

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

RECEIVED

MAR 23 2012

S.C. Supreme Court

WILLIAM GLADNEY HARDEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Deputy Chief Appellate Defender

South Carolina Commission on Indigent
Defense
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 5)
 -vs-)
 6)
 William Harden)
 7 -----)

ORIGINAL

March 12, 2009
Greenville, South Carolina

B E F O R E:

THE HONORABLE VICTOR C. PYLE, Judge

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

GEORGE CAMPBELL, ESQUIRE
Attorney for the State

RANDY CHAMBERS, ESQUIRE
Attorney for Defendant

CAROLINE HISKELL
Circuit Court Reporter

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I N D E X

(There were no witnesses or exhibits presented.)

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State versus William Harden

P R O C E E D I N G S

1
2 THE BAILIFF: All rise, the Honorable Victor
3 C. Pyle presiding.

4 THE COURT: Please be seated.

5 THE CLERK: Your Honor, Indictment 2008-GS-
6 23-2837, William Harden, indictment against a federal
7 chartered or insured institution pleading to bank fraud. It
8 is a True Bill and there is an order of restitution.

9 Would you please raise your right hand.

10 WILLIAM HARDEN, having been duly sworn,
11 testified as follows:

12 Thank you.

13 THE COURT: What's the penalty, the maximum
14 sentence?

15 MR. CAMPBELL: Five years, Your Honor.

16 THE COURT: You are William Harden?

17 MR. HARDEN: I am, sir.

18 THE COURT: And how old are you?

19 MR. HARDEN: Sixty-seven.

20 THE COURT: You can read and write?

21 MR. HARDEN: Yes.

22 THE COURT: And have you ever worked?

23 MR. HARDEN: Yes, I have.

24 THE COURT: Doing what?

25 MR. HARDEN: School teacher as a chemist.

State versus William Harden

1 THE COURT: Mr. Chambers is your lawyer?

2 MR. HARDEN: Yes, sir.

3 THE COURT: Have you talked to him as often
4 and as for long as you feel necessary for him to properly
5 represent you?

6 MR. HARDEN: I have, sir.

7 THE COURT: Have you understood your talks
8 with him?

9 MR. HARDEN: Yes, sir.

10 THE COURT: Has he done everything you have
11 asked him to do?

12 MR. HARDEN: I believe so, sir.

13 THE COURT: Has he done anything that you
14 didn't like?

15 MR. HARDEN: No, sir.

16 THE COURT: So you are satisfied with his
17 services?

18 MR. HARDEN: I am.

19 THE COURT: Now, has anyone used any force or
20 made any threats against you in order to get you to plead
21 guilty?

22 MR. HARDEN: No, sir.

23 THE COURT: Has anybody promised you a
24 lighter sentence if you pled guilty?

25 MR. HARDEN: No, sir.

State versus William Harden

1 THE COURT: Has anybody promised you anything
2 for pleading guilty?

3 MR. HARDEN: No.

4 THE COURT: Are you pleading guilty
5 voluntarily, that is of your own free will?

6 MR. HARDEN: I am.

7 THE COURT: Do you understand the maximum
8 sentence of up to five years in prison?

9 MR. HARDEN: Yes, sir.

10 THE COURT: Now, you don't have to plead
11 guilty. You have a perfect right to have a trial by jury,
12 do you know that?

13 MR. HARDEN: Yes, sir, I do.

14 THE COURT: If you stood trial by jury, your
15 lawyer could cross-examine all witnesses who testified
16 against you. You would not have to take the stand or
17 present evidence because that is your Constitutional
18 right. The burden would be on the State to prove you
19 guilty beyond a reasonable doubt. Do you understand all
20 of those rights?

21 MR. HARDEN: Yes, sir.

22 THE COURT: You give up all those rights when
23 you plead guilty. Is that what you want to do?

24 MR. HARDEN: I believe I am taking an Auford
25 Plea.

State versus William Harden

1 THE COURT: I understand.

2 MR. HARDEN: Yes, sir.

3 THE COURT: Are you under the influence of
4 any alcohol, drugs, or any other substance right at this
5 moment?

6 MR. HARDEN: No, sir.

7 THE COURT: Do you know what you're doing and
8 you want to plead guilty?

9 MR. HARDEN: Yes, sir.

10 THE COURT: Okay. Solicitor, tell us the
11 facts.

12 MR. CAMPBELL: If the please the Court, Your
13 Honor, between the dates of January 28th and January 31st
14 of 2008, William Gladley Harden, with the intent to
15 defraud a federally chartered financial institution
16 executed a scheme or artifice to defraud First Savers
17 Bank, which is federally deposit and insured corporation
18 by depositing eight checks drawn on four closed accounts
19 from Suntrust and Wachovia.

20 He deposited these into his accounts at First
21 Savers and then withdrew all the funds before the checks
22 could be returned as being on closed accounts.

23 All these events happened within Greenville
24 County.

25 At the appropriate time, Your Honor, the

State versus William Harden

1 victim would like to address the Court.

2 THE COURT: Mr. Harden, you've heard the
3 facts related to me by the Solicitor and this is what he
4 says the State would prove if you had a trial by a jury.
5 Do you understand that?

6 MR. HARDEN: Yes, sir.

7 THE COURT: I understand, for whatever
8 reason, you are unable or unwilling to admit guilt in this
9 case but you're telling me were you to go to trial you
10 would be found guilty of this offense and you would be
11 sent to prison for quite some time?

12 MR. HARDEN: Yes, sir. Well, I would be
13 subject to that, yes, sir.

14 THE COURT: And for that very reason although
15 you are unwilling or unable to admit guilt, you're willing
16 to plead guilty; is that correct?

17 MR. HARDEN: Yes, sir, I am.

18 THE COURT: I'll accept to plea as being
19 voluntarily made on a substantial factual basis.

20 MR. CHAMBERS: Your Honor, William -- this
21 case has been going on for a while. As I understand it,
22 before I got it he was represented by another lawyer. He
23 was representing himself for a while and it's been on the
24 trial docket a couple of times. The reason that all
25 that's happened and we got to this point is, William has

State versus William Harden

1 maintained to me -- it's clear that he opened this account
2 at First Savers with checks for accounts that apparently
3 there was no money in those accounts, and it's clear to me
4 and now clear to William that based on the evidence that
5 the State would present, a jury would surely infer from
6 the evidence that he intended to defraud the bank and
7 that's always been the rub.

8 He tells me that he never had that intent and
9 was ready even after he found out that these checks he
10 wrote were no good to make good on it. The problem was he
11 had the money and was ready to go pay and make good on the
12 checks, he was picked up on some outstanding bench
13 warrant, went to jail, unable to get out, unable to pay
14 the money and since then didn't have the money.

15 He has always been willing to pay the money
16 and he is willing today to pay the money. And what he has
17 done in order to be able to pay the money to the bank, he
18 -- first of all, he voluntarily today signed a restitution
19 the order. He intends to pay ever bit of that restitution
20 if he is given an opportunity.

21 He has actually moved himself into a homeless
22 shelter where he is going to be able to reside
23 indefinitely. He's got food stamps and he has made it so
24 he has no expenses and so anything that he makes, he is
25 going to apply to getting this amount paid off, and he

State versus William Harden

1 wants to do that as quickly as possible. I'll let him
2 talk some more about that in a minute.

3 What we will ask the Court for is to sentence
4 to the maximum sentence which would be five years, suspend
5 that sentence and put him on probation and let him pay the
6 bank back.

7 One of the things the solicitor indicated
8 early on in this case is the reason that First Savers was
9 really pushing this case is as a smaller bank, this is a
10 big hit for him financially. If he goes to jail for any
11 significant period of time, there is no way he's going to
12 pay the money back. He's not going to be able to. But if
13 he is given the opportunity to pay it back, he is going to
14 do this.

15 We're not asking for a free ride. You're
16 going to here in a minute that he does have a fairly
17 significant record and in a lot of ways is not a candidate
18 for probation, and I know that the other side is not in
19 favor of that. But if he's not true to his word and he's
20 got five years hanging over his head, it's just going to
21 take a probation revocation hearing and he's gone. He
22 understands that.

23 Basically, he's asking for a chance to do
24 that and to pay these folks back and that's what we're
25 asking for. Thank you.

State versus William Harden

1 THE COURT: Is there anything you want to say
2 before sentencing?

3 MR. HARDEN: Yes, Your Honor. If you
4 remember, Your Honor, I came before you in December. At
5 that time my attorney was relieved and you gave the option
6 of representing myself or retaining someone and I was
7 able, through good fortune, to retain Mr. Chambers.

8 I think that I informed the Court last
9 December is the way this whole chain of events started is
10 that in 2007, I was arrested by the Greenville County
11 Sheriff's Office on a bench warrant which should never
12 have been issued. It was erroneously issued, and I spent
13 seven months in jail trying to get that resolved until I
14 could get an attorney to do that. In the meantime, I had
15 not income. My business failed and I was evicted from my
16 apartment, and everything has been on a downward spiral
17 since then.

18 I started in the business of buying and
19 selling options in real estate, and the reason I went to
20 the bank to get this money was to show some activity in
21 the account. I didn't spend a penny of the money. In
22 fact, I was headed to the bank to redeposit the money. I
23 had my deposit tickets with me and all of the money and I
24 wanted to show some activity in the account. There was
25 never any intent to defraud the bank.

State versus William Harden

1 But unfortunately, I had a misdemeanor charge
2 pending at that time and I went to court that same day
3 believing from my attorney who you relieved that I would
4 not go to jail and spend any time because I had already
5 spent the maximum amount of time on the charge before I
6 made bond.

7 Well, it turned it out that was not the case
8 and I had to serve a 90 day sentence and I was unable to
9 get to the bank that day. Of course, while I was in jail,
10 this warrant was served.

11 What I've done in the meantime is I've
12 attempted to resurrect my business. Here's what I do,
13 Your Honor, if you'd like to take a look at that?

14 THE COURT: I don't need to see that.

15 MR. HARDEN: I've been clawing and scratching
16 to get back on my feet and I moved into a homeless
17 shelter, Salvation Army, first, and now the Rescue Mission
18 so I don't have to pay any rent. All the money that I'm
19 saving, because I'm still making money on this business,
20 but not enough to pay all the restitution at one time. I
21 also qualify for food stamps and free medical care so I
22 have no expenses, and all the money that I earn has been
23 set aside to go towards restitution.

24 If I go to jail at all -- to prison, my
25 business will be lost a second time. I'll be 68 years old

State versus William Harden

1 when I get out or whatever the age might be, there will be
2 no income and there would not possibly be any restitution.
3 So the intelligent thing from my point of view and the
4 bank's point of view is to get what they can get and I'll
5 be glad to pay this back as soon as I can.

6 THE COURT: All right.

7 MR. CAMPBELL: Your Honor, we have this prior
8 record here and it is significant. It starts back in 1977
9 with five counts of forgery and house breaking, possession
10 of marijuana, contributing to the delinquency of a minor,
11 furnishing narcotics to a minor; 1982, obtaining goods by
12 fraud, simple possession of marijuana; 1991, contributing
13 to the delinquency of a minor, possession with intent to
14 distribute marijuana; 1992, possession with intent to
15 distribute a Schedule 1, 2 or 3 substance, third offense;
16 1993, contributing to the delinquency of a minor, simple
17 possession of marijuana, unlawful possession of
18 prescription drugs, seven counts; 1998, possession with
19 intent to distribute a Schedule 1, 2 or 3 drug,
20 contributing to the delinquency of a minor, possession
21 with intent to distribute crack cocaine; 2006,
22 distributing obscene material to a minor under 18 years of
23 age; 2008 a violation of a sex offender act; 2002, a
24 federal charge for sex offense; 1999 in Georgia we have
25 theft by deception and 1981 in 1981 in Georgia there were

State versus William Harden

1 three counts of theft.

2 We believe that given his record, this
3 warrants the maximum sentence.

4 THE COURT: Give us your name, please, ma'am.

5 MS. DAVIS: Wanda Davis.

6 THE COURT: Is there anything you want to
7 say?

8 MS. DAVIS: Yes. I am the bank security
9 officer and branch manager for First Savers Bank, the
10 Roper Mountain Road location. We are a small community
11 bank and we opened this account in good faith with
12 Mr. Harden. But this seven thousand plus dollars that he
13 defrauded us on is a big hit for a bank of our size.
14 We're not a larger institution or a larger entity, so we
15 are pursuing this because we want our money back however
16 Mr. Harden can repay it, or if he is sentenced to jail
17 that he can't get away with defrauding us the way he has.
18 This has been going on for a while now, so we
19 really want our money back.

20 MR. HARDEN: I just wanted to correct some of
21 the inaccuracies in the record. I've never even seen any
22 crack cocaine. I don't know how that charge got on my
23 record. I've never been charged with a sex offense and
24 especially the one that's indicated there in Georgia. I
25 was doing time in South Carolina and it couldn't have

State versus William Harden

1 possibly have happened.

2 I also want to point out that I've been on
3 probation before and parole and I finished both of those
4 without even a technical violation. I met every appoint
5 that I had, paid all of my fees, never failed a drug test,
6 paid restitution when I was supposed to make restitution.
7 I think Ms. Davis is right, she wants her money back.

8 THE COURT: Tell me this, sir, as I
9 understand it, you were headed back to the bank with cash
10 in hand the day you were arrested.

11 MR. HARDEN: And the jail records will show
12 that. I had to stay in jail for a substantial period of
13 time and when I made bond ---

14 THE COURT: You didn't give the money to the
15 bank.

16 MR. HARDEN: My bond prohibited me from
17 having any contact with the bank.

18 THE COURT: Would that prohibit you from
19 mailing the money to them?

20 MR. HARDEN: I was told that if I did that, I
21 would be in violation of my bond and I would be
22 rearrested. So I was between a rock and hard place, but I
23 would like to pay Ms. Davis back. I had the money and I
24 had the deposit tickets on my person and the jail records
25 will show that.

State versus William Harden

1 MR. CAMPBELL: If I may add something else,
2 Your Honor, this defendant escaped from federal prison and
3 was on America's Most Wanted back in the 1990s.

4 MR. HARDEN: I never escaped from a federal
5 prison. That's totally inaccurate. The reports are not
6 right. I spent two-and-a-half years in a federal prison
7 without any violations at all.

8 MR. CAMPBELL: The Aiken Facility.

9 MR. HARDEN: That was not a federal facility.
10 That was a State facility.

11 MR. CAMPBELL: You did leave the Aiken
12 Facility without permission and was later captured by the
13 Greenville County Sheriff's Office for the sex offense.

14 MR. HARDEN: That's not right either.

15 MR. CAMPBELL: But you did leave the Aiken
16 Facility without permission.

17 MR. HARDEN: I left the Aiken Facility, but I
18 don't know what that has to do with being on probation or
19 parole. I've successfully done all of that in the past
20 and I've been out on bond now for a year and I haven't
21 gone anywhere, and I'm before the Court today to answer to
22 this charge and I'm willing to pay the money back.

23 THE COURT: All right. The sentence of this
24 Court is you be committed to the Department of Correction
25 for a period of five years, provided on the service of

State versus William Harden

1 three years, the balance to be suspended, probation for
2 five years. As a condition of the probation, you are to
3 make restitution in accordance with the order.

4 ---END OF TRANSCRIPT RECORD---

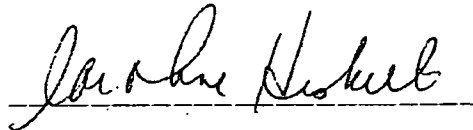
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State versus William Harden

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 12th day of March, 2009.

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

11
12 April 29, 2010

13
14 

15 CAROLINE HISKELL, CR
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STATE OF SOUTH CAROLINA

County of GREENVILLE

In the Court of Common Pleas
FEB 08 2010

BRCI
MAILROOM

WILLIAM G. HARDEN
Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA
Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEF

2010-CP-23- 1209

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION, 4460 BROAD RIVER ROAD, COLUMBIA, SC 29210-4012
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS, GREENVILLE, SOUTH CAROLINA
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2008-GS-23-2837
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) MARCH 12, 2009 — 5 YEARS SUSPENDED UPON SERVICE OF 3 YEARS, AND 3 YEARS PROBATION + INDETERMINABLE
 - (b) _____
 - (c) NOTATION AT BOTTOM LEFT CORNER OF SENTENCING SHEET, APPARENTLY NOT IN JUDGE'S HANDWRITING

- 5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?
No.

- 7. If you answered "yes" to (6), list
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

- 8. If you answered "no" to (6), state your reasons for not so appealing:
 - (a) IN TRANSIT.
 - (b) _____
 - (c) _____

- 9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) UNLAWFUL / EXCESSIVE SENTENCE
 - (b) INEFFECTIVE ASSISTANCE OF COUNSEL
 - (c) _____

- 10. State concisely and in the same order the facts which support each of the grounds set out in (9):
 - (a) APPLICANT SENTENCED UNDER 34-3-110, SCL (1976), AS AMENDED
 - (b) _____
 - (c) _____

CONTINUATION ON ATTACHMENT

WILLIAM G. HARDEN
 APPLICATION FOR POST-CONVICTION RELIEF
 SUBMITTED FEBRUARY, 2010

ATTACHMENT

CONTINUATION

10.(a) THIS STATUTE PERMITS A MAXIMUM SENTENCE OF FIVE (5) YEARS. APPLICANT RECEIVED A SENTENCE OF, IN EFFECT, SIX (6) YEARS [5 YEARS, SUSPENDED UPON SERVICE OF 3 YEARS, AND 3 YEARS PROBATION]

(b.) PLGA COUNSEL WAS INEFFECTIVE BY

- (i) UNDERMINING APPLICANT'S REASONABLE OPPORTUNITY FOR "PTUP" (PROBATION, TO BE TERMINATED UPON PAYMENT);
 - (ii) FAILING TO OBJECT TO THE STATE'S INTRODUCTION OF UNVERIFIED PRIOR CRIMINAL HISTORY;
 - (iii) FAILING TO OBJECT TO THE STATE'S INTRODUCTION OF SCANDALOUS AND INFLAMMATORY INFORMATION WHICH DID NOT CONSTITUTE A PART OF THE APPLICANT'S CRIMINAL HISTORY, AND WHICH WAS DESIGNED SOLELY TO AROUSE THE COURT'S PASSION AS IT CONSIDERED AN APPROPRIATE SENTENCE;
- (A COMBINATION OF (ii) AND (iii) HAD AN IMPACT WHICH IS IMPOSSIBLE TO MEASURE, REPRESENTING PREJUDICE PER SE AS TO SENTENCING);

WILLIAM G. HARDEN
 APPLICATION FOR POST-CONVICTION RELIEF
 SUBMITTED FEBRUARY , 2010

ATTACHMENT

CONTINUATION (cont'd)

(iv) FAILING TO PROPERLY INVESTIGATE THE APPLICANT'S CRIMINAL HISTORY AND TO REACH AN AGREEMENT WITH THE STATE CONCERNING THE SPECIFIC INFORMATION TO BE ADMITTED AT SENTENCING;

(v) FAILING TO OBJECT TO THE OUTRAGEOUS CONDUCT OF THE COURT WHEN IT PERMITTED THE "VICTIM" (THROUGH ITS REPRESENTATIVE IN COURT AT APPLICANT'S PLEA) TO DECIDE WHETHER THE APPLICANT RECEIVED PROBATION OR AN ACTIVE SENTENCE;

(vi) FAILING TO CONTEMPORANEOUSLY OBJECT TO THE SENTENCE OF THE COURT AS BEING EXCESSIVE UNDER THE STATE (EVEN IF THE COURT HAD SENTENCED THE APPLICANT TO, E.G., 3 YEARS SUSPENDED UPON SERVICE OF 2 YEARS AND 2 YEARS PROBATION, SUCH A SENTENCE WOULD STILL BE UNLAWFUL BECAUSE THE PERIOD OF JUDICIAL RESTRAINT UPON THE APPLICANT WOULD EXCEED THE SENTENCE IMPOSED)
 (2 YEARS + 2 YEARS = 4 YEARS)

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No.
- (d) any other petitions, motions or applications in this or any other Court?
No.

12. If you answered "yes" to any part of (11), 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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) 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) NO PROCEEDINGS TO WARRANT SUCH PRESENTATION.
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. RANDALL L. CHAMBERS, ESQ.
201 EAST NATH STREET, GREGGVILLE, SC 29601
- ii. _____
- iii. _____

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

- i. PLEA.
- ii. SENTENCING.
- iii. _____

18. State clearly the relief you seek in filing this application.

NEW SENTENCE (RE-SENTENCING) TO CONFORM WITH STATUTE AND ACTIVE PORTION NOT TO EXCEED CURRENT SENTENCE; STRIKING OF NOTATION AT BOTTOM LEFT CORNER OF SENTENCING SLIP, APPROPRIATELY

19. Are you now under sentence from any other court that you have not challenged? NO IN JUDGE'S HANDWRITING

STATE OF SOUTH CAROLINA

County of RICHLAND

VERIFICATION

I, William G. Hester, 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.

Wm S. Arden

SWORN to and subscribed before me this 8

day of FEBRUARY, 20, 19

Eugene Arden (L.S.)
Notary Public

My Commission Expires April 4, 2018

My Commission Expires: _____

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

I, William G. Hester, 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 therefor.

Wm S. Arden
Applicant

SWORN or affirmed to and subscribed before me this

8 day of FEBRUARY, 20, 19

Eugene Arden
Notary Public

My Commission Expires My Commission Expires April 4, 2018

STATE OF SOUTH CAROLINA
IN THE
COURT OF COMMON PLEAS
FOR

ORIGINAL TO BE
FILED WITH THE
CLERK OF COURT
RECEIVED

GREENVILLE COUNTY
THIRTEENTH JUDICIAL CIRCUIT

FEB 08 2010

BRCI
MAILROOM

STATE OF SOUTH CAROLINA,)	C/A No. 2010-CP-23-
PLAINTIFF,)	NOTICE OF
RESPONDENT,)	APPEAL
v.)	FROM
WILLIAM G. HARDEN,)	MAGISTRATE'S
DEFENDANT,)	COURT
APPELLANT,)	
)	

COMES NOW THE DEFENDANT/APPELLANT,
WILLIAM G. HARDEN, PRO SE, WHO SUBMITS THIS HIS
NOTICE OF APPEAL FROM THE MAGISTRATE'S COURT OF
GREENVILLE COUNTY, REGARDING TICKET NOS. 62369-DL
AND 62370-DL, HEARD IN THE CHICK SPRINGS SUMMARY
COURT ON NOVEMBER 18, 2008.

CONVICTED AND SENTENCED TO TWO (2) CONSECUTIVE
TERMS OF THIRTY (30) DAYS EACH, THE DEFENDANT/
APPELLANT MADE THE SUMMARY COURT ON NOVEMBER 28,
2008 TO SET ASIDE HIS CONVICTIONS, TO SET A NEW
TRIAL DATE AND TO APPOINT COUNSEL FOR SUCH NEW TRIAL.
HE WAS NEVER ADVISED OF HIS RIGHT TO COUNSEL ON
THE CHARGES WITHIN FOR HIS ORIGINAL PROSECUTION.

STATE V. HAYDEN

-2- C/A No. 2010-CP-23-

NOTICE OF APPEAL

A NOTICE OF APPEAL NEED NOT BE FILED, BY JURY OF COURT, UNTIL TEN (10) DAYS AFTER A MOTION FOR RECONSIDERATION (OR ITS EQUIVALENT MOTION TO SET ASIDE CONVICTIONS) IS HEARD AND DETERMINED BY THE SENTENCING COURT (IN THIS CASE, THE SUMMARY COURT).

AS OF THE MORNING OF FEBRUARY 3, 2010, THE DEFENDANT/APPELLANT HAS RECEIVED NO RESPONSE TO HIS POST-TRIAL MOTIONS FILED WITH THE SUMMARY COURT ON NOVEMBER 28, 2009.

THUSFORE, ITS APPEARING THAT THE SUMMARY COURT DOES NOT INTEND TO HEAR AND DETERMINE THE SUBMITTED POST-TRIAL MOTIONS, THE DEFENDANT/APPELLANT HEREBY FILES HIS NOTICE OF APPEAL TO PREVENT A FURTHER, CONTINUING MISCHANCE OF JUSTICE.

THIS NOTICE OF APPEAL IS FILED IN ACCORDANCE WITH 18-3-10 ET SEQ. OF THE SOUTH CAROLINA CODE OF LAWS. GROUNDS FOR APPEAL, PENDING DISCOVERY OF ADDITIONAL GROUNDS, IF ANY, ARE

(1) NO COUNSEL OFFERED TO DEFENDANT PRIOR TO TRIAL;

(2) DEFENDANT FURNISHED NO NOTICE OF TRIAL TIME AND DATE;

STATE V. HARDEN

-3- C/A No. 2010-CP 23-

NOTICE OF APPEAL

(3) BENCH TRIAL SUBSTITUTED FOR
 JURY TRIAL (JURY TRIAL WAS
 DEMANDED; BENCH TRIAL AFFORDS
 NO OPPORTUNITY FOR JACOBSON
 CHARGE AND PROGRESS);

(4) TRIAL COURT ENGAGED IN
 IMPROPER EX PARTE COMMUNICATION
 WITH THE STATE'S ONLY TWO (2)
 PROSECUTING WITNESSES BEFORE
 TRIAL.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Wth Harden

FEBRUARY 8, 2010

WILLIAM G. HARDEN 176882

BRETT MO-124

4460 Broad River Road

COLUMBIA, SC 29210-4012

CERTIFICATE OF SERVICE

THE DEFT/DOMY/APPELLANT HEREBY CERTIFIES THAT
 HE HAS DULY SERVED THE RESPONDENT STATE OF SOUTH
 CAROLINA BY PLACING A COPY OF THIS HIS NOTICE OF APPEAL
 IN HIS PRISON MAILBOX WITH ADEQUATE PREPAID POSTAGE
 AFFIXED AND ADDRESSED TO THE ATTORNEY GENERAL OF
 SOUTH CAROLINA, COUNSEL FOR RESPONDENT, P.O. Box 11549,
 COLUMBIA, SC 29211-1549. Wth Harden

WILLIAM G. HARDEN 176882

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 William Gladney Harden,)
 S.C.D.C. No. 176882,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-1209

RETURN

In response to the post-conviction relief application filed February 15, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections. The Greenville County Grand Jury indicted the Applicant at the May 2008 term of General Sessions for crimes against a federally chartered or insured institution (2008-GS-23-2837). Randall L. Chambers, Esquire represented the Applicant.

On March 12, 2009, the Applicant pled guilty as indicted. The Honorable C. Victor Pyle, Jr. sentenced the Applicant to five (5) years suspended on the service of three (3) years and five (5) years probation. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

II.

In his application for post-conviction relief the Applicant alleges he is being held in

custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Undermined the Applicant's "reasonable opportunity for 'PTUP.'"
 - b. Failed to object to introduction of unverified prior criminal history.
 - c. Failed to object to "introduction of scandalous and inflammatory information which did not constitute a part of the Applicant's criminal history."
 - d. Failed to properly investigate the Applicant's prior criminal history.
 - e. Failed to object to "the outrageous conduct of the court when it permitted the 'victim' . . . to decide whether the Applicant received probation or an active sentence."
 - f. Failed to object to the sentence as excessive.
2. Unlawful/excessive sentence:
 - a. Received more time than the maximum sentence of five (5) years.

III.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

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

IV.

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

V.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

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

By:


Attorneys for Respondent

April 21, 2010

HARRIS V. STATE
 AMENDMENT TO APPLICATION
 FOR PCR

-2- C/A No. 2009-CF-23-9391

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

W^m D. Harris

FEBRUARY 8, 2010

WILLIAM G. HARRIS 176882

BACT, MO-124

4460 Broad River Road

COLUMBIA, SC 29210-4012

CERTIFICATE OF SERVICE

THE APPLICANT WITHIN, WILLIAM G. HARRIS, PRO SE,
 HEREBY CERTIFIES THAT HE HAS, ON THE DATE BELOW,
 DULY SERVED THE RESPONDENT BY PLACING A COPY OF
 THIS HIS AMENDMENT TO APPLICATION FOR POST-CONVICTION RELIEF
 IN HIS PRISON MAILBOX WITH ADEQUATE PREPAID POSTAGE
 AFFIXED AND ADDRESSED TO

ATTORNEY GENERAL OF

SOUTH CAROLINA

POST OFFICE Box 11549

COLUMBIA, SC 29211-1549,

COUNCIL FOR RESPONDENT.

W^m D. Harris

FEBRUARY 8, 2010

WILLIAM G. HARRIS 176882

BACT, MO-124

4460 Broad River Road

COLUMBIA, SC 29210-4012

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	Case No(s) : 2010CP2301209
)	
William G. Harden,)	
)	
Applicant,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
State of South Carolina,)	
)	
Respondent.)	
)	

February 25, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE ROBIN B. STILWELL, Judge.

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

KAREN RATIGAN, Esquire
Attorney for the State

DANIEL FARNSWORTH, JR., Esquire
Attorney for the Applicant

Recorded by: Mary DiGirolamo
Circuit Court Reporter

Transcribed by: Teresa B. Johnson
Circuit Court Reporter

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Remarks	4			
William Harden	10			
Randal Chambers				
by Mr. Harden	19			
by Ms. Ratigan		31		
by Mr. Harden			33	
Certificate of Reporter	35			

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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APPLICANT EXHIBITS

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

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P R O C E E D I N G S

THE COURT: All right. Gentlemen, how y'all doing this morning? Good.

Mr. Shamley.

MR. SHAMLEY: Yes, sir.

THE COURT: That's you, sir.

And Mr. Harden. Is Mr. Harden here?

MR. FARNSWORTH: He's right here, Judge.

THE COURT: Mr. Harden, how are you doing this morning, sir?

MR. HARDEN: I'm fine. How are you?

THE COURT: Mr. Gross. Gross.

And Mr. Wellmaker, is that correct?

MR. GROSS: Yes, sir.

THE COURT: Good. Glad to see y'all this morning. Uh, I find that it is helpful for me to have a talk with you before we start post-conviction relief application hearings. I find that in presiding over a lot of these cases, sometimes I have defendants have a misconception or misunderstanding of what I can do in a post-conviction relief application. It's always helpful for me to kind of tell you what I can and what I can't do.

I'll start by telling you what I can't do

1 and, that is, I can't change your sentence.
2 That is, if you were sentenced to 10 years, I
3 can't change it to 5. I can't change the
4 classification of your, uh, crime. That is, if
5 it's classified as violent and you want it as
6 non-violent, I can't do that. I don't have
7 that authority. I can't change the way or
8 manner in which your time is served or the
9 calculation of your sentence. That is, I can't
10 tell them to give you good time and I can't
11 tell them to change it from 85 percent to 60 or
12 65 percent. Okay. That's not within my
13 discretion.

14 Really, the only thing I can do in a post-
15 conviction relief application is grant you a
16 new trial. There are a few other things, small
17 things that I can do. But ordinarily, what I
18 can do is grant you a new trial.

19 Now, sometimes that's good and sometimes
20 it's not. Sometimes applicants find that if
21 they are successful in a post-conviction relief
22 and they are granted a new trial, then they
23 actually are in a worse position than they
24 would have been if they would have just
25 accepted what had happened the first time

1 around. I say that because it does happen.

2 From time to time, people will go in front
3 of a court, either pursuant to a trial or
4 pursuant to a plea. And they get the benefit
5 of certain circumstances. That is, let's say
6 that you went in front of a court. I don't
7 know -- I haven't read your file so I don't
8 know what your charges were or what your case
9 is right now.

10 Let's just say, hypothetically, you went
11 before the court on 10 forgery indictments and
12 you pled guilty to two of the indictments and
13 the remaining 8 were dismissed and the judge
14 elected to sentence you to two years as opposed
15 to the maximum, which would be 10 years under
16 the two that you pled to. And you benefitted
17 significantly from the negotiations that you
18 had at trial court with the Solicitor that your
19 lawyer had with the Solicitor. And you also
20 benefitted from the judge giving you less than
21 the maximum sentence. And let's say that maybe
22 you went to trial and you got the benefit of
23 certain evidentiary rulings and charges that
24 were given to the jury, you may not get that
25 benefit the second time around either.

1 What would happen is you go straight back
2 to the beginning and you start from scratch,
3 which means if you had 10 indictments to begin
4 with, then you got 10 indictments again. And
5 if when you pled you were only facing 10 years
6 on all outstanding indictments to which you
7 pled, you would be facing potentially 50 years
8 on all the indictments you pled to.

9 If a charge was reduced from, say, an
10 Assault and Battery with Intent to Kill to an
11 Assault and Battery of High and Aggravated
12 Nature, you wouldn't get the benefit of that
13 reduction either. You would start over from
14 scratch. You would be facing the total maximum
15 amount of time that you were facing originally.

16 Now, the reason I tell you that is not to
17 dissuade you from or discourage you from going
18 forward with your application here today. I'm
19 here to hear your case, and I'm ready to hear
20 your cases. The reason I tell you that is just
21 so that you'll think about it and know that it
22 could be that if you win, you might be in a
23 whole lot worse shape than you were. Okay.
24 All right.

25 With that having been said, Ms. Ratigan,

1 who you calling first, ma'am?

2 **MS. RATIGAN:** Mr. Shamley.

3 (WHEREUPON, there is a break in the record.)

4 **THE COURT:** Let's call to bar the case of
5 William G. Harden versus the State of South
6 Carolina, case number 2010-CP-23-1209.

7 Ms. Ratigan.

8 **MS. RATIGAN:** Thank you, Your Honor. May
9 it please the Court. This is the case of Mr.
10 Harden versus the State of South Carolina. He
11 was indicted for Crimes against a Federally
12 Chartered or Insured Institution back in May of
13 2008. He was represented by Mr. Chambers on
14 that charge.

15 On March 12th, 2009, Mr. Harden entered an
16 Alford plea before Judge Pyle. He received a
17 sentence of 5 years suspended on the service of
18 3 years and 5 years probation. Did not file an
19 appeal. As Your Honor can see, Mr. Harden is
20 no longer incarcerated with the Department of
21 Corrections. I have been advised he may have a
22 motion to make at this time.

23 **THE COURT:** Okay. All right.

24 **MR. FARNSWORTH:** Judge, Mr. Harden has
25 informed me he would like to proceed as his own

1 counsel in this matter but would like to have
2 me sit here as, uh, standby counsel which I
3 will agree to do.

4 **THE COURT:** Okay. Good enough. We'll do
5 that. Okay.

6 Mr. Harden, you have a motion, sir?

7 **MR. HARDEN:** Just to serve as my own
8 counsel.

9 **THE COURT:** Okay. Sure. I'll let you do
10 that. No problem. No problem. Now, Mr.
11 Harden, I'll ask you this. Again, I told you
12 this before, I don't mean to discourage you
13 from going forward. It seems to me that if you
14 already out of jail and, uh, -- are you on
15 probation now?

16 **MR. HARDEN:** I am.

17 **THE COURT:** You are? How much longer you
18 have on probation?

19 **MR. HARDEN:** Well, that's one of the
20 issues today, Your Honor.

21 **THE COURT:** Okay. All right. You want to
22 take the risk of starting over from scratch on
23 this thing?

24 **MR. HARDEN:** Well, I don't think I'll be
25 starting over from scratch when you hear my

1 argument.

2 **THE COURT:** Okay. All right. Well, I
3 think that might be the only thing I can do,
4 but okay, you may be right. I'll keep my, uh,
5 -- I'll keep my, uh, ears open and I'll listen.
6 Okay.

7 **MR. HARDEN:** All right.

8 **THE COURT:** Okay.

9 **MR. HARDEN:** Do I take the stand?

10 **THE COURT:** All right.

11 **THE CLERK:** Place your left hand on the
12 Bible please. Raise your right hand.

13 **THE COURT:** Right here, Mr. Harden.

14 **THE CLERK:** Your left hand on the Bible.
15 Raise your right hand.

16 **WILLIAM HARDEN**

17 having first been sworn, testifies as follows:

18 **THE CLERK:** Thank you. You may be seated.
19 State your full name for the record please.

20 **THE WITNESS:** William Gladney Harden.

21 **THE CLERK:** Thank you.

22 **THE COURT:** All right. Mr. Harden, I'll
23 be happy to hear from you, sir.

24 **MR. HARDEN:** Okay. Your Honor, this is
25 not a -- what you call a typical post-

1 conviction relief application. I'm not
2 challenging the validity of the plea.

3 **THE COURT:** Okay.

4 **MR. HARDEN:** Okay. I'm only -- under
5 another section of the post-conviction relief
6 code, I'm challenging the excessiveness of the
7 sentence ---

8 **THE COURT:** Okay.

9 **MR. HARDEN:** --- and the role that my
10 attorney played in having that occur.

11 **THE COURT:** Okay.

12 **MR. HARDEN:** It's true that I entered an
13 Alford plea on March 12th, 2009 before the
14 Honorable Victor Pyle. My attorney was Mr.
15 Randall Chambers. The charge carry the maximum
16 sentence of 5 years. Judge Pyle imposed a
17 sentence of 5 years suspended on the service of
18 3 and 3 years probation which, of course,
19 calculates to a sentence of 6 years, which
20 exceeds the statutory maximum.

21 Now, on the sentence sheet, the sentence
22 sheet clearly says for a determinate term of 5
23 years upon the service of 3 years probation --
24 excuse me, 3 years active sentence and 3 years
25 probation. Now, do you have a copy of the

1 sentence sheet in front of you?

2 **THE COURT:** Yes, sir. I'm looking at it.
3 It's right here.

4 **MR. HARDEN:** All right, sir. If you will
5 look at where it says with probation for 3
6 years.

7 **THE COURT:** Yes, sir.

8 **MR. HARDEN:** Okay. Now, fortunately, the
9 transcript indicates that the judge said 5
10 years. 5 years suspended upon the service of 3
11 years and 5 years probation. There's a
12 conflict between the transcript and the actual
13 written document. I believe, in that case, the
14 written sentence sheet is controlling. Now,
15 when I got to the Department of Corrections,
16 I've had some time to think about this. And it
17 seems to me that if I had an active sentence of
18 3 years and probationary period of 3 years,
19 that was the total of 6 years restraint which
20 exceeds the statutory maximum of 5 years on the
21 charge.

22 When I got to Classification at Kirkland,
23 they said, in fact, we can't even give you 3
24 years. For the same argument I was advancing,
25 they advanced it before I even had the chance

1 to mention it to them. They said we're going
2 to hold you and change your sentence here to 5
3 years suspended to 3 years and 2 years
4 probation because that's as much as he can give
5 you.

6 Now, I think some of the reason that this
7 happened is that at the sentencing, when I
8 entered the Alford plea and all that was left
9 to do was to have sentencing, there was so much
10 misinformation advanced as far as my criminal
11 history. For example, I have a copy I would
12 like to give the court. These are the last
13 three pages of the plea transcript.

14 **THE COURT:** I've got them right here, Mr.
15 Harden.

16 **MR. HARDEN:** Okay. All right. I just
17 wanted to be ready.

18 **THE COURT:** Yes, sir. I appreciate that.

19 **MR. HARDEN:** At the bottom of page 13, I
20 say I just wanted to correct some of the
21 inaccuracies of the record. For example,
22 during the course of the plea proceeding, I had
23 been accused through my criminal history of
24 having distributed crack cocaine. I've never
25 even seen any crack cocaine. I've seen it on

1 television. I know that it looks like a
2 rocklike substance. I never even seen it.
3 They mentioned a sex offense in Georgia in
4 1998. That was impossible because I was
5 incarcerated in 1998.

6 They also, after my criminal history had be
7 laid on the record, it's my impression, Your
8 Honor, that when you state somebody's criminal
9 history, it should be very accurate. That's
10 what the judge is going to base the sentence
11 upon. I was smeared so much. It's true that I
12 have a criminal record. I don't have a
13 beautiful criminal record, but there was so
14 much misinformation. It was impossible to
15 measure how much that influenced the sentence
16 that he gave me. I'm contending that the
17 sentence, the five-year sentence is excessive
18 because of this misinformation.

19 Judge Pyle would never have done this had
20 he been accurately informed of my criminal
21 history. In fact, he was teetering and
22 tottering about what kind of sentence he was
23 going to give me. And suddenly, Sylvia
24 Harrison, the Assistant Solicitor, hopped up.
25 She wasn't even the solicitor in this case.

1 Mr. Campbell was.

2 Many of the statements that were attributed
3 to Mr. Campbell actually was spoken by Ms.
4 Harrison. Let me give you some examples. On
5 page 15 up at the top, it says Mr. Campbell.

6 **THE COURT:** Right.

7 **MR. HARDEN:** If I may add something else,
8 Your Honor, this defendant just came from
9 federal prison and was on America's Most Wanted
10 back in the 1990's. First of all, Mr. Campbell
11 never said that. Sylvia Harrison said that.
12 None of that has ever been proven. I been in
13 federal prison. Never escaped from federal
14 prison. Served my time with distinction,
15 without any kind of mark on my record at all
16 and they produced no evidence whatsoever. I
17 never been on America's Most Wanted. You can
18 imagine throwing that out at a plea is just
19 like throwing gasoline on a fire.

20 I go on to say I never escaped from federal
21 prison. That's totally inaccurate. The
22 reports are not right. I spent two and a half
23 years in a federal prison without any
24 violations at all.

25 Mr. Campbell says, the Aiken facility. The

1 federal government has no Aiken facility. That
2 was not a federal facility, I said, that was a
3 state facility. Mr. Campbell said -- and it
4 wasn't Mr. Campbell. It was Ms. Harrison --
5 you did leave the Aiken facility without
6 permission and was later captured by the
7 Greenville County Sheriff's office for the sex
8 offense. None of that's true. I wasn't
9 arrested for any sex offense.

10 Mr. Chambers, my attorney, we discussed
11 this in his office. I met up with him for a
12 few minutes the night before the plea. I
13 mentioned to him that a lot of inaccurate
14 information might be advanced because I noticed
15 it on my RAP sheet. I didn't know this
16 scandalous material was going to be introduced.
17 He made no attempt to object whatsoever to
18 clear the record. I said that's not right
19 either.

20 At the bottom, I pointed out the error that
21 the judge allegedly, according to the
22 transcript, said the sentence of this court is
23 you be committed to the Department of
24 Corrections for a period of 5 years provided on
25 the service of 3 years and 5 years probation.

1 It wasn't 5 years probation. It was 3, which
2 is not proper either for the reasons I already
3 advanced.

4 **THE COURT:** Okay.

5 **MR. HARDEN:** All right. There was also a
6 very important exchange between the court and
7 a witness for the bank in this case, who was
8 the alleged victim, in which Judge Pyle
9 specifically asked Wanda Davis, a security
10 officer at First Savings Bank, you want your
11 money back or you want this man to go to
12 prison. Because I had already offered to go on
13 probation and pay back the money while on
14 probation because I had an existing business at
15 this time which I could pay from. She said we
16 want this man to go to prison. So, in effect,
17 the witness determined my fate. That's no
18 where in the record, Your Honor. I think if
19 we'd studied the backup tape, we will certainly
20 find that.

21 Mr. Chambers had, at my suggestion, offered
22 to see the judge before and the Solicitor
23 before my plea to suggest PTUP, Probation
24 Terminated upon Payment. I thought that was
25 the right thing to do. He didn't mention

1 anything about the fact that he was going to
2 stand up in open court and suggest that I'm not
3 a proper candidate for probation. That's
4 something he should have discussed with me.

5 He came to the courtroom late and went out
6 to see Judge Pyle, but Judge Pyle was already
7 coming in the courtroom so he never got a
8 chance to discuss that with him. I thought
9 that was a reasonable and a common sense
10 solution to this whole question.

11 My argument today is that the sentences are
12 unlawful by statute. The charge only carries 5
13 years, but I, in fact, received either a 6-year
14 sentence or an 8-year sentence, whichever, you
15 know, version of that is to be believed. I
16 believe that Mr., uh, Chambers was ineffective
17 about protecting me in at least correcting the
18 record on these inappropriate comments that
19 were made at sentencing.

20 **THE COURT:** Thank you, Mr. Harden,
21 appreciate that.

22 **MS. RATIGAN:** I have no questions of Mr.
23 Harden, Your Honor.

24 **THE COURT:** All right. Thank you, Mr.
25 Harden. I appreciate your testimony, sir.

1 **THE WITNESS:** Thank you for your time and
2 patience.

3 **THE COURT:** Mr. Harden, you have anything
4 else you need to put on the record, sir?

5 **MR. HARDEN:** I would like to question Mr.
6 Chambers.

7 **THE COURT:** Yeah, I think that, uh, -- you
8 want to call him as a witness?

9 **MR. HARDEN:** I do.

10 **THE COURT:** Okay. Good enough. Mr.
11 Chambers, if you would come forward please,
12 sir.

13 **THE CLERK:** Place your left hand on the
14 Bible please. Raise your right hand.

15 **RANDALL CHAMBERS**

16 having first been sworn, testifies as follows:

17 **THE CLERK:** Thank you. You may be seated.
18 State your full name for the record please.

19 **THE WITNESS:** Uh, my full name is Randall
20 Lee Chambers.

21 **THE CLERK:** Thank you.

22 **DIRECT EXAMINATION**

23 **BY MR. HARDEN:**

24 **Q** Mr. Chambers, how are you this morning?

25 **A** I'm doing okay. How about you, Mr. Harden?

1 **Q** You understand, Mr. Chambers, there's
2 nothing personal about this?

3 **A** You know, I never take any of this
4 personally.

5 **Q** All right. This is strictly business. All
6 right. You remember also that during the course of
7 my incarceration that I wrote you or we exchanged
8 several letters in which I asked you to check a
9 comment that was on my sentence sheet.

10 **A** I do remember that.

11 **Q** At the bottom.

12 **A** I don't remember the comment, but I
13 remember that I looked at the sentencing sheet and
14 wrote you back regarding the comment.

15 **MR. HARDEN:** All right. Mr. -- Your
16 Honor, if you would look at the bottom of the
17 sentencing sheet, ---

18 **THE COURT:** I got it.

19 **MR. HARDEN:** -- there's a comment at the
20 very bottom. Could anyone read that to me and
21 tell me what it says? I can't read it. I
22 don't know what it says.

23 **THE COURT:** Okay.

24 **BY MR. HARDEN:**

25 **Q** It's a condition apparently of my sentence,

1 but it was apparently not put on there by Judge Pyle.
2 It was added by someone else and should be stricken.
3 When I had an exchange of letters to Mr. Chambers, he
4 admitted to me, did you not, Mr. Chambers, that you
5 didn't have a copy of my sentencing sheet so you
6 couldn't check on this. You were going to try to get
7 a copy.

8 **A** I wouldn't call it an admission. It seems
9 to me that that implied that I did something wrong.
10 I did tell you that I didn't have a copy of the
11 sentencing sheet in the file and that I would get one
12 from criminal records, which I did, and then I then
13 responded to you.

14 **Q** Okay. And you told me that I should write
15 someone else, I believe, or inquire of the Clerk of
16 Court or someone else, that you couldn't -- you
17 didn't understand this comment either.

18 **A** You know what, Mr. Harden, I didn't pull my
19 file because it's in storage. I remember writing
20 those letters back and forth to you. I remember that
21 I wrote you back about the comment, but I'll be real
22 honest with you and tell you that I don't remember
23 what I told you in the letter.

24 **Q** Okay.

25 **A** If you have a copy of the letter, that

1 would probably be helpful.

2 Q It seems to me that if you had been
3 competent in this matter, you would have had a
4 complete file including the sentence sheet to start
5 with and that you would have known what this comment
6 was, you would have known what the sentence of the
7 court was and you would have advised me of that, but
8 you still can't do that today.

9 A Is that a question or an opinion?

10 Q Well, would you agree that that's true?
11 That's the question.

12 A Well, first of all, I wouldn't agree that
13 that's true. I never have a copy of the sentencing
14 sheet in my file. I come up here and somebody pleads
15 guilty or they are convicted at trial, I close the
16 case. Nobody automatically sends me a copy of the
17 sentencing sheet. I don't go and get a copy unless
18 somewhere down the road I need to. That's why we
19 have criminal records.

20 Q Well, down the road, you needed it.

21 A Hold on and let me answer your question. I
22 go and get a copy of the sentencing sheet if it's
23 necessary just like I did in your case. I paid for
24 the copy. I looked at the comment and I responded to
25 your letter. No, I disagree with your comment that I

1 was incompetent in this case.

2 Q But I went to extraordinary lengths just to
3 get that copy. It seems to me and do you not agree
4 that a competent lawyer would have a complete file.
5 That would end the case, would be the sentence sheet.
6 You would know what the sentence is. You would
7 recognize any errors on the sentence sheet and you
8 would step up and protect your client in that regard.

9 A I had a complete file. A complete file
10 does include a copy of the sentencing sheet. And I
11 was competent in this case. There's not anything
12 that I did in this case that I would do any
13 differently if I represented you again.

14 Q Well, I believe that. Why did you not
15 object to all the inaccuracies about my criminal
16 history and all the scandalous material that was
17 introduced?

18 A I wasn't aware that there were any
19 inaccuracies and you spoke for yourself on the
20 record.

21 Q I told you the night before that those
22 inaccuracies occurred on the criminal history. We
23 went over it. And I said I don't want this material
24 introduced. Then, when these people got up and
25 started talking about America's Most Wanted and

1 escape from federal prison, you stood there like a
2 crash dummy.

3 **A** Are you going to insult me or are you going
4 to ask me questions, Mr. Harden?

5 **Q** Did you not do that?

6 **A** No, I didn't. I mean, listen, I don't have
7 any way of knowing whether or not you were on
8 America's Most Wanted list.

9 **Q** And they didn't either.

10 **A** I had no way of knowing what your prior
11 criminal record was other than what was submitted to
12 me. If there are inaccuracies on there, you are the
13 one to speak to that. I -- I mean, if you've got any
14 investigator to come in here and show the court that
15 what's on there is not correct -- I mean, you knew
16 this day was coming up. Have you done that?

17 **Q** That was your response as my lawyer?

18 **A** No, that was not my response.

19 **THE COURT:** All right. Y'all, I'm going
20 to stop you. Now, here's the deal. I'm very
21 patient. I want you to have the opportunity to
22 try your case.

23 **MR. HARDEN:** Yes, sir.

24 **THE COURT:** I want you to have the
25 opportunity to respond to questions. But what

1 I'm really am not interested in doing is listen
2 to y'all argue. Okay. So this is what we're
3 going to do, you're going to ask a question and
4 then you will answer it. Now, Mr. Chambers'
5 problems with your questions is some of them
6 aren't really questions. They are testimony,
7 which as he has pointed out to you. He's
8 correct in that regard. Okay. So ask him a
9 question and answer a question. Okay.

10 **BY MR. HARDEN:**

11 **Q** Do you think, Mr. Chambers, by failing to
12 investigate the accuracy of my criminal record that
13 you were competent?

14 **A** Yes.

15 **Q** And you do that in all cases? You never
16 challenge the accuracy of anyone's criminal history
17 when you know that the sentence is going to be
18 determined largely by that?

19 **A** I don't ever investigate anybody's criminal
20 record unless it is going to involve a sentence
21 enhancement of some sort.

22 **Q** But did I not point out to you the night
23 before, when we met in your office, that there were
24 inaccuracies and that the Solicitor's office should
25 be challenged on those?

1 **A** I don't recollect that, Mr. Harden. But I
2 do recollect that when the sentences were read into
3 the record, or your criminal history was read into
4 the record, that you let the judge know that you
5 disagreed. He was well aware of that.

6 **Q** But you did nothing to protect me in that
7 behalf, did you?

8 **A** You were protected. You spoke for
9 yourself. You -- I had nothing to offer. I didn't
10 know whether that was accurate or not.

11 **Q** And do you remember telling the judge on
12 the record that I was really not a good candidate for
13 probation even though we were asking for that?

14 **A** I don't remember that I told him that. I
15 really don't.

16 **Q** That's in the record. Shall I read it to
17 you?

18 **A** I know that we were trying to get you
19 probation. I think I may have been indicating to the
20 judge that you had -- and this is not an uncommon
21 tactic, that looking at the record on its face that
22 you would not appear to be a candidate for probation.
23 But given the special circumstances of this case, we
24 were asking for probation.

25 **Q** Because that was the common sense solution?

1 **A** Exactly, so the bank could get their money
2 back.

3 **Q** And that was the only way they could get it
4 back at that time. They chose for me to go to prison
5 instead.

6 **A** Listen, the thing you have to understand
7 about Judge Pyle is he's been around a long time. I
8 have practiced -- I have probably tried more cases
9 and done more pleas in front of Judge Pyle than any
10 other judge here in Greenville County. I have a
11 pretty good idea about how he looks at somebody's
12 criminal history and what he might do.

13 What I was trying to do in that particular
14 case was to say that Judge Pyle, on its face, in
15 looking at this man's criminal history and -- and --
16 and this particular offense, he did not appear to be
17 a candidate for probation. But given the
18 circumstances of this case, we're asking you to do
19 just that and let me tell you why. That's what we
20 did in that case.

21 **Q** Now, you just said that you are very aware
22 of the fact that he's very sensitive to what he
23 hears, the criminal history and so forth.

24 **A** Exactly.

25 **Q** That's why it was even more important in

1 going before Judge Pyle that you determine the
2 accuracy of my criminal history.

3 **A** Let me just reiterate this to you because
4 we seem to be going back over this same ground. Even
5 if I were inclined to investigate your criminal
6 history, I really don't even know how I would go
7 about that. I could look at NCIC, but I can't go
8 behind that RAP sheet and determine whether that's
9 accurate or not.

10 **Q** Could you not have asked Sylvia Harrison
11 what proof she had that I had been on America's Most
12 Wanted?

13 **A** I don't -- first of all, I don't recall
14 Sylvia Harrison being in the courtroom. I will take
15 you at your word that she was.

16 **Q** She was.

17 **A** But when you stand up and do sentencing,
18 I'm not -- you know, it's not part of what I'm
19 allowed to do is ask questions of other people in the
20 courtroom. My comments have to be directed to the
21 judge on the bench. It's not a trial where
22 somebody's sitting in the witness stand and I can ask
23 questions of them, I can challenge them, I can object
24 to what they have to say. When somebody's being
25 sentenced, the judge is in charge of what's going on

1 there. The judge conducts the inquiry that's going
2 on. You know that as well as I do.

3 Q But it was your job to protect me?

4 MS. RATIGAN: Objection, Your Honor. This
5 has been asked and answered numerous times at
6 this point.

7 THE COURT: Okay. I'm going to sustain
8 the objection. That's not, Mr. Harden, because
9 I'm trying to keep you from asking the questions
10 that you need to ask. It's just that you
11 understand that I understand the points you're
12 making.

13 MR. HARDEN: Okay.

14 THE COURT: A lot of times when you are
15 trying a case in front of a jury, you might ask
16 the same questions over and over so you could
17 put a very fine point on an issue. I understand
18 the issues. I know what you're saying. What
19 you are saying is Mr. Chambers failed to address
20 the inaccuracies that were proffered to the
21 Court and Judge Pyle heard a criminal record
22 that you say was inaccurate.

23 MR. HARDEN: Very inaccurate.

24 THE COURT: And you say that Sylvia
25 Harrison stood up and said something that was

1 very prejudicial to you.

2 **MR. HARDEN:** Exactly.

3 **THE COURT:** And your complaint to Mr.
4 Chambers is that he didn't do anything.

5 **MR. HARDEN:** That's right.

6 **THE COURT:** And because he didn't do
7 anything, Judge Pyle, uh, gave you a greater
8 sentence than he would have otherwise.

9 **MR. HARDEN:** That's right.

10 **THE COURT:** I get that.

11 **MR. HARDEN:** Okay.

12 **THE COURT:** So you've made that point.

13 **MR. HARDEN:** All right, sir. Thank you,
14 Your Honor.

15 **THE COURT:** So you can move on in that
16 line of questioning. Okay.

17 **MR. HARDEN:** I'm an old-school teacher.
18 So you have to forgive me for being thorough.

19 **THE COURT:** No, no. You're fine with
20 that. You're fine with that.

21 **MR. HARDEN:** On page 15 -- excuse me, page
22 9, Your Honor.

23 **THE COURT:** I'll take judicial notice of
24 page 9, lines 15 through 23 wherein Mr. Chambers
25 says, uh, you are going -- you're going -- uh,

1 on his part. I didn't want him to get any jail time.
2 We were really trying to get probation for him. I
3 obviously failed in that effort. But no, I did not
4 have any reason to object.

5 Q In your opinion, is that a legal sentence?

6 A Yeah.

7 Q An illegal sentence?

8 A Illegal?

9 Q Yeah.

10 A No.

11 Q Okay. And looking back on it, is there
12 anything that you wish you had objected to during the
13 course of the plea?

14 A No. Again, I never even heard or, you
15 know, objected -- I don't know if we're talking about
16 trial objections -- to object to something that comes
17 in in sentencing. Certainly, you want to try and
18 keep the record accurate as much as possible. As I
19 said, he corrected as best -- he's the one that knew.
20 He let the judge know that he disagreed with what was
21 written down on his RAP sheet, that he didn't have
22 those prior convictions.

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

25 THE COURT: Yes, sir.

1 **MR. HARDEN:** One more statement.

2 **THE COURT:** You can ask one question.

3 **MR. HARDEN:** Another question.

4 **THE COURT:** Okay.

5 **REDIRECT EXAMINATION**

6 **BY MR. HARDEN:**

7 **Q** We do not agree, Mr. Chambers, that if
8 someone is accused of distributing crack cocaine and
9 committing a serious sex offense, that those are not
10 inflammatory charges?

11 **MS. RATIGAN:** I'm going to object. That's
12 outside the scope of redirect, Your Honor.

13 **THE COURT:** Okay. You understand what her
14 objection is, Mr. Harden?

15 **MR. HARDEN:** I expect I do, Your Honor.

16 **THE COURT:** Yeah, well, redirect is
17 limited to the scope of cross-examination, which
18 means that Ms. Ratigan didn't ask a question
19 related to that topic which you asked a question
20 on, then that's inappropriate. That's the basis
21 of her objection. I'm going to tell you, Mr.
22 Harden, I understand your point. I understand
23 your point.

24 **MR. HARDEN:** Thank you, Your Honor.

25 **THE COURT:** All right. Thank you, Mr.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 William Gladney Harden,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2010-CP-23-1209

ORDER OF DISMISSAL

RECEIVED
 COURT OF COMMON PLEAS
 GREENVILLE CO. SC
 APR 25 2010

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 15, 2010. The Respondent made its return on April 21, 2010. An evidentiary hearing into the matter was convened on February 25, 2011 at the Greenville County Courthouse. The Applicant represented himself at the hearing.¹ Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Randall L. Chambers, Esquire. The Court had before it the transcript of the guilty plea hearing, the records of the Greenville County Clerk of Court, the application for post-conviction relief, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant was indicted at the May 2008 term of the Greenville County Grand Jury for crimes against a federally chartered or insured institution (2008-GS-23-2837). He was represented by Randall L. Chambers, Esquire.

¹ At the beginning of the hearing, the Applicant moved to have his appointed counsel – Daniel J. Farnsworth, Jr., Esquire – relieved as counsel. This Court granted the Applicant's request and ordered Mr. Farnsworth to assist the Applicant in the role of standby counsel.

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On March 12, 2009, the Applicant entered an Alford² plea to the charge. The Honorable C. Victor Pyle, Jr. sentenced the Applicant to five (5) years suspended on the service of three (3) years and five (5) years probation. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Undermined the Applicant's "reasonable opportunity for 'PTUP.'"
 - b. Failed to object to introduction of unverified prior criminal history.
 - c. Failed to object to "introduction of scandalous and inflammatory information which did not constitute a part of the Applicant's criminal history."
 - d. Failed to properly investigate the Applicant's prior criminal history.
 - e. Failed to object to "the outrageous conduct of the court when it permitted the 'victim' . . . to decide whether the Applicant received probation or an active sentence."
 - f. Failed to object to the sentence as excessive.
2. Unlawful/excessive sentence:
 - a. Received more time than the maximum sentence of five (5) years.

The Applicant, through counsel, submitted an amendment to his application dated June 4, 2010, in which he alleged the following:

1. Ineffective assistance of counsel:
 - a. Failed to conscientiously discharge professional responsibilities.
 - b. Failed to effectively challenge search and seizure.
 - c. Failed to act as a diligent and conscientious advocate.
 - d. Failed to give complete loyalty.
 - e. Did not have Applicant's best interest in mind.
 - f. Failed to serve the cause in good faith.
 - g. Neglected necessary investigations and preparation.
 - h. Did not do necessary factual investigations.
 - i. Did not do necessary legal research.
 - j. Did not conscientiously gather information to protect rights.
 - k. Did not try to have the case settled in a manner that would have been to my best advantage.

² North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

- l. Did not advise me of all my rights or take any of the actions that were necessary to protect and preserve them.
- m. Never properly ascertained whether or not I actually understood or comprehended all of the issues involved in the case.
- n. Never properly consulted with me or kept me informed.
- o. Never explained to me or discussed with me any of the elements.
- p. Never made any attempt to ascertain whether or not I actually knew the elements of the crime charge or whether or not I understood exactly what "criminal element" meant.
- q. Never explained or discussed with me how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd.
- r. Never informed me of any of the defenses that were available to me.
- s. Never intended to offer any defense to the court on my behalf.
- t. Never explained to me or discussed with me any kind of defense strategy.
- u. Never explained to me or discussed with me any of the tactical choices that were made or planned to be made.
- v. Dictated to me exactly how my case was going to be handled and offered no alternative options.
- w. Failed to properly acquaint herself with the law and facts surrounding my case and, as a result, there was a very serious error in the assessment of both the law and the facts.
- x. No defense at all was put in issue for me during the Court proceedings.
- y. Did not subject the prosecution's case to any adversarial testing.
- z. Failed to oppose the prosecution's case with any adversarial litigation.
- aa. Failed to function as the government's adversary in any sense of the word.
- bb. Failed to pursue any of the legal recourse that was available.
- cc. Failed to function as the counsel that the Constitution's Sixth Amendment guarantees.
- dd. Failed to call alibi witnesses on my behalf.
- ee. Failed to appeal my case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

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

Ineffective Assistance of Counsel

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

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

The Applicant stated he was not challenging the validity of the guilty plea. Rather, the Applicant stated he was challenging the excessiveness of his sentence and plea counsel’s role at the guilty plea hearing. The Applicant stated that, as the maximum sentence on his charge is five (5) years imprisonment and the plea judge sentenced him to five (5) years suspended on the service of three (3) years and five (5) years probation, the overall sentence exceeds that maximum sentence. The Applicant stated that, the night before the plea hearing, he met with

plea counsel and told him there was some incorrect information about his prior record. The Applicant stated he challenged a portion of his criminal record at the guilty plea hearing but that it influenced his overall sentence. The Applicant stated plea counsel should not have told the judge at the guilty plea hearing that he was not a good candidate for probation. The Applicant stated that, while it was not included in the plea transcript, the bank manager/victim in this case was asked by the judge whether she wanted him to go to prison or make restitution and she said prison.

Plea counsel testified he did not recall meeting with the Applicant the night before the guilty plea hearing and the Applicant telling him about inaccuracies in his criminal record. Plea counsel testified that, regardless, he did not believe there were any errors in the Applicant's prior criminal record. Plea counsel noted the Applicant addressed the perceived errors during the guilty plea hearing. Plea counsel testified they were always looking for a probationary sentence. Plea counsel testified he asked the plea judge for such a sentence but also admitted his prior record "looked bad." Plea counsel testified he knew this plea judge and presented his sentence request to him in a way that the judge would appreciate. Plea counsel testified he did not believe anything objectionable occurred during the guilty plea hearing. Plea counsel testified the Applicant received a lawful sentence and that there was no reason to object to that sentence, especially because the Applicant did not want a lengthy jail sentence. Plea counsel testified he would not handle this case any differently today.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. The Applicant told the plea judge that he wanted to plead

guilty. (Plea transcript, p.7). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.4-6).

This Court finds the Applicant failed to meet his burden of proving plea counsel was ineffective during the guilty plea hearing. Plea counsel testified he reviewed the Applicant's prior record and was not aware of any inaccuracies. The Applicant explained to the plea judge the various concerns he had with his criminal record. (Plea transcript, pp.13-14; p.15). This Court finds the Applicant failed to present any evidence that either the information about his prior record was inaccurate or that it prejudiced him in some way. This Court also finds the Applicant mischaracterized plea counsel's statement about probation during the mitigation portion of the plea. While plea counsel did state the Applicant "in a lot of ways is not a candidate for probation" based on his prior record, plea counsel also asked the plea judge to levy "the maximum sentence which would be five years, suspend that sentence and put him on probation and let him pay the bank back." (Plea transcript, p.9, lines 3-6 and lines 15-18). This Court finds there was no error. The Applicant argued the victim in this case was allowed input into the type of punishment he would receive; however, this Court notes there is no such statement in the guilty plea transcript. As such, this Court finds the Applicant's testimony on this issue is not credible. See, e.g., Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007) (noting the guilty plea transcript refuted the applicant's claim).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have objected to the sentence imposed by the plea judge. This Court finds the sentence imposed in this case was, in fact, a legal and appropriate sentence. See, e.g., State v. Wickenhauser, 309 S.C. 377, 382, 423 S.E.2d 344, 347 (1992) (noting the maximum sentence for DUI, fourth

offense is five years and finding a sentence of four years suspended on the service of eighteen months and five years probation does not exceed the maximum sentence because “any actual period of incarceration under this sentence will not exceed the maximum statutory limit”). It is further this Court’s observation that the plea judge did not impose the maximum sentence as requested by the State,³ but rather suspended a substantial portion of the same. As such, plea counsel did not err in failing to object to the sentence in this case.

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

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

All Other Allegations

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

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

³ Plea transcript, p.13.

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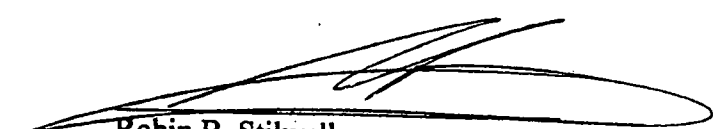
established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 1st day of April, 2011.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

GREENVILLE, South Carolina.

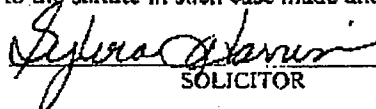
STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 CRIMES AGAINST A FEDERALLY CHARTERED OR INSURED
 INSTITUTION

At a Court of General Sessions, convened on **MAY 06 2008** the Grand Jurors of Greenville
 County present upon their oath:

That WILLIAM GLADNEY HARDEN did in Greenville County, between the 28th and 31st day of January, 2008, knowingly execute a scheme or artifice to defraud a federally chartered or insured financial institution, to wit: First Savers Bank, of more than One Thousand Dollars and No Cents (\$1,000.00), by deposited a total of eight checks drawn on closed accounts from Wachovia Bank and SunTrust Bank and deposited into First Savers Bank. WILLIAM GLADNEY HARDEN then withdrew funds from the First Savers account. This is in violation of §34-3-110 of the South Carolina Code of Laws (1976) as amended.

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


 SOLICITOR

WITNESSES

C Palmer *[Signature]*

Greenville Police Department

2/25/2008

ARREST WARRANT NUMBER
J484912

ACTION OF GRAND JURY
TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

.. VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-23-0-2-0337

SPH

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2008

PLEAD GUILTY

THE STATE

VS.

WILLIAM GLADNEY HARDEN

Indictment for

1345

CRIMES AGAINST A FEDERALLY CHARTERED
OR INSURED INSTITUTION

VIOLATION § 34-03-0110