you it was a certainty or he would ask for
20 a 10-year sentence?

21 A. He sounded like he was gonna ask for it.

22 Q. So Mr. Thompson told you he would ask for a 10-year
23 sentence for your nephew?

24 A. Yes.

25 MS. JAMESON: No further questions, Your Honor.

1 THE COURT: All right. Do you have any redirect,
2 Ms. Fennell?

3 MS. FENNEL: I -- I do. Just one.

4 REDIRECT EXAMINATION

5 BY MS. FENNEL:

6 Q. Ms. Bartley, after you had that conversation with
7 Mr. Thompson -- well, strike that. Was it your
8 understanding after that conversation that the 10-year
9 sentence was what he would be looking at if he did enter
10 into the guilty plea?

11 A. Yes.

12 Q. Okay.

13 MS. JAMESON: I don't have any further questions.

14 THE COURT: All right.

15 Hey, Ms. Bartley, let me ask you one other thing.

16 EXAMINATION

17 BY THE COURT:

18 Q. All right. Does he get a check for -- is he disabled?
19 Does he get SSI or does he get an SSD check because of his
20 impairments?

21 A. Yeah, before he was in jail and --

22 Q. Right.

23 A. Yes.

24 Q. So before. What I wanted to ask --

25 A. For several years.

1 Q. Okay. All right. Are you his designated payee?

2 A. Yes.

3 Q. All right. And what -- and so in that case, let me
4 ask you this, ma'am. So what is the reason that he gets
5 the -- the check from the government?

6 A. Mental disability.

7 Q. Okay. And he's been getting that for years before he
8 was incarcerated?

9 A. About three years maybe. Not a whole long time.

10 Q. And have you always been his designated payee?

11 A. Yes.

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

13 All right. Either -- either -- either attorney
14 have any other questions based on the questions the
15 Court asked?

16 MS. JAMESON: Briefly, Your Honor.

17 RECROSS EXAMINATION

18 BY MS. JAMESON:

19 Q. Ms. Bartley, you indicated that it was only for about
20 three years that he'd been getting these disability checks.
21 When did they start?

22 A. I would have to look that up. I know it was at least
23 three years before all this happened in 2018.

24 Q. I'm sorry, you cut out again. Three years before --

25 A. It was at least three years before all this happened

1 in 2018.

2 Q. Okay. So around 2015?

3 A. It was around 2015, yes. I think, yes. I should have
4 looked that up. I have tons of papers on him.

5 Q. You don't recall when in 2015, whether it was earlier
6 in the year or later in the year?

7 A. It was in -- it was in the -- once the beginning of
8 the summer, spring or something like that, they called me
9 and I had to go -- it was in the summer I had to go over
10 there and sign the papers.

11 MS. JAMESON: All right. Thank you.

12 MS. FENNELL: I do have a follow-up question.

13 THE COURT: Yes, ma'am.

14 MS. FENNELL: Thank you.

15 FURTHER REDIRECT EXAMINATION

16 BY MS. FENNELL:

17 Q. Ms. Bartley, did you let Mr. Thompson know that --
18 that Mr. Prior was receiving disability?

19 A. I think I did.

20 Q. And were the documents that you provided to
21 Mr. Thompson the documents that were used to support his
22 claim for disability?

23 A. Yeah, some of it. It was his mental records. I have
24 like -- there's about two inches thick of mental records.

25 Q. Okay. And did -- did Mr. Prior have an attorney

1 represent him in his application for disability?

2 A. No, we just filled out the papers and --

3 Q. And he was awarded --

4 A. And we gave them the copy of his mental records.

5 Q. Okay.

6 MS. FENNELL: No further questions.

7 THE COURT: All right.

8 MS. JAMESON: Your Honor, if I may ask one follow-up
9 question?

10 THE COURT: Yes, ma'am.

11 FURTHER RECROSS EXAMINATION

12 BY MS. JAMESON:

13 Q. Ms. Bartley, you weren't present at the plea, correct?

14 A. Correct.

15 Q. So you're not aware if Judge Keesley got all this
16 information from his attorney, whether his attorney told
17 Judge Keesley all of this in mitigation, are you?

18 A. No, I'm not aware because they didn't tell me that he
19 was even going before a judge when he did.

20 Q. Okay. So you're not aware if -- if Mr. Thompson told
21 Judge Keesley all of this information, including that he
22 was on disability and that you had provided this paperwork
23 to Mr. Thompson?

24 A. Yes, I'm not aware of that.

25 MS. JAMESON: Okay.

1 And, Your Honor, I'm referencing page 20 of the
2 transcript for the record.

3 THE COURT: Yes, ma'am.

4 All right. Ms. Bartley?

5 THE WITNESS: Yes.

6 THE COURT: Thank you so much for being here.
7 Thank you for sharing the information and freely
8 answering the questions, ma'am, that were asked of you,
9 okay?

10 THE WITNESS: Okay.

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

13 (Witness excused.)

14 THE COURT: All right. Counsel, you can call your
15 next witness.

16 MS. FENNELL: We have no further witnesses, Your
17 Honor.

18 THE COURT: All right.

19 And so let me go -- Attorney General Jameson, do
20 you have any witnesses that you want to call, ma'am?

21 MS. JAMESON: Yes, Your Honor. The State would
22 call plea counsel, Barry Thompson.

23 THE COURT: All right.

24 MR. THOMPSON: Your Honor, before we proceed, may
25 I have a sixty second break to use the facilities?

1 THE COURT: What I'm gonna do is, I don't want
2 anybody to feel rushed, so I'm gonna give everybody --
3 we're gonna take about ten minutes and then we will --
4 we'll be back on.

5 So let's take a 10-minute break and thank you-all
6 very much, okay?

7 MR. THOMPSON: Thank you, Your Honor.

8 MS. JAMESON: Thank you.

9 THE COURT: Yes, sir. Yes, sir.

10 (Recess taken at 10:27 AM.)

11 (Back on the record at 10:38 AM.)

12 THE COURT: All right.

13 MS. JAMESON: The State would call Barry Thompson
14 to the stand.

15 THE COURT: Okay, Mr. Johnson {sic}. How about
16 raising your right hand for me, sir?

17 Do you swear to tell the truth, the whole truth and
18 nothing but the truth so help you God?

19 I do, Your Honor. It's Mr. Thompson.

20 THE COURT: Thompson. Okay. I'm -- I apologize.

21 All right, Mr. Thompson. You can put your hand
22 down. Thank you very much.

23 Your witness, Counsel.

24 BARRY THOMPSON,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. JAMESON:

3 Q. Mr. Thompson, when were you appointed in this case?

4 A. December 13, 2017.

5 Q. And was this appointment in your capacity as an Aiken
6 County public defender?

7 A. Yes, ma'am.

8 Q. At the time of your appointment, where was Mr. Prior
9 located?

10 A. He was at the South Carolina Department of
11 Corrections.

12 Q. Why was he at the Department of Corrections?

13 A. Because he was serving a sentence for a burglary.

14 Q. Are you aware if he had any other prior burglaries
15 than the ones for which he was detained at the time of your
16 appointment?

17 A. I can't speak prior to my appointment, but Mr. Prior
18 is a career burglar. I think there was like four or five
19 prior burglaries.

20 Q. Did you discuss his prior record with him?

21 A. When I went to go see him, we talked about the
22 elements of the crime and I told Ashley this until I was
23 blue in the face, but you can get to burglary first degree
24 one of three ways; either by going into a house in the
25 nighttime or by having a prior record for burglaries or by

1 at some point in time being armed during the commission of
2 the burglary, and at all times he would have met two out of
3 these three cat -- criteria.

4 Q. And what two out of the three would he have met?

5 A. He and Mr. Owensby stole guns from a house and
6 Mr. Prior has a long record of burglary convictions.

7 Q. And you -- you specifically remember discussing those
8 things with Mr. Prior?

9 A. Yes, ma'am. As a normal part of what I do when I do
10 an intake with clients, we -- it's -- it's an -- I work in
11 Aiken, so it's -- it's a trip to go up to Kirkland to get
12 to see Mr. Prior at SCDC, so when I went there I would have
13 been trying to do the -- the most things possible to try
14 to get a feel for where he's at, what the case needs to
15 do, where we're going with this, what are our goals, that
16 kind of stuff. So, yes, we discussed the law, we discussed
17 all the elements of the crime, we reviewed the discovery
18 material, we talked about any defenses that he might have.
19 Honestly, I don't remember him being able to talk with me
20 about any type of legal defenses to burglary other than he
21 wanted to be able to talk about not being -- not having the
22 capacity due to mental health concerns. We also discussed
23 he wanted to do a defense against the grand larceny charge
24 for -- he wanted to be able to say that he was actually a
25 victim of theft because when he and Mr. Owensby went and

1 stole the stuff out of the house that he then went back
2 to where they were staying at and he went to sleep and
3 then Grady Owensby stole all the stuff from him and left
4 -- left him there and that he didn't actually have the
5 proceeds of the burglary for very long and, therefore, he
6 shouldn't be guilty of grand larceny. We discussed how
7 that's not really a defense to grand larceny and I -- I
8 got information about his mental health status.

9 I also contacted his aunt and got -- she's correct,
10 she brought mental health records to my office and we made
11 sure to provide all of that to the Department of Mental
12 Health so that we would perhaps see if the Department of
13 Mental Health would either -- would either find him either
14 not competent to stand trial or lacking the ability to
15 conform his behavior at the time all this happened.
16 Unfortunately for Mr. Prior, neither one of those things
17 was true. He was evaluated and found competent and able
18 to conform his behavior and knowing the difference between
19 right and wrong. Even though he does -- I firmly believe
20 he does have mental health issues, it was wonderful
21 information for mitigation purposes, but it didn't have a
22 thing to do with a legal defense to either one of these
23 crimes.

24 Q. So when you say that it was good at mitigation but not
25 legal defenses based on the evaluations, did you present

1 any of that information to Judge Keesley in mitigation?

2 A. Yes. Judge Keesley was aware that Ashley had mental
3 health issues, had mental health problems, had grown up
4 with mental health problems, had been evaluated for mental
5 health problems, and the fact that he was getting treatment
6 at SCDC.

7 This was kind of part of -- in part of Ashley's --
8 part of Ashley's testimony, he talked about how I told
9 him that I thought he would probably get about forty
10 years at trial. That's actually true. I told him I think
11 he'd probably get forty to fifty years if we take this
12 to trial and he get convicted, but if he were to beg for
13 mercy and if we were able to talk to the judge about
14 Ashley having some significant mental health issues, that
15 perhaps we could get closer to the minimum on burglary
16 first as opposed to the maximum on burglary first, so it
17 was presented at -- at his plea.

18 Q. Okay. You testified that you told Ashley that you
19 thought he would get forty or fifty years at trial, so you
20 told him that you thought he would be convicted, correct?

21 A. Yes, ma'am. He -- he really didn't have any defense
22 to the crime. He -- he -- he was absolutely there. He
23 cut his hand breaking into the place and his blood was at
24 the point of entry for the burglary. He had a -- a
25 co-defendant that was going to testify against him. He

1 didn't believe me about that, but that's why I had
2 Mr. Hayes come and -- and tell him oh, yeah, Mr. Owensby
3 is planning on testifying against you and Ashley confessed
4 when the police came and talked to him. So there was
5 forensics evidence proving he was there at the burglary
6 scene, there was a testifying co-defendant and a confession
7 and, no, I didn't think there was very much of a chance
8 at all that we'd be able to win this case.

9 Q. And the -- the forty or fifty years that you told him
10 he likely would get at trial, what is that based on?

11 A. My experience with Judge Keesley.

12 Q. Is that based at all on his prior record of those five
13 prior burglaries?

14 A. Partially, but it's -- it's -- whenever you give
15 somebody an idea of some kind of range of numbers, it --
16 it depends a little bit on what the judge does. I will
17 tell you that at this time Judge Keesley was not a stranger
18 to this circuit. I had been in front of Judge Keesley on
19 numerous occasions with people with various and sundry
20 different kinds of records and based on my experience
21 before Judge Keesley, I believed that if we were to go to
22 trial and if he were to be found guilty, which I thought
23 he probably would be, that that would be about the range
24 that Judge Keesley would probably sentence him to.

25 Q. So you did not see any viable defenses to this crime?

1 A. No, ma'am, I did not. And Mr. Prior and I have talked
2 about possible other -- any type of other defenses. I
3 questioned him pretty good about that, but we were not able
4 to come up with any ideas of what we would be saying if we
5 were to go to trial.

6 Q. And you discussed at that first meeting with him in
7 SCDC that he was enhanced to first degree burglary based
8 on the theft of the weapons and his priors, correct?

9 A. I -- yes, the -- we discussed that they could get to
10 burglary first one of a couple of different ways and, yes,
11 that this would be a burglary first case. He asked me to
12 talk to the solicitor about possibly offering him what his
13 co-defendant pled to and I did that. I spoke with the
14 prosecutor's office about the possibility of him getting
15 a -- offered a lesser charge and they -- they were not
16 interested in that, they turned me down flat, so Mr. Prior
17 and I had, frankly, rather circular arguments where he
18 would say I want to plead guilty to burg second and I would
19 tell him they aren't offering burg second, then he would
20 say well, then I want to go to trial and I would say okay,
21 well, then we need to get ready for trial and he would say
22 I don't have any defense to this and -- and I want to get
23 -- plead to burg second and I would tell him they're not
24 offering burg second, and we would go around and around
25 and around in circles about it.

1 Q. Did you explain to Mr. Prior that the prosecutor had
2 discretion in -- in what to offer in terms of a plea offer
3 to a lesser included?

4 A. Yes, ma'am.

5 Q. Okay.

6 A. And in addition to that, Mr. Prior has rather
7 extensive experience with the criminal justice system.

8 Q. So you tried to get a lesser included and the State
9 wouldn't bulge, it was gonna be burglary first?

10 A. Absolutely.

11 Q. Did you try to get a plea agreement for a determinant
12 range of -- of sentence for burg first?

13 A. I believe that there at one point in time was an offer
14 for the minimum on burg first, but that offer was turned
15 down. Mr. Prior said no, I'm not accepting fifteen years
16 on burg first.

17 Q. And he ultimately pled straight up without a
18 negotiation or recommendation, correct?

19 A. That's correct.

20 Q. How did that come about when he had previously turned
21 down the 15-year offer?

22 A. We were getting ready for trial. We -- we were having
23 this circular argument and I was -- he -- well, he would
24 say I don't want to go to trial and I don't want to plead
25 to burglary first and I would tell him well, if we don't

1 want to plead to burglary first, then the answer is we're
2 going to trial. That's what I'm not gonna plea means, it's
3 we're going to trial, and once we got to close to the edge
4 of going to trial, then he changed his mind and decided to
5 plead guilty.

6 Q. And I think you said you were right on the edge of
7 trial, so his plea was pretty close to the trial date?

8 A. He was -- he was on the -- he was on the trial
9 dockets. Now at the time that this all happened, those
10 trial dockets were, what, forty to fifty names deep, but
11 they -- they had started putting him on the list of
12 possible persons to go to trial.

13 Q. And you explained that to Mr. Prior?

14 A. Yes, ma'am, I did.

15 Q. And at the time he decided to enter a guilty plea
16 without negotiation or recommendation?

17 A. Yes, ma'am, he did. And he was transported down to
18 the Aiken detention center and he and I met, again, about
19 this and talked about this and he decided he wanted to
20 plead guilty.

21 Q. Did you ever make him a promise as to a specific
22 sentence?

23 A. No, I -- no, I did not, and it would not have been in
24 my power to do so either. I also didn't tell Ms. Bartley
25 ten years. Ten years, not only is that not something I

1 said fact -- factually not something I said, but it's also
2 not a possible -- it's not a possible sentence on what he
3 was being -- on what he was being prosecuted on.

4 Q. And you advised Mr. Prior the sentencing range for
5 first degree burglary, correct?

6 A. Yes, ma'am.

7 Q. Did you advise him the mandatory minimum sentence he
8 could receive when he pled guilty was fifteen years?

9 A. Yes, ma'am. And I told him that I would ask for the
10 minimum. I believe I did --

11 Q. But did you --

12 A. -- but I did not -- I did not guarantee him any type
13 of sentence. That is not true. If I could guarantee
14 sentences, I -- I would not be -- I'd be able to predict
15 the future and I wouldn't be doing this job, I'd be picking
16 lottery numbers or betting on football games in Las Vegas.

17 Q. And at the plea you did request a minimum sentence,
18 correct?

19 A. I believe that's correct. I'd have to look back. I
20 -- I don't remember that off the top of my head, but I
21 believe that that's correct.

22 Q. Did you advise Judge Keesley -- well, strike that.
23 At the start of the plea, did Judge Keesley conduct a Blair
24 hearing?

25 A. Yes, ma'am.

1 Q. And Judge Keesley found be Mr. Prior was competent,
2 correct?

3 A. Yes, ma'am.

4 Q. And there was also a discussion that he had been found
5 criminally responsible by the Department of Mental Health
6 in their evaluation, correct?

7 A. Yes, ma'am.

8 Q. So Judge Keesley was aware of these mental health
9 concerns?

10 A. Yes, ma'am.

11 Q. Did you present any background on his mental health or
12 his upbringing in mitigation at the plea?

13 A. I don't -- I don't remember.

14 Q. Do you have a copy of the plea transcript in front of
15 you?

16 A. I was looking for that, but I don't -- I beg the
17 Court's indulgence.

18 THE COURT: Yes, sir.

19 A. Yes, ma'am. I -- I do have the transcript in front of
20 me.

21 Q. If you could review pages 19 through 21 to yourself if
22 you -- if you haven't already.

23 A. I've got to apologize to you. Mine are scanned in
24 reverse order, so it may -- I may be a little bit off.

25 Q. Oh, my goodness. I'm sorry.

1 A. No -- no worries. Yes, ma'am. I'm on page 19.

2 Q. Okay. If you'll just review that to yourself, I have
3 some questions about mitigation you presented.

4 A. Yes, ma'am. I've reviewed it.

5 Q. Can you -- did you in mitigation discuss with Judge
6 Keesley in furtherance of your request for a lesser
7 sentence the difficult childhood that Mr. Prior had had?

8 A. Yes, ma'am, I did.

9 Q. What other things did you tell Judge Keesley in
10 mitigation on your client's behalf?

11 A. I talked to him about some intellectual deficiencies
12 and being in -- essentially in a self-contained environment
13 of public school and special education. We talked about
14 him being in the psychiatric unit of the state prison
15 system. In mitigation I talked about him having difficulty
16 with his eyesight. We talked about him making efforts to
17 try to -- to be honest with law enforcement and -- and his
18 confession to law enforcement. We talked about the fruits
19 of the burglary being stolen from him, that he didn't
20 actually have anything to -- to give back to the victims,
21 but that he, you know, would have wanted to.

22 Q. And does this relate to your prior testimony that
23 Mr. Prior advised you that his co-defendant Grady had then
24 stolen the proceeds of the burglary from him and so he felt
25 he was in more of a victim capacity?

1 A. Yes, ma'am.

2 Q. And you had explained to Mr. Prior that that was not
3 a legally viable defense, correct?

4 A. Yes, ma'am. Ashley and I discussed at great length
5 the difference between things that are mitigation and
6 things that are grounds for innocence, so that -- we
7 discussed that at great length.

8 Q. Have you reviewed the indictments that were issued
9 against Mr. Prior by the grand jury?

10 A. I -- I looked at them at least a -- a couple of times.
11 I will tell you I haven't looked at them in the last
12 twenty-four to forty-eight hours. The indictments though,
13 the indictment process is a secret process. That's not
14 something that -- as a defense attorney that I'm invited
15 to. When you are preparing for trial, you get the
16 indictments so that you can be able to answer the specific
17 allegations that are being made against your client, but
18 they don't even automatically -- they may do this in other
19 circuits, but in our circuit they don't automatically give
20 you the indictments, you have to go and get them right
21 before trial, and any arguments that I would have made
22 about the indictments or the indictment process would have
23 been pre-trial motions that I would have made right before
24 trial. Again, I don't know how other circuits do this,
25 but in -- in Aiken County all pre-trial motions are heard

1 right then and there the day of trial right before we have
2 trial. So if we had been at that point in time in a trial
3 mode, I would have concentrated more on the indictments
4 and been in the posture of making arguments about the
5 indictments right then and there at the time right before
6 trial. But in point of fact, we never actually really got
7 there. We never were in the hey, we're gonna have your
8 trial tomorrow or the next week kind of mode. He was on
9 the trial list, but we weren't right then and there about
10 to have trial and as a result we never got around to making
11 the pre-trial motions.

12 So this whole indictment issue is really interesting,
13 but it's not one that was raised at a plea. When Ashley
14 decided he wanted to plead guilty, other than him being
15 able to -- to speak on the factual basis for the plea and
16 the indictment documents actually being correct right then
17 and there during the plea in Court, other than that there
18 wouldn't have been a -- a format to make any of these
19 objections to indictments.

20 Q. And you just discussed that you wouldn't have raised
21 these until you were on the eve of trial, correct?

22 A. That's correct.

23 Q. Do -- let's take a look at the first degree burglary
24 indictment from August. Do you have a copy of that with
25 you?

1 A. I'm going to be looking at your -- I don't see it in
2 the packet. This would have been in -- I apologize. Help
3 me find it. I -- I don't know exactly where I'm looking.

4 Q. It was e-mailed to you last week with some additional
5 clerk's records that were also provided to the Court and
6 Mr. Prior's counsel. You should have received it in the
7 original packet as well, but the August 2018 first degree
8 burglary indictment.

9 A. I'm -- I'm going to have to apologize to you. The --
10 the device that I'm using to look at my records and notes
11 is a different one than the main computer that I'm actually
12 attending court on, so it's gonna take me just a second to
13 try and switch devices and try to find it.

14 I'm gonna have to apologize to you. If you wouldn't
15 mind e-mailing that to me again. I've got the doc -- I've
16 got the e-mail from you that are the documents that you
17 earlier admitted into evidence, but I -- I don't see the
18 actual indictments themselves.

19 MS. JAMESON: Sure. One -- one moment.

20 A moment's indulgence, Your Honor.

21 All right. Mr. Thompson, I am forwarding you an
22 e-mail with the updated packet of clerk's records that
23 I had previously provided you on the 28th of this -- of
24 January.

25 And for purposes of the record, these -- this is

1 the full packet of clerk's records that we received from
2 the Aiken County Clerk of Court, which has previously
3 been provided to the Court in Your Honor's pocket and to
4 Mr. Prior through his coun -- his attorney, Nancy Fennel.

5 THE COURT: All right.

6 THE WITNESS: Yes, ma'am. I have it.

7 BY MS. JAMESON:

8 Q. Okay. If you can take a look, and it should be the
9 first three documents, but the indictment for first degree
10 burglary that was issued in August. If you will look at
11 the face and the inside of the indictment first.

12 A. Yes, ma'am. I -- I've reviewed it.

13 Q. Is this the indictment that you previously were
14 provided before Mr. Prior plead guilty?

15 A. Yes, ma'am.

16 Q. And in the body of the indictment, what does it
17 indicate is the enhancement reason for first degree
18 burglary under 16-11-311?

19 A. That he has a -- that he unlawfully enters a dwelling
20 without consent with the intent to commit a crime and
21 that he has two or more convictions for burglary or
22 housebreaking or a combination of both.

23 Q. And it does list the first degree burglary statute,
24 correct?

25 A. Yes, ma'am. In violation of 16-11-311.

1 Q. Does this provide you with sufficient notice pursuant
2 to Gentry and its progeny of what Mr. Prior was being
3 charged with?

4 A. Yes, ma'am. And this would have been the indictment
5 that I would have seen in court. I will tell you that if
6 there was an earlier indictment, it's -- it's doubtful that
7 I would have ever seen it.

8 Q. But he pled guilty pursuant to this August indictment,
9 correct?

10 A. Yes, ma'am. That's correct.

11 Q. And just to make sure the record's abundantly clear,
12 if you can look at the sentencing sheet, does the
13 indictment case number in the upper right-hand corner
14 match this indictment?

15 A. Yes, ma'am, it does.

16 Q. Do you believe this is a facially valid indictment?

17 A. Yes, ma'am, I do.

18 Q. Do you believe you would have had a legal basis to
19 move to quash this facially valid indictment?

20 A. No, ma'am.

21 Q. Okay. If you can keep those clerk's records with you.

22 A. Yes, ma'am.

23 Q. The -- let's deal with the -- the burglary first. Can
24 you look at the face of the indictment and see what the
25 action of the grand jury is?

1 A. Well, it's true billed by the grand jury and signed by
2 the foreperson.

3 Q. Okay. And I believe you mentioned previously that you
4 have a copy of Respondent's exhibits, correct?

5 A. Yes, ma'am. I have to switch screens, but, yes,
6 ma'am, I -- I do have that.

7 Q. Okay. Are you aware whether the Aiken County Grand
8 Jury convened on August 2, 2018, pursuant to any
9 administrative orders of the chief administrative judge?

10 A. Again, I'm not invited to grand jury proceedings, so
11 they would have been a secret thing that would have
12 happened without my knowledge at the time, but I have no
13 reason to doubt the court documents, I have no reason to
14 doubt that the grand jury actually did, in fact, convene
15 and -- and true billed this indictment. I have no basis to
16 not believe that.

17 Q. Okay. And so this is, again, a facially valid
18 indictment that you have no reason legally to move to quash
19 based on the -- based on the grand jury either, correct?

20 A. That's correct.

21 Q. Can you look at the grand larceny indictment? It
22 should be in that same packet a few pages beyond and if
23 you'll look at the face of that indictment and -- and the
24 inside of that indictment, please, and review it to
25 yourself.

1 A. Yes, ma'am, I've reviewed it.

2 Q. Does this also appear to be a facially valid
3 indictment for grand larceny?

4 A. Yes, ma'am, it does.

5 Q. Do you see any legal basis to move to quash this
6 facially valid indictment?

7 A. No, ma'am, I do not.

8 Q. Okay. And if you'll look at the face of the
9 indictment under the action of the grand jury, can you
10 summarize for the Court what -- what it says there?

11 A. This is true billed and signed by the foreperson of
12 the grand jury.

13 Q. And on what date?

14 A. It's dated March the 8th.

15 Q. Of 2018?

16 A. Of 2018, and -- yes, ma'am. There's a -- it's dated
17 March the 8th of 2018.

18 Q. And do you have a copy of State's Exhibit Number 2
19 in front of you that was introduced earlier this morning
20 regarding the administrative judge's setting of the grand
21 jury terms?

22 A. Yes, ma'am. I'm at the e-mail now. This is Number 1,
23 2, 3, 4, 5.

24 Q. Number 2, Mr. Thompson.

25 A. Okay. Yes, ma'am. I've reviewed it.

1 Q. Do you see any reason to move to quash this facially
2 valid indictment based on the date in which the grand jury
3 convened and true billed the grand larceny indictment?

4 A. No, ma'am, I do not.

5 MS. JAMESON: A moment's indulgence, Your Honor.

6 THE COURT: All right.

7 BY MS. JAMESON:

8 Q. One final thing, Mr. Thompson. After Mr. Prior pled
9 guilty, you filed a motion to reconsider his sentence,
10 correct?

11 A. Yes, ma'am, I did.

12 Q. What was the basis of that motion?

13 A. We were hoping to get a little bit more mercy from the
14 judge to give him credit for time served for all of the
15 time that he had been incarcerated, including time that
16 technically he probably wasn't entitled to. So the way
17 this works is Ashley goes -- the burglary happens before
18 he gets arrested for a second burglary, okay, and he gets
19 convicted on the second burglary and is in jail on the
20 second burglary before they find out, wait a minute, he's
21 a suspect in this prior burglary. So he doesn't actually
22 get served with the warrant for the prior burglary until
23 he's been at SCDC for some period of time. I think it was
24 a couple of years. I can't remember exactly off the top
25 of my head, I'd have to look at the motion, but he had been

1 incarcerated for a period of time before he's actually
2 served with the warrant for the burglary that we're talking
3 about today, and what we asked the judge to reconsider was
4 hey, Judge, would you give us the mercy of giving him
5 credit for time served for all of the time that he's been
6 locked up, not just from the time that he was served with
7 the warrant for the charge that he plead guilty to, so --
8 and the judge decided to do that. I believe the solicitor
9 actually consented to it, but I'd -- I'd have to look back.
10 I don't remember that off the top of my head.

11 MS. JAMESON: Thank you.

12 No further questions, Your Honor.

13 THE COURT: All right. Cross-examination?

14 MS. FENNELL: Yes, just a few questions, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. FENNELL:

17 Q. Mr. Thompson, when you -- you said that -- excuse me
18 -- you and Mr. Prior discussed his -- his mental health
19 and using that or relying that on the basis of any type of
20 defense, did you specifically look at the medications that
21 he was taking?

22 A. Yes, ma'am. All of the medications that he's taking,
23 the medical records that we had, all of that stuff is given
24 to the Department of Mental Health when they evaluate him.
25 There's this big, long laundry list of things that they

1 look at when they evaluate for competency and for ability
2 to conform, and they had all of that stuff. And I know
3 it's frustrating because there are different standards for
4 mental health issues and that you can be on disability for
5 mental health problems and you can be in the psychiatric
6 wing of the -- of the prison for mental health problems,
7 but that doesn't necessarily mean that you're not competent
8 to stand trial or that you don't have the ability to
9 distinguish between right and wrong, which is kind of
10 maddening, and a reason why Ms. Bartley and I kind of went
11 back and forth in circles for a while because there are
12 different standards. She would say well, he's mentally ill
13 and I'd say yes, ma'am, I understand he's mentally ill, but
14 the doctors who have evaluated him have determined that
15 even after looking at all of his medication and stuff that
16 he's competent to stand trial, which means I can talk,
17 again, in mitigation about how hey, Judge, can you please
18 have some mercy on him, but that's not necessarily a basis
19 for a defense at law, and that was the problem he and I
20 were having.

21 Q. Okay. And did you discuss with him his -- his
22 evaluation that was done?

23 A. Yes, ma'am.

24 Q. Okay. Do you think he understood that?

25 A. I believe so. Yes, ma'am.

1 Q. Okay. And so you said that you -- he was like forty
2 to fifty -- you know, one of forty to fifty on the list to
3 go to trial and that you had never actually come up with
4 a trial strategy. Had you ever -- had you received the
5 indictments at any time prior to his plea hearing?

6 A. I don't remember. I -- I know we were -- we were
7 gearing up and in the process of getting ready for trial,
8 but I don't remember whether we had -- had gathered up all
9 that material or not. But at the time -- and it's a little
10 different now, but at the time the solicitor's office was
11 completely in charge of -- they had what old sailors used
12 to refer to as the weather gauge. They were completely in
13 charge of when cases went to trial and I think that we were
14 -- we were at court this last time when he pled guilty
15 because I was told by the solicitor you need to tell him
16 this is the last chance he gets to try to plead guilty and
17 if he doesn't plead guilty during this term of court, then
18 the very next term we -- we will be in trial. It will be
19 too late to change your mind, too late to plead guilty.
20 You don't have the right to plead guilty, you have the
21 right to go to trial, and we would be in trial, you know,
22 if we did not go ahead and do something that term.

23 Q. Okay. And so you let him know that that day that you
24 met with him in Aiken?

25 A. Yes, ma'am. We -- we discussed this at great length.

1 Q. Okay. And that was the day that he made the decision
2 to enter a guilty plea?

3 A. I believe that he had made the decision to enter a
4 guilty plea a day or two before that or he would not have
5 been placed on the transport list. By the time -- this was
6 before COVID, so we were actually doing live court, we were
7 actually at the courthouse, and he and I would have had
8 those conversations before even he actually ended up at the
9 courthouse if memory serves me.

10 Q. Okay. Now did you let Mr. Prior know that his plea
11 would be without negotiation or recommendation?

12 A. Yes, ma'am. He knew that and I believe that was
13 actually on the record.

14 Q. Okay. And did you explain to him what that meant?

15 A. Yes, ma'am.

16 Q. And do you think he understood what that meant?

17 A. I -- I believe so. Yes, ma'am.

18 Q. And you were aware -- well, strike that. You said
19 that previously they had come -- the solicitor's office
20 had come with a plea agreement of fifteen years violent?

21 A. Fifteen years pleading to burglary in the first
22 degree and Mr. -- Mr. Prior was savvy enough -- he -- he
23 can actually tell you now he -- he was savvy enough to know
24 that burglary in the first degree is an 85 percent time,
25 no parole offense, which is much different from a burglary

1 in the second degree offense. Even burglary second
2 violent, you would end up -- the maximum sentence on burg
3 second violent, he'd end up serving less time than a
4 minimum sentence on burg first, and he was very desirous
5 of a burg second plea offer. His co-defendant actually
6 took a burg second plea offer instead of pleading to burg
7 first. He was aware that the reason why was because his
8 co-defendant had agreed to testify against him, but he was
9 desirous of the same offer as his co-defendant and was --
10 very frustrated would be an under statement. He was very
11 frustrated that he was not getting the same treatment as
12 his co-defendant and he and I talked at length about how
13 everybody's different, situations are different, people
14 are different, and not everybody is treated exactly the
15 same in court, that justice is, frankly, rather
16 personalized.

17 Q. Okay.

18 MS. FENNEL: I think those are all the questions
19 I have. Thank you.

20 THE COURT: Any redirect?

21 MS. JAMESON: No, Your Honor.

22 THE COURT: Okay. Thank you, Mr. Thompson.

23 THE WITNESS: Yes, sir.

24 (Witness excused.)

25 THE COURT: Solicitor, you can call your next

1 witness.

2 MS. JAMESON: No additional witnesses.

3 The State would like to make an argument if Your
4 Honor will entertain it.

5 THE COURT: I'm happy to hear from the State and
6 then I'm happy to hear from Ms. Fennell.

7 MS. JAMESON: Thank you, Your Honor.

8 The -- the State, for the same reasons in our
9 pre-trial motion to dismiss, moves to have relief denied
10 as to the first two allegations for leave cannot be
11 granted as a matter of law as to these allegations. It
12 is clear from the face of both of these indictments,
13 they are proper notice documents as required under
14 Gentry and its progeny and because they are facially
15 valid indictments, any pre-trial motion to quash would
16 have been improper. Case law is very clear on that.
17 We recently had the South Carolina Supreme Court of State
18 v. Massey two years ago, which, again, reminds the Bench
19 and Bar that a pre-trial motion to quash a facially val
20 -- valid indictment based on facts is not proper.

21 So, first, as to the first degree burglary indictment
22 to which he pled, that August indictment, it clearly
23 states the correct statute which he was indicted under,
24 Code Section 16-11-311, and so, therefore, would be
25 valid on its face pursuant to State v. Nichols and other

1 such cases, but it goes beyond that and indicates that
2 he is being enhanced to first degree burglary based on
3 his two or more prior burglary convictions. This is
4 abundantly clear that it is a proper facially valid
5 indictment and -- and this claim should be denied and
6 dismissed as a matter of law. He did not plead to the
7 March indictment, but even if he had that still would
8 not be a sufficient legal argument on which relief
9 could be granted. Again, he did not plead guilty to
10 this one, but any dispute regarding time would have been
11 a factual challenge not appropriate for a pre-trial
12 motion to quash this facially valid indictment pursuant
13 to Massey. It appropriately cites the statute under
14 which he was indicted and so as a matter of law the
15 first issue should be denied.

16 As to the second issue with the purported date
17 discrepancies, both the indictments from the grand jury
18 for grand larceny and first degree burglary were properly
19 issued by a grand jury on the exact date which the chief
20 administrative judge ordered that the grand jury convene.
21 He had express authority to do so and pursuant to
22 Respondent's Exhibit 1, particularly I would draw the
23 Court's attention to Number 9 of that litany of things
24 that is the responsibility and authority of the chief
25 administrative judge. Court Administration advises and

1 encourages chief administrative judges to set these terms
2 outside the grand jury terms. That is what both Judge
3 Early and Judge Keesley did here. They consistently set
4 these terms -- or the grand jury dates on the Thursday
5 before the General Sessions term the next week. It is
6 abundantly clear from Respondent's exhibits that these
7 are facially valid indictments and no motion to quash
8 would have been warranted in these circumstances and
9 so based on that as a matter of law counsel was not
10 deficient.

11 Moreover, Applicant cannot show any prejudice,
12 and I want to draw the Court's attention to Code
13 Section 14-7-1140, which indicates that Applicant cannot
14 establish prejudice because he was not injured by any
15 purported irregularity here. It's the State position
16 that there is no irregularity based on fact or date as
17 to either of these indictments, so counsel wasn't
18 deficient, but, moreover, Applicant cannot establish any
19 prejudice, so as a matter of law these two allegations
20 must be denied and dismissed.

21 As to the remaining claims, the third claim that
22 Applicant would receive a 10-year sentence, there is no
23 credible testimony that Applicant was ever told he would
24 receive a three -- a 10-year sentence. Applicant himself
25 testified that counsel at best told him he would ask for

1 fifteen years to burg second degree. There was no
2 testimony from Applicant or his attorney that he was
3 ever told that he would get a 10-year sentence. When
4 questioned, Applicant's aunt indicated that she was told
5 by Mr. Thompson he would ask the solicitor to entertain
6 a 10-year sentence, never that there was a promise or an
7 agreement, and Applicant himself testified that the best
8 he hoped for was a 15-year sentence, so there is no
9 evidence to support that allegation.

10 Counsel was adamant and consistent that he never
11 promised Mr. Prior he would receive any particular
12 sentence. He properly advised Mr. Prior that the
13 mandatory minimum was fifteen years up to life
14 imprisonment and that he was pleading straight up
15 without any negotiation or recommendation from the State
16 as to sentencing. That credible testimony is buttressed
17 by the plea transcript we have here where Judge Keesley
18 in detail in a thorough plea colloquy goes over with
19 Mr. Prior does he understand that he's pleading to first
20 degree burglary, he indicates yes. Does he understand
21 that the mandatory minimum for first degree burglary
22 is fifteen years up to life imprisonment, he, again,
23 indicates yes. Judge Keesley then re -- reviews with
24 him whether there's any sort of agreement or promise
25 and Mr. Prior indicates no, so the record is abundantly

1 clear that there is no testimony to support or evidence
2 to support this allegation and the State would ask
3 that it be denied and dismissed as Mr. Prior has not
4 established deficiency, nor has he established any
5 prejudice.

6 And as to the final allegation that his plea was
7 involuntary based on numerous medications that he was
8 on at the time of this plea, the record also does not
9 support granting relief as to this allegation. If you
10 look at the -- the plea transcript, it starts with a
11 Blair hearing wherein Judge Keesley fully questions
12 Mr. Prior and counsel regarding his competency, discusses
13 that the Department of Mental Health evaluated him for
14 competency and criminal responsibility and that he was
15 deemed competent and criminally responsible. He was
16 under -- he knew right from wrong. He could not meet
17 McNaughton standard either.

18 Moreover, Mr. Prior expressly tells the Court that
19 he is on medication which makes him understand and
20 think more clearly and that he cannot think clearly or
21 understand without this medication, so his -- this
22 allegation is directly rebutted by the plea transcript.

23 Counsel also testified credibly that he was able
24 to communicate with Mr. Prior and he had no reason to
25 believe he was incompetent. I think the plea transcript

1 supports that he was evaluated out of an abundance of
2 caution based on his prior drug use and significant
3 mental health history, which echoes what Judge Keesley
4 was told during the plea, so there is no credible
5 evidence to support that allegation either. The State's
6 position is this was a validly entered, knowing,
7 voluntary and intelligent plea by Mr. Prior with the
8 advice of competent counsel, and so we'd ask you to deny
9 ground number four and deny the application in full.

10 THE COURT: All right.

11 And, Ms. Fennell, I'm happy to hear from you.

12 MS. FENNEL: Thank you, Your Honor.

13 We believe that Applicant has met his burden of
14 proof to establish that he is entitled to the relief
15 that he seeks. The testimony demonstrates that Mr. Prior
16 was taking numerous medications, had extens -- extensive
17 mental -- mental health background dating back to his
18 childhood. He was not -- he testified that he -- he
19 didn't fully understand what sentence he could receive.
20 He -- he didn't even understand the elements of first --
21 first degree burglary for which he was being charged and
22 which he ultimately plead guilty to. I think based on
23 that -- and even in the transcript of the plea hearing
24 that day, Mr. Prior was not able to fully recite all of
25 the medications he was taking that day. All of those

1 factors indicate that his -- his guilty plea was not
2 knowingly and intelligently made at that point in time.

3 Likewise, as far as the -- the indictment
4 deficiency, I mean, Mr. Prior testified today that he
5 still -- until, you know, he was informed by me, that
6 he did not understand why -- what the elements of the
7 burglary first charge were against him, that it was
8 based on prior convictions. He was never -- that was
9 something that was never discussed with him.

10 He also testified that -- as far as going into
11 his understanding of the proceedings and -- and what it
12 would mean to plead guilty on that day, he testified that
13 Mr. Hayes accompanied Mr. Thompson to discuss that -- to
14 discuss and essentially from what Mr. Prior says convince
15 him to enter into a guilty plea that day. I think that
16 also supports his allegation that this was not knowingly
17 and voluntarily entered into.

18 I think all of the testimony taken as a whole
19 demonstrate that Mr. Prior did not truly understand the
20 implications of his actions and the result of entering
21 into a guilty plea.

22 THE COURT: All right.

23 Well, you know, Mr. Prior, I'm -- I'm gonna tell
24 you, sir, you -- you know, you indicated when you talked
25 earlier that you were gonna go or you tried to check

1 yourself in to get some help and -- and I forget what
2 organization, but they sort of put you back out on the
3 street and didn't provide you with the assistance that
4 you needed and that you reached out and that you had a
5 problem for the vast majority of your life, and I think
6 that's abundantly clear, sir.

7 And I will also tell you, and you know this, you're
8 -- you're very fortunate to have your aunt be here today.
9 You're very fortunate to have your aunt provide the
10 testimony and -- and to stand up for you and to -- and
11 to be there to help you, and I know you're -- I know
12 you're grateful for that.

13 My job today is to, quite frankly, evaluate this
14 plea and the conduct of your lawyer and the allegations
15 that you brought up through your lawyer, and what I
16 will tell you is as it relates to the State's motion to
17 dismiss on the documents, having now heard the evidence,
18 I would concur that that is appropriate.

19 I do believe that the documents -- that the
20 evidence today, sir, the documents -- the evidence
21 presented today, and understanding that in this case
22 unlike -- Mr. Prior, I want you to know unlike a trial
23 when you didn't have -- or before trial you're presumed
24 innocent and you have no burden, today the burden is on
25 -- on you, the Applicant. What I would say is having

1 looked at these documents and having heard the testimony,
2 I do believe that the documents were correct facially on
3 their face. I think that the documents as it relates to
4 the -- I think that the documents as it relates to the
5 charges and putting you on notice, sir, I understand
6 your position, but, again, I've got to look to your
7 carrying the burden of proof and I don't know that
8 you've carried the burden of proof, and so I believe
9 that -- I think that the documents were sufficient to
10 put you on notice, sir, that you were facing a burglary
11 first charge and, quite frankly, I think the evidence
12 today -- one thing is very clear, I think not only
13 today, but also at the time, you understand the difference
14 between the burglary first charge and the burg second
15 non-violent, and the significance that -- as it relates
16 to the difference between those two.

17 And, you know, why the solicitor didn't do or
18 didn't offer or -- or, you know, quite frankly, I don't
19 know that that's really for today, I don't know that,
20 but as it relates to that I think that the evidence is
21 that they were facially correct, that you had the notice
22 to put you and make you aware of the charges that you
23 were facing. I also don't think -- even if they were
24 not, I don't know that you sustained any prejudice.

25 As it relates to the dates, the second argument,

1 I think, or one of the arguments the State made as it
2 relates to the dismissal, quite frankly, I believe
3 that was explained away, but at the same time, I'll be
4 honest, I think the burden is on the defense -- or on
5 the Applicant to prove that there was a problem with
6 the dates and I didn't -- I just didn't hear a lot as
7 it relates to that, and so to that extent based on the
8 evidence that the State has presented I believe that
9 any discrepancy concerning the dates has been adequately
10 explained, so I will conclude that the motion, now having
11 heard the evidence, having had the State renew their
12 motion on the documents to dismiss for the -- those
13 initial causes, I would grant that.

14 As it relates to -- as it relates to the other
15 matters, I think that the -- I think the Applicant has
16 fallen short of meeting the burden to show basically
17 that counsel's conduct to -- so undermined the proper
18 functioning of the adversarial process that it can't be
19 relied upon as a just result, that the Applicant must
20 show a reasonable probability that but for counsel's
21 error he would not have pled guilty and would have
22 insisted on a jury trial and must prove that his advice
23 was not within the competence demanded of attorneys in
24 a criminal case.

25 Having heard the testimony and having examined

1 the plea transcript, and I want you to know, Mr. Prior,
2 I -- I -- actually I reviewed this file in its entirety
3 several days ago, sir, and this case was postponed for
4 any number reasons until today, I reviewed it again this
5 morning, so I'm very familiar with the transcript in
6 addition to the testimony, and I believe that you've
7 fallen short of -- of the burden today as it relates to
8 those matters.

9 And, finally, in regards to the medical, I agree
10 with your lawyer. One thing he did say, and I think you
11 would agree, too, sir, I don't want to speak for you,
12 but what I would tell you is it's frustrating because
13 you've been diagnosed with a mental -- with a mental
14 illness or slash condition for which the government,
15 Social Security, in fact, has determined that you're
16 eligible for benefits and you have that issue, but I
17 think your lawyer is right, you have been evaluated,
18 which is the steps that he would take and request that
19 you get evaluated. I -- I would have done the same
20 thing if I was practicing law, but that evaluation came
21 back and said that you were competent and in a position
22 to -- to know what you were doing and so for that reason
23 I think he is correct, that the only issues -- the only
24 issue really as relates to your mental condition would
25 go to mitigation in this case. You know, could that be

1 different? Yeah, it could be different if the report
2 had been different, but it wasn't.

3 Now, finally, I will also say, sir, that -- that
4 as it relates to your not being able to understand what
5 you were doing the day of the plea, you know, I'll just
6 be honest. I heard testimony, quite frankly, that was
7 in -- I heard you testify in pretty good detail as to
8 what took place that day in the court -- in the
9 courthouse before the actual plea, conversations that
10 you had with your lawyer and with the lawyer for the
11 co-defendant, whose name escapes me right now, but you
12 -- you had good recollection. I think you knew what
13 you wanted, but they weren't offering it, and to that
14 extent I also reviewed the transcript and I think that
15 you were aware of what was going on, and so for those
16 reasons I -- I think that you freely and voluntarily
17 entered into this plea and were aware of the
18 circumstances and the significance and so I think that
19 you've failed to carry your burden and I think that your
20 -- I think that your lawyer did an adequate job as it
21 relates to representing and explaining to you, but more
22 to the point you did a good job explaining to the Court.
23 This was a 19-page transcript. I want to say four pages
24 of this transcript was him explaining in detail the
25 mitigating factors to the judge as it relates to your

1 -- as it relates to your mental health condition.

2 So with those things said, I'm glad, sir -- I'm
3 gonna have to deny your request for relief. I'm --
4 I'm glad your vision is better, I'm glad that your
5 medication has been adjusted such that you are able to
6 see better and -- and it certainly sounds like from a
7 mental health condition is difficult in the situation
8 you find yourself in, it sounds like you've got new
9 doctor perhaps they have you going to and -- and you're
10 on a better regimen of medication. So for those reasons
11 I'm gonna deny. I wish you luck, sir.

12 I thank everybody for the information they've
13 presented.

14 (Whereupon, the proceedings were concluded at
15 11:45 AM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on the 4th day of February, 2022, recorded via WebEx
Videoconferencing, and transcribed by me to the best of
my ability.

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conducted remotely via videoconferencing.

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

September 12, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Ashley Prior, SCDC # 378681)

Case No.: 2019-CP-02-02013

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

This matter comes before this Court by way of an application for post-conviction relief filed by Applicant Ashley Prior on August 8, 2019, asserting various claims of ineffective assistance of counsel and involuntary guilty plea. In response, Respondent the State of South Carolina filed a return and requested an evidentiary hearing to resolve the claims set forth in the application. Thereafter, Applicant, through counsel Nancy C. Fennell, served an amended application on Respondent with specific claims of ineffective assistance of counsel and involuntary guilty plea.

An evidentiary hearing on this action was convened February 4, 2022, before this Court utilizing the virtual courtroom on the Cisco WebEx platform. Applicant appeared virtually along with his counsel. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. Applicant proceeded forward on the claims raised in his amended application. This Court heard testimony from Applicant, his aunt, and plea counsel, Barry L. Thompson, II.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any

constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismissed this action with prejudice. Specific findings of fact and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 are set forth below:

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently incarcerated within the South Carolina Department of Corrections (SCDC) following his guilty plea and sentence in Aiken County. On February 28, 2015, Applicant and a co-defendant broke into a home in Aiken County and stole firearms, money, and other items of personal property. Applicant was not immediately identified as a suspect in this burglary. He later committed another, unrelated burglary, and as a result, pled guilty and was sentenced to SCDC for that unrelated burglary. While in SCDC, Applicant was identified as a suspect in this underlying burglary based on a DNA match from blood recovered at the scene of the burglary. Applicant gave a statement admitting to his involvement in the burglary and his co-defendant also implicated him. Applicant has five prior burglar convictions.

Applicant originally indicted by the Aiken County Grand Jury in March 2018 for first-degree burglary(2018-GS-02-0531) and grand larceny (2018-GS-02-0530). In August of 2018, the Aiken County Grand Jury issued an amended indictment for first-degree burglary (2018-GS-02-1898) based on his prior burglary convictions.¹

By order of the court, Applicant was evaluated for competency and criminal responsibility and found to be both competent and criminally responsible.

Assistant Public Defender Barry L. Thompson, II, of the Second Circuit Public Defender's

¹ The original burglary indictment from the March 2018 term was nolle prossed after Applicant's plea.

Office represented Applicant. Assistant Solicitor Heather DeLoach of the Second Circuit Solicitor's Office prosecuted the case.

On August 20, 2018, Applicant appeared before the Honorable William P. Keesley, circuit court judge and pled guilty as indicted to first-degree burglary and grand larceny without any negotiations or recommendations. Following a thorough plea colloquy with Applicant, Judge Keesley determined Applicant's pleas were knowing, voluntary, and intelligently entered, accepted his pleas, and sentenced him to twenty years of imprisonment for first-degree burglary and five years of imprisonment for grand larceny, with both sentences to be served currently.

On August 23, 2018, Applicant, though counsel Thompson, filed a motion to reconsider his sentence, seeking for his sentences to run concurrently with his active sentences for the unrelated burglary for which he was in SCDC at the time of his plea and to give him credit for the time he had been in SCDC on the unrelated burglary. On January 10, 2019, Applicant, though counsel Thompson, filed a memorandum in support of his motion to reconsider his sentence. The State consented to this relief, and on February 13, 2019, Judge Keesley entered an order granting Applicant credit for the entire time he was in SCDC for the unrelated burglary.

Thereafter, Applicant filed a timely notice of appeal, which was subsequently dismissed for failing to provide a sufficient explanation of a preserved issue for appellate review from his guilty plea pursuant to Rule 203(d)(1)(B)(iv), SCACR. The remittitur was issued on May 28, 2019.

Applicant then initiated this action with the filing of his *pro se* application for post-conviction relief on August 8, 2019.

CURRENT PROCEEDING

In his *pro se* application for post-conviction relief, Applicant asserted the following

grounds for relief:

1. -involuntary guilty plea based on a lack of competency and an insufficient indictment for failing to state the crime was committed at night
2. -ineffective assistance of counsel for failing to object to the indictment based on insufficiency of the indictment for failing to adequately put him on notice of the time of the crime

As relief sought, Applicant stated he was seeking, “a vacation of conviction and sentence of the same sentence that [his] co-defendant got.”

Nancy C. Fennell, Esquire, was thereafter appointed by the Aiken County Clerk of Court to represent Applicant.

In response to the application, Respondent filed a return and requested an evidentiary hearing to resolve these claims. Attached to this return and before this Court are the records from the Aiken County Clerk of Court regarding Applicant’s underlying general sessions matter, the transcript from Applicant’s guilty plea proceeding, the records from Applicant’s direct appeal, Applicant’s inmate records from the South Carolina Department of Corrections, and the records from this current action.

On January 24, 2022, Applicant, through counsel Fennell, filed an amended application, setting forth the following additional claims of ineffective assistance of counsel:

1. Failing to move to quash the indictment for first-degree burglary for failing to inform Applicant of the time element or being based on prior convictions
2. Failing to move to quash both the burglary and grand larceny indictments for discrepancies in the dates on the indictments
3. Advising Applicant he would receive a ten-year sentence, which also rendered his plea involuntary
4. Involuntary guilty plea based on the numerous medications he was on at the time of his plea, which he asserts rendered him incompetent

A hearing on was convened February 4, 2022, before this Court. At the hearing, Applicant proceeded forward on the claims set forth in his amended application. At the start of the hearing, Respondent admitted five exhibits into evidence with the consent of the Applicant:

1. Administrative Order from February 4, 2011, signed by then-Chief Justice Toal, outlining the duties and responsibilities of Chief Administrative Judges in Circuit Court
2. Administrative Order from then-Chief Administrative Judge Early dated October 31, 2017, setting the dates for the Aiken County Grand Jury for the first 6 months of 2018
3. Administrative Order from then-Chief Administrative Judge Keesely dated April 23, 2018, setting the dates for the Aiken County Grand Jury for the last 6 months of 2018
4. Second Circuit Terms for March 2018 from the Judicial Department Website
5. Second Circuit Terms for August 2018 from the Judicial Department Website

At the start of the hearing, Respondent asked this Court to take judicial notice of the following undisputed facts based on these five exhibits:

- By order of the Supreme Court through the Chief Justice, the Chief Administrative Judge for the 2nd Circuit was responsible for setting the dates the grand jury would convene;
- By order of the Chief Administrative Judge, the Aiken Grand Jury convened on March 8, 2018;
- By order of the Chief Administrative Judge, the Aiken Grand Jury convened on August 2, 2018;
- Court Administration set a General Sessions term for Aiken County for the week of March 12, 2018; and
- Court Administration set a General Sessions term for Aiken County for the week of August 6, 2018.

In response, this Court declined to formally take judicial notice but indicated that the documents are clear and the contents of the documents are not in dispute.

Respondent then moved to dismiss the allegations pertaining to Applicant's indictments for failing to state a claim upon which relief can be granted as a matter of fact or law. Respondent argued that it was clear from the face of the indictments that the indictments are proper notice documents as required by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Respondent further argued that because the indictments are facially valid, any pre-trial motion to quash based on would have been improper, as set forth in State v. Massey, 430 SC 349, 844 S.E.2d 667 (2020).

As to the first claim regarding the first-degree burglary indictment, Respondent argued the first-degree burglary indictment to which Applicant pled guilty (the August 2018 indictment), clearly states the correct statute under which he was indicted (SC Code Ann. § 16-11-0311) and clearly indicates the enhancement is based on Applicant's two or more prior burglary convictions. Respondent argued that while it was not the indictment to which he pled guilty and was sentenced, the March 2018 first-degree burglary indictment that was dismissed is still legally sufficient because it properly gives Applicant notice of the crime for which he was charged and any challenge based on the time of day would be a factual challenge not appropriate for a pre-trial motion to quash a facially valid indictment pursuant to Massey. Accordingly, Respondent argued the first-degree burglary indictment was proper as a matter of law and this claim should be dismissed.

As to the second claim regarding purported date discrepancies in both the first-degree burglary and grand larceny indictments, Respondent argued both indictments were properly issued by the Grand Jury on the date which the Aiken County Grand Jury convened pursuant to Administrative Orders issued by the Chief Administrative Judge for the 2nd Circuit, who had the

express authority and responsibility to set the dates for the Grand Jury as determined by the Chief Justice. Respondent argued that pursuant to Section 14-7-1140, Applicant cannot establish prejudice because he was not injured by any purported irregularity.

This Court denied Respondent's motion for summary dismissal of the first two claims. Testimony was taken from Applicant, his aunt Jackie Bartley, and plea counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged various claims of ineffective assistance of plea counsel and asserts that as a result of counsel's purported errors, he is entitled to have his guilty plea undone and proceed back to the court of general sessions for a new disposition of his case.

This Court has thoroughly reviewed the record in its entirety, including the plea transcript, the appellate records, and the records for this current action. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Based on this comprehensive review, this Court finds Applicant has failed to meet his burden of proof as to any of his allegations and finds this action must be denied and dismissed with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Plea Counsel

Applicant's first three claims for relief as set forth in his amended application pertain to ineffective assistance of counsel. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745

S.E.2d 97, 101 (2013). Ordinarily, post-conviction relief allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in post-conviction relief actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(c), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably

competent attorney.” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong

presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed at the time of counsel's conduct." Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Id. The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." Id.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," **not** whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify

reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59. This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. *Id.* In determining

whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Id. at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” Id. at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. Id. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

This Court finds Applicant cannot meet his burden as to any of his claims of ineffective assistance of counsel. Each specific claim is addressed below:

Ineffective assistance of counsel for failure to move to quash the burglary indictment

As his first claim for relief, Applicant asserts plea counsel was ineffective for failing to move to quash his first-degree burglary indictment. In support of this allegation, Applicant asserts that the first indictment for first-degree burglary, issued in March 2018, was improper because it did not properly state why the charge was enhanced to first-degree burglary. Applicant stated he first heard that it was based on the theft of weapons, and then he later heard it was based on the time of day (nighttime), and then he was eventually told it was based on his prior record. He testified he did not discuss his prior burglary convictions or his prior record with counsel, despite

acknowledging that he was presently incarcerated in SCDC for burglary convictions when counsel came to visit him at his SCDC institution. He testified he and counsel never discussed how his prior burglary convictions would impact his pending charges. He testified he never discussed any issues with the indictments with counsel and did not ask counsel to move to quash or otherwise challenge the indictments because he did not know there were problems with the indictments until his aunt sent him the March 2018 indictment while he was in SCDC. He testified his poor eyesight prevented him from ever reading the indictments prior to his plea. He testified he did not know that he was charged with first-degree burglary based on his prior record until his current PCR counsel explained this to him.

On cross-examination, Applicant acknowledge he does have more than two prior burglary convictions, was incarcerated in SCDC for a burglary conviction at the time of this plea, and counsel was aware of his prior record. He testified he is not sure of the facts and circumstances of the burglary because he was so drunk that he "blacked out" and cannot remember the crime.

Counsel testified that he reviewed the indictments with Applicant as well as discussed the elements of first-degree burglary. Counsel testified he specifically discussed the ways in which a burglary charge can be enhanced to first-degree burglary, including the involvement of weapons, the commission at nighttime, or a prior record of two or more burglary convictions. He testified he explained to Applicant that he fit two of these criteria: the theft of weapons from the home and a prior record. He explained to Applicant that he was properly indicted for first-degree burglary based on these two things. He testified he does not believe there were any challenges to the first-degree burglary indictment and that the indictment was facially valid with proper notice of the crime and elements.

After review of the record and the testimony presented, this Court agrees with Respondent that this claim must fail as a matter of law. A review of the first-degree burglary indictments reveal that they are facially valid indictments that put Applicant on notice of the charged offense and comport with Gentry. This Court notes that Applicant pled guilty to the August 2018 first-degree burglary indictment that clearly states, “the defendant has a prior record of two or more convictions for burglary or housebreaking or a combination of both, all in violation of § 16-11-311, Code of Lawes of South Carolina (1967), as amended.” This indictment is facially valid and counsel had no legal basis to move to quash this indictment. See Massey, 430 SC 349, 844 S.E.2d 667 (discussing that a trial court has no authority to grant a pre-trial motion to quash a facially valid indictment based on the sufficiency of evidence). This allegation fails as a matter of law.

Ineffective assistance of counsel for failure to move to quash both indictments based on dates

As his second claim for relief, Applicant asserts plea counsel was ineffective for failing to move to quash his both his first-degree burglary indictments and his grand larceny indictment based on purported date discrepancies. Specifically, Applicant argues that the face of the indictments list action by the grand jury on one date (March 8, 2018 and August 2, 2018) and the inside of the indictment states a different date for the term of general sessions the following week (March 12, 2018 and August 6, 2018). Applicant asserts this inconsistency of dates renders the indictments invalid and counsel should have moved to suppress the indictments on this ground.

Respondent presented five exhibits in response to this allegation, without objection from Applicant, that directly refute this allegation. Respondent’s Ex. No. 1 is clear that the Chief Administrative Judge for a circuit is responsible for setting the terms the grand jury will convened and advises judges to maximum court time by setting these grand jury dates outside the terms of

general sessions. Acting with this directive, the Chief Administrative Judges for the 2nd Circuit properly issued orders setting the dates to grand jury would convene, as set forth in Respondent's Ex. No. 2 and No. 3, including March 8, 2018, and August 2, 2028. Moreover, Respondent's Ex. No. 4 and No. 5 clearly establish that terms for general sessions court were the following weeks, starting on March 12, 2018, and August 6, 2018, as stated in Applicant's indictments.

After a thorough review of the record, including the evidence presented at the hearing, this Court agrees with Respondent that these are facially valid indictments, and this claim must fail as a matter of law.

Ineffective assistance of counsel for advising Applicant he would receive a ten-year sentence

As his third claim for relief, Applicant asserts plea counsel was ineffective for advising him he would receive a ten-year sentence in exchange for his guilty plea. At the hearing, Applicant testified inconsistently as to what type of sentence he would receive, ranging from a "lesser sentence like [his] co-defendant" to an assertion that he would get a fifteen-year sentence to a non-violent crime. He also testified at certain points that he been informed he would receive a six-year sentence if he pled guilty. On cross-examination, he acknowledged he knew the mandatory minimum sentence he faced for first-degree burglary, as he told the plea court during his plea.

Applicant also presented his aunt, who testified that based on her conversations with counsel, she believed Applicant would receive a ten-year sentence if he pled guilty. She clarified that counsel stated he would ask for a ten-year sentence but never gave assurances that Applicant would receive a ten-year sentence.

Counsel testified adamantly that he never advised Applicant, his aunt, or anyone else that he would receive a ten-year sentence in exchange for his guilty plea. He testified he explained to

Applicant that he was facing a mandatory minimum sentence of fifteen years of imprisonment if he pled guilty and that he would receive at least a fifteen-year sentence. He testified he had previously attempted to negotiate a plea offer to a lesser-included offense that would lessen Applicant's sentencing exposure but that the solicitor's office refused to offer Applicant any less than first-degree burglary based on the facts of the case, the overwhelming evidence of his guilt, and his significant prior record including numerous other burglaries. He testified that he advised Applicant he would argue Applicant should receive the mandatory minimum sentence of fifteen years but he could not guarantee even a fifteen-year sentence. He testified he presented mitigation on Applicant's behalf in support of a mandatory minimum sentence, including significant physical and mental health concerns and Applicant's troubled childhood.

This Court finds Applicant has failed to meet his burden of proof as to this allegation. Initially, this Court finds that Applicant provided inconsistent, non-credible testimony, ranging from promises that he would receive a six-year sentence up to a fifteen-year sentence. This Court finds that Counsel provided credible testimony that he properly advised Applicant as to the sentencing exposure of a mandatory minimum sentence of at least fifteen years of imprisonment for first-degree burglary. The record supports counsel's credible testimony, as Applicant told the plea court that he understood he would receive a sentence of "not less than 15 years and up to life in prison." (Plea Tr. p. 16). This Court finds that Counsel provided correct, competent advice as to the particular sentence Applicant may receive, and that Applicant entered a knowing, voluntary, and intelligent plea based on this advice. This allegation is denied and dismissed with prejudice.

Involuntary Plea Based on Numerous Medications

As his final claim for relief, Applicant asserts his plea was rendered incompetently based

on numerous medications that prevented him from understanding what he was doing. The record and evidence presented do not support such a claim.

In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing

State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 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)). "In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing." Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In this case, the record refutes any allegation Applicant did not knowingly, voluntarily, and intelligently enter his guilty plea. At the start of Applicant's plea proceeding, Judge Keesley conducted a thorough colloquy with Applicant, including a Blair hearing to evaluate Applicant's competency. (Plea Tr. 3-6). During this colloquy, Judge Keesley specifically asked Applicant if he was taking any medications, and when Applicant responded affirmatively, Judge Keesley conducted a further inquiry to determine what medications Applicant was taking and the effect of those medications. (Plea Tr. 4-5). Applicant informed the court that his medications "help[ed]" him and that he could not remember what happens when he did not take his medicine. (Plea Tr. 5). Judge Keesley found Applicant was competent to "make rational choices" regarding his charges. (Plea Tr. 6). Throughout the rest of the plea colloquy, Applicant responded appropriately to the court's questions, affirmed that he understood the elements of the offenses, the potential sentences,

and affirmed numerous times that he wanted to proceed forward with his plea. The record strongly supports a conclusion that Applicant entered a knowing, voluntary, and intelligent plea.

The testimony from the evidentiary hearing also supports that Applicant understood his plea and was competent to enter his plea. Applicant testified he told counsel he was on numerous medications, much like what Applicant told the plea court. Applicant recalled his guilty plea proceeding and his conversations with the court regarding mental health and competency. Counsel testified he investigated Applicant's prior mental health history, and, as a result of this investigation, determined Applicant would be able to present this evidence in mitigation but that it was not a valid defense to the crimes. He testified that Applicant was evaluated for competency and criminal responsibility and found both competent and criminally responsible. He testified he made the plea court aware of the mental health concerns during the plea and used this information in sentence mitigation. This testimony supports a conclusion that Applicant entered a knowing, intelligent, and voluntary plea.

This Court finds Applicant has failed to meet his burden of establishing any constitutional ineffectiveness regarding this allegation. Additionally, this Court finds Applicant's guilty plea was entered knowingly, intelligently, freely, and voluntarily. This allegation is denied and dismissed with prejudice.

CONCLUSION

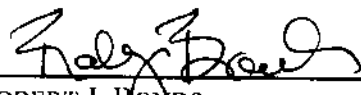
Based on all the foregoing, this Court finds Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

This Court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant Ashley Prior shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 11 day of April, 2022.


 ROBERT J. BONDS
 Presiding Judge
 Second Judicial Circuit

Who, South Carolina

2011-02-04-01 (Amended by Order 2019-06-28-02)

The Supreme Court of South Carolina

ORDER

The Order dated January 13, 2010 setting forth the authority of circuit judges designated as chief judges for administrative purposes is amended to read as follows:

Pursuant to the provisions of S. C. CONST. Art. V, §4,

IT IS ORDERED that the authority of a circuit judge designated as a chief judge for administrative purposes shall include, but not be limited to, the following administrative purposes and acts:

1. To call, or cause to be called, meetings of the County Bar Association for the purpose of preparing civil and criminal rosters and for such other purposes as he or she shall deem necessary. In any circuit with two chief judges for administrative purposes, each chief judge may call, or cause to be called, these meetings for the court for which he or she has been designated chief judge.

2. To set jury and nonjury trial rosters and/or dockets for all civil terms of circuit court and to designate which presiding judge shall hear each roster or rosters. In addition, the chief judge for administrative purposes shall set the common pleas jury and nonjury trial roster for those terms to be established during the first month following this six month period.

To set hearings on bonds, motions, probation revocations and other nonjury general sessions matters and to designate which presiding judge shall hear these matters.

To regularly review, with the assistance of the clerk of court, all common pleas cases to determine which, if any, should appropriately be transferred to the magistrate court for disposition.

In any circuit with two chief judges for administrative purposes, each chief judge shall assume responsibility for setting rosters and assigning judges to those rosters for the court for which he or she has been designated chief judge.

3. To assist the clerk of court in fulfilling his or her responsibility pursuant to S.C. Code Ann. §14-17-210(1976) to assign courtrooms and offices to the presiding circuit and family court judges.

4. To designate the hours of court for each term of circuit court. In those circuits with two chief judges for administrative purposes, this responsibility shall be assumed by the chief judge for administrative purposes for the court of common pleas.

5. To direct and supervise the activities of all circuit court secretaries in the circuit to the extent that it does not unreasonably conflict with their other judicial duties. In those circuits with two chief judges for administrative purposes, this responsibility shall be assumed by the chief judge for administrative purposes for the court of common pleas.

6. To direct the clerks of court and presiding judges to keep and maintain such records as he or she shall direct, upon the approval of the Chief Justice, of the disposition of cases during each term of the circuit court, both civil and criminal. In those circuits with two chief judges for administrative purposes, each chief judge shall assume this responsibility for the court for which he or she has been designated as chief judge.

7. To grant continuances when requested by counsel for good and sufficient legal cause stated in writing prior to the commencement of any term of circuit court, both civil and criminal. In those circuits with two chief judges for administrative purposes, each chief judge shall assume this responsibility for the court for which he or she has been designated as chief judge.

8. To resolve any scheduling and other administrative problems which may arise from time to time in conducting concurrent terms of circuit court, both civil and criminal. Because of the large number of jurors summoned during the juror qualification and selection phases of capital cases and other complex or high profile criminal and civil cases, the chief judge, in coordination with the clerk of court, shall

make reasonable accommodations by converting other jury terms to non-jury terms in order to eliminate any undue burden on courthouse facilities and staff. In those circuits with two chief judges, this responsibility shall be assumed by the chief judge for administrative purposes for the court of common pleas.

9. To consult with the circuit solicitor as soon after the effective date of this order to determine the dates for the convening of the grand jury in the various counties within the judicial circuit for the ensuing six-month period. Where feasible, the grand jury shall be convened at times other than the opening day of a term of the court of general sessions in order to maximize the effective use of each term of the court of general sessions. The chief judge shall issue an order scheduling such terms of the grand jury in each county within his circuit, including the opening day of a term of general sessions, for the ensuing six-month period. A copy of such order is to be filed with the Office of South Carolina Court Administration. Notwithstanding the foregoing, the chief judge for administrative purposes may convene the grand jury at other times during the six-month period as the public interest may necessitate, with a copy of each such order filed with the office of South Carolina Court Administration. In those circuits with two chief judges for administrative purposes, this responsibility shall be assumed by the chief judge for administrative purposes for the court of general sessions.

10. Cases stricken from the file book under Rule 40(j), SCRCP, may only be restored by the chief judge for administrative purposes in each judicial circuit, or by the chief judge for administrative purposes for the court of common pleas in those circuits with two chief judges.

11. To maintain a current record of all scheduling orders issued in the circuit and to provide the record of scheduling orders to the chief judge for administrative purposes subsequently assigned to the circuit.

12. To consider requests to be relieved of appointments to serve as counsel or guardian ad litem for indigents pursuant to Rule 608(f)(8), SCACR.

13. To monitor matters referred to masters-in-equity or special referees to insure timely disposition of the matters. Masters-in-equity and special referees shall continue to have exclusive jurisdiction over the referred matters until rendering a final decision or referring a matter back to the circuit court.

14. To perform such other administrative duties as shall be assigned from time to time by the Chief Justice.

15. Except as specifically authorized herein, no administrative rule affecting the operation of the courts shall be adopted without the prior approval of the Chief Justice.

16. To handle matters brought within the circuit pursuant to federal and state statutes regulating the interception of wire, electronic, or oral communications, sexual exploitation, or cyber crime.

17. As the Presiding Judge of the State Grand Jury, the Chief Judge (General Sessions) of the Fifth Judicial Circuit shall have statewide jurisdiction over matters brought pursuant to federal and state statutes regulating the interception of wire, electronic or oral communications, sexual exploitation, or cyber crime. In the absence or unavailability of the Chief Judge (General Sessions) of the Fifth Judicial Circuit, the Chief Judge (Common Pleas) of the Fifth Judicial Circuit is hereby designated as the Acting Chief Judge (General Sessions) of the Fifth Judicial Circuit and the Acting Presiding Judge of the State Grand Jury.

IT IS FURTHER ORDERED that when a chief judge for administrative purposes has a conflict in a matter or proceeding and is thereby prevented from performing these duties in a matter or proceeding reserved to the chief judge for administrative purposes, the following procedures shall be followed.

a. In those circuits with one chief administrative judge, the matter or proceeding shall be referred to the Chief Justice for assignment to the chief administrative judge of an adjoining circuit.

b. In those circuits with two chief administrative judges, the matter or proceeding shall be referred to the other chief administrative judge. If the other chief administrative judge is also disqualified, the matter or proceeding shall be referred to the Chief Justice for assignment to the chief administrative judge of an adjoining circuit.

c. Should the chief administrative judge(s) in the circuit and those of an adjoining circuit be disqualified, the matter or proceeding shall be referred to the Chief Justice for assignment to a judge.

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IT IS FURTHER ORDERED that if a trial or hearing has been commenced and the judge is unable to proceed, the chief judge for administrative purposes shall assign the trial or hearing to a successor judge. If the chief administrative judge has a conflict and is thereby prevented from performing this duty, the matter shall be referred to the Chief Justice to assign a successor judge. The successor judge may proceed with the trial or hearing upon certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties. In a hearing or a trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed and who is available to testify without undue burden. A successor judge may provide for the recall of any witnesses.

IT IS FURTHER ORDERED that this Order shall remain in effect until amended or rescinded by Order of the Chief Justice.

s/Jean Hoefer Toal
Jean Hoefer Toal
Chief Justice

February 4, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)

IN THE COURT OF GENERAL SESSIONS
 SECOND JUDICIAL CIRCUIT

GRAND JURY TERMS FOR)
 AIKEN COUNTY)
 _____)

ORDER

I FIND THAT THE PROMPT AND EFFICIENT DISPOSITION OF CRIMINAL CASES IN
 THE COURT OF GENERAL SESSIONS REQUIRE THAT THE GRAND JURY OF AIKEN
 COUNTY BE CONVENED ON THE FOLLOWING DATES FOR THE YEAR OF 2018:

January 3, 2018 @ 9:30 a.m.
 February 8, 2018 @ 8:30 a.m.
 March 8, 2018 @ 8:30 a.m.
 April 5, 2018 @ 8:30 a.m.
 May 10, 2018 @ 8:30 a.m.
 June 7, 2018 @ 8:30 a.m.

AND SHALL REMAIN IN SESSION FOR AS LONG AS NECESSARY.


 CHIEF ADMINISTRATIVE JUDGE
 SECOND JUDICIAL CIRCUIT

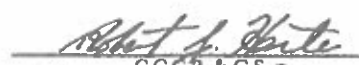
This 31st day of October, 2017
 Aiken, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Robert J. Harte, Clerk of Court of Common Pleas and General
 Sessions for Aiken County, South Carolina do hereby certify
 that the foregoing constitutes a true and correct copy of the
 original documents which have been filed in my office this

JAN 27 2022


 C.C.P. & G.S., Aiken County, S.C.
 Deputy Clerk  *aul*

FILED 10 31 20 17


 C.C.P. & G.S.
 Deputy Clerk  *aul*

STATE OF SOUTH CAROLINA)
 COUNTY OF AIKEN)

GRAND JURY TERMS FOR)
 AIKEN COUNTY)
 _____)

IN THE COURT OF GENERAL SESSIONS
 SECOND JUDICIAL CIRCUIT

ORDER

I FIND THAT THE PROMPT AND EFFICIENT DISPOSITION OF CRIMINAL CASES IN
 THE COURT OF GENERAL SESSIONS REQUIRE THAT THE GRAND JURY OF AIKEN
 COUNTY BE CONVENED ON THE FOLLOWING DATES FOR THE YEAR OF 2018:

June 28, 2018 @ 8:30 a.m.
 August 2, 2018 @ 8:30 a.m.
 August 30, 2018 @ 8:30 a.m.
 September 27, 2018 @ 8:30 a.m.
 November 8, 2018 @ 8:30 a.m.
 November 29, 2018 @ 8:30 a.m.

AND SHALL REMAIN IN SESSION FOR AS LONG AS NECESSARY.

William P. Hendrix
 CHIEF ADMINISTRATIVE JUDGE
 SECOND JUDICIAL CIRCUIT

This 23rd day of April, 2018
 Aiken, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Robert J. Harte, Clerk of Court of Common Pleas and General
 Sessions for Aiken County, South Carolina do hereby certify
 that the foregoing constitutes a true and correct copy of the
 original documents which have been filed in my office this

JAN 27 2022

Robert J. Harte
 C.C.P. & G., Aiken County, S.C.
Wendy M. Miller *ack*
 Deputy Clerk

FILED April 23 20 18

Robert J. Harte
 C.C.P. & G.S.
Charlea Griffing Plouffe
 Deputy Clerk

March ▼

2018 ▼

Search

Terms of Circuit and Family Court March 2018

Circuit Number	3/5/2018	3/12/2018	3/19/2018	3/26/2018
<u>2</u>	Common Pleas Non-Jury 9 Keesley, William SIGWALD 9	General Sessions Aiken Keesley, William SIGWALD General Sessions Non- Jury 14 Keesley, William SIGWALD 14	Common Pleas/Common Pleas Nonjury Aiken Early, Doyet NO CR NEEDED General Sessions Barnwell Keesley, William SIGWALD 19, 20 am SIGWALD 21, 22 NO CR NEEDED 23 General Sessions Non- Jury 20 Keesley, William SIGWALD 20 General Sessions Non- Jury 22 Keesley, William SIGWALD 22	General Sessions Aiken Early, Doyet NO CR NEEDED 26 SIGWALD 27, 28, 29 NO CR NEEDED 30

Family Court Aiken Gable, Dale Moore	Family Court Aiken Nuessle, Peter R.	Family Court Aiken Gable, Dale Moore	Family Court Barnwell Gable, Dale Moore
HAYES 5, 6, 7 NO CR NEEDED 8 HAYES 9	JACKSON 12 am, 13 SHEALY 14 WALKER 15 JOHNSON 16 am	GREEN 20 am HAYES 21, 22, 23	HAYES
Family Court 6, 7, 8, 9 Aiken Snelgrove, Vicki J.	Family Court Bamberg / Barnwell Gable, Dale Moore	Family Court 20, 21, 22, 23 Aiken Snelgrove, Vicki J.	Family Court 26 Bamberg Gable, Dale Moore
JOHNSON 6, 7, 8, 9 am	HAYES 12, 13, 14, 15 NO CR NEEDED 16	JOHNSON 20 am, 21, 22 am JOHNSON 23 am	HAYES 26
	Family Court 12, 13, 14, 15 Aiken Snelgrove, Vicki J.		Family Court Aiken Snelgrove, Vicki J.
	JOHNSON 12, 13 am JOHNSON 14, 15		JOHNSON 26, 27, 28, 29 NO CR NEEDED 30
			Family Court Aiken Crouch, Huntley S.
			COLLINS 26, 27, 28, 29 NO CR NEEDED 30
			Family Court 29 Bamberg Gable, Dale Moore
			HAYES 29

August 2018

Search

Terms of Circuit and Family Court August 2018

Circuit Number	8/6/2018	8/13/2018	8/20/2018	8/27/2018
<u>2</u>	General Sessions Bamberg Early, Doyet SIGWALD 6, 7, 8, 9 NO CR NEEDED 10 General Sessions Aiken Keesley, William HOLSTON		General Sessions Aiken Keesley, William SIGWALD General Sessions Non-Jury Keesley, William SIGWALD	Common Pleas Non-Jury/PCR Hyman, Larry NEVERS 27, 28 NO CR NEEDED 29, 30, 31 Common Pleas/Common Pleas Nonjury Bamberg Keesley, William SIGWALD 27 NO CR NEEDED 28, 29 SIGWALD 30, 31 General Sessions 27 Bamberg Keesley, William SIGWALD 27 Common Pleas Non-Jury 30 Keesley, William SIGWALD 30

Family Court Aiken Snelgrove, Vicki J. JOHNSON 6 am, 7, 8 JOHNSON 9, 10 am	Family Court 14 Aiken Gable, Dale Moore SHEALY 14	Family Court Aiken Snelgrove, Vicki J. JOHNSON 20, 21 am JOHNSON 22, 23, 24 am	Family Court 27, 28 Aiken Gable, Dale Moore JOHNSON 27, 28
Family Court Barnwell McGee, Randall E. WALKER 6 am, 7, 8 WALKER 9 SIGWALD 10	Family Court 14 Aiken Snelgrove, Vicki J. JOHNSON 14 am	Family Court Bamberg / Barnwell McGee, Randall E. DAVIS	Family Court Aiken Crouch, Huntley S. DERRICK
Family Court Aiken Abstance, Angela W. MOLLOHAN			Family Court 29, 30, 31 Aiken Snelgrove, Vicki J. JOHNSON 29, 30, 31 am