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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Carmen T. Mullen, Circuit Court Judge

JOHN STANFORD JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000082

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTIES OF ORANGEBURG
AND DORCHESTER

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

CASE NO. 2010-GS-38-1141
2010-GS-38-1142
2010-GS-38-1143
2010-GS-18-0239
2008-GS-18-0651

STATE OF SOUTH CAROLINA)

versus)

JOHN STANFORD JOHNSON,)

DEFENDANT)

TRANSCRIPT OF RECORD

DATE:

FEBRUARY 24, 2011

BEFORE:

HONORABLE EDGAR DICKSON, PRESIDING JUDGE

APPEARANCES:

DONALD SORENSON, ESQUIRE
HARRISON BELL, ESQUIRE
ASSISTANT SOLICITORS

FOR THE STATE

MELISSA GUE, ESQUIRE
DAVID WILLIAMS, ESQUIRE
CHARLIE WILLIAMS, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

I N D E X

PAGE

JOHN STANFORD JOHNSON,
EXAMINATION BY THE COURT

5

SENTENCE OF THE COURT

E X H I B I T S

NONE.

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DATE:

February 24, 2011

SOLICITOR SORENSON: This is a guilty plea, Your Honor.

THE COURT: Okay.

SOLICITOR SORENSON: We've got three Orangeburg County charges that I'm handling, 2010-GS-38-1141, 1142, 1143, he's pleading to three counts of burglary, second, non-violent. Two of them are as indicted, one of them is being reduced from a burglary, first degree, to a burglary, second degree.


THE COURT: Okay.

SOLICITOR SORENSON: And then, Mr. Bell is handling two Dorchester County charges, 2008-GS-18-651, malicious injury to real property more than Ten thousand Dollars, he was originally charged with an arson on that charge, and then receiving stolen goods less than Two thousand in 2010-GS-18-239.

THE COURT: Okay.

SOLICITOR SORENSON: We've offered a negotiated ten year sentence. Additionally, Your Honor, and I'll put on the record at the appropriate time, there's several other charges that are being dismissed as a result of this also, this plea.

THE COURT: Okay.

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JOHN STANFORD JOHNSON, EXAMINATION BY THE COURT

4

1 CLERK: Please raise your right hand as best you
2 can.

3 (Whereupon, John Stanford Johnson
4 is duly sworn.)

5 CLERK: Thank you.

6 (NOTE: Blank lines on this page do not indicate any part
7 of record has been omitted. Headers on testimony pages
8 and hard page breaks between testimony are now required
9 by the Court. See next ensuing page for sequential
10 continuation of record.)

JOHN STANFORD JOHNSON, EXAMINATION BY THE COURT

JOHN STANFORD JOHNSON,

EXAMINATION BY THE COURT:

Q. Alright, Mr. Johnson, the sentencing sheet indicates that you are Thirty-three years old, is that correct?

A. Yes, sir.

Q. Alright, sir. How far did you go in school?

A. I graduated.

Q. From what high school?

A. St. George High.

Q. St. George?

A. Yes, sir.

Q. Alright, sir. And have you gotten any training or education past that?

A. Some training.

Q. Okay. Alright, sir, were you working - - -

A. Brick masonry.

Q. Sir?

A. Brick masonry.

Q. Were you working at the time you were arrested?

A. At Mike Shook's Masonry in Charleston, South Carolina.

Q. Alright, sir. And Mr. Johnson, I know you've got, I see you've got two sets of attorneys here, you have Ms. Gue and Mr. Williams. Mr. Williams is representing you in the Orangeburg cases and Ms. Gue is representing you

JOHN STANFORD JOHNSON, EXAMINATION BY THE COURT

6

1 in the Dorchester cases, is that correct?

2 MS. GUE: Not - - -

3 THE COURT: Are y'all all representing him together
4 or ...

5 MS. GUE: Well, I don't know that Mr. Williams is
6 representing him on the Dorchester stuff because I've
7 been doing that for years.

8 THE COURT: Oh, okay.

9 MS. GUE: As of recently he was associated in for
10 purposes of the Orangeburg cases.

11 THE COURT: Okay.

12 MS. GUE: At this moment I think they've considered
13 me lead counsel and him helping me or involved.

14 THE COURT: Okay.

15 Q. Alright, Mr. Johnson, your attorneys have gone over
16 these charges with you?

17 A. Yes, sir.

18 Q. Okay. And they've told you what your possible
19 sentence could be?

20 A. Yes, sir.

21 Q. Okay. They've also advised you of our constitutional
22 rights?

23 A. Yes, sir.

24 Q. Okay. And have you understood everything that they
25 have told you?

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A. Yes, sir, I have.

Q. Okay. Are you satisfied with their services as your attorneys?

A. Yes, sir.

Q. Okay. Do you need anymore time to talk with them?

A. No, sir.

Q. Alright, sir. Now, are you under the influence of any medication, drugs or alcohol here today?

A. No, sir.

Q. You're thinking clearly?

A. Yes, sir.

Q. You know exactly what you're doing?

A. Yes, sir.

Q. The Solicitor's office has told me that this is a recommended sentence of ten years. Is that your understanding?

A. Yes, sir.

Q. Other than that recommendation has anybody promised you anything to get you to plead guilty here today?

A. No, sir.

Q. Has anybody threatened you to get you to plead guilty?

A. No, sir.

Q. You're doing it freely and voluntarily?

A. Yes, sir, I am.

1 Q. Do you understand that if I accept your plea today
2 and sentence you today you'd have ten days from today's
3 date to file any notice of intent to appeal?

4 A. Yes, sir.

5 Q. Alright. You have the right to have the two
6 Dorchester cases heard in Dorchester County. You're here
7 in Orangeburg. Do you waive venue to allow me to hear
8 this in Orangeburg?

9 A. Yes, sir, I do.

10 Q. Okay. Alright, sir. The first indictment that I
11 have is Indictment Number 2010-GS-38-1142, true billed by
12 the Grand Jury on September Fifteenth, Two thousand and
13 ten. The indictment alleges, Mr. Johnson, that you did,
14 in Orangeburg County, on or about May Fourth, Two
15 thousand and ten, willfully and unlawfully enter a
16 dwelling belonging to Kim and Ryan Carson without consent
17 with the intent to commit a crime therein, in violation
18 of the laws of this State. Do you understand the
19 allegations contained in this indictment?

20 A. Yes, sir, I do.

21 Q. Do you agree with the allegations contained in this
22 indictment?

23 A. Yes, sir. I do.

24 MS. GUE: Judge Dickson, he was asking me something,
25 I told him to listen to you. Can you just give me on

JOHN STANFORD JOHNSON, EXAMINATION BY THE COURT

9

1 second and let him ask me that so I can see whether it's
2 relevant?

3 THE COURT: Sure, okay.

4 (Whereupon, Counsel and Defendant
5 confer off the record.)

6 MS. GUE: It's something he wants to ask me
7 afterwards.

8 Q. Okay. We're okay?

9 A. Yeah.

10 Q. Okay, alright. Mr. Johnson, how do you plead to this
11 charge of burglary, second degree, non-violent?

12 A. Guilty, Your Honor.

13 Q. Alright, sir. The next indictment I have, 2010-GS-
14 38-1143, true billed by the Grand Jury on September
15 Fifteenth, Two thousand ten. The allegations are, Mr.
16 Johnson, that you did, in Orangeburg County, on or about
17 May Fourth, Two thousand ten, willfully and unlawfully
18 enter the dwelling belonging to Mr. Baker without
19 consent, with the intent to commit a crime therein, in
20 violation of the laws of this State. Do you understand
21 the allegations contained in this indictment?

22 A. Yes, sir, I do.

23 Q. Alright, sir. Do you agree with these allegations?

24 A. Yes, sir.

25 Q. How do you plead to the charge of burglary, non-

1 violent, second degree?

2 A. Guilty.

3 Q. Alright, sir. The final indictment in Orangeburg is
4 Indictment Number 2010-GS-38-1141, true billed by the
5 Grand Jury on September Fifteenth, Two thousand ten. It
6 was originally, it is for burglary in the first degree.
7 I understand they're allowing you to plead to another
8 burglary, non-violent, second degree, in regard to this
9 charge. Is that correct?

10 A. Yes, sir.

11 Q. The allegations are, Mr. Johnson, that you did, in
12 Orangeburg County, on or about May Fourth, Two thousand
13 ten, willfully and unlawfully enter the dwelling of
14 Kenneth Green without consent with the intent to commit a
15 crime therein. And since you're not pleading to the rest
16 of it I'm not going to worry about it. Do you understand
17 the allegations contained in this indictment?

18 A. Yes, sir, I do.

19 Q. Do you agree with the allegations that you entered
20 into Mr. Green's dwelling without consent?

21 A. Yes, sir.

22 Q. Okay. How do you plead to this charge of burglary,
23 non-violent, second degree?

24 A. Guilty, Your Honor.

25 Q. Thank you, sir. Now, we get to the Dorchester County

JOHN STANFORD JOHNSON, EXAMINATION BY THE COURT

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1 charges. The first one I have ...

2 THE COURT: And Mr. Bell, where did y'all get this
3 small print?

4 Q. Anyway, the first indictment I have is Indictment
5 Number 2008-GS-18-651, true billed by the Grand Jury on
6 March the Sixteenth, Two thousand and nine. It is for
7 arson, but they're allowing you to plead to malicious
8 injury to real property of value more than Ten thousand,
9 injury value more than Ten thousand Dollars. Is that
10 your understanding, Mr. Johnson?

11 A. Yes, sir, it is.

12 Q. Alright, sir. The allegations in this one involve,
13 indicate that you did, in Dorchester County, on or about
14 September Eleventh, Two thousand five, willfully and
15 maliciously cause an explosion or set fire to or burn the
16 cash drug store either directly, and either directly or
17 indirectly caused serious bodily harm to a fire fighter.
18 Those are the allegations contained in this indictment
19 for arson. Do you understand them?

20 A. Yes, sir.

21 Q. As regarding this indictment they're allowing you to
22 plead to malicious injury to real property, injury value
23 more than Ten thousand. Is that your understanding?

24 A. Yes, sir.

25 Q. How do you plead to that charge?

1 A. Guilty also.

2 Q. Thank you, sir. The next indictment I have is
3 Indictment Number 2010-GS-18-289, is for receiving stolen
4 goods. It was true billed by the Grand Jury on March
5 Fourth, Two thousand and ten, and the allegations are,
6 Mr. Johnson, that you did, in Dorchester County, on or
7 about December Ninth, Two thousand and nine, buy,
8 receive, possess stolen goods valued at more than a
9 thousand but less than Five thousand Dollars and it being
10 described as Browning Sweet Sixteen Shotgun, and that
11 you had reason to know that the gun was stolen.

12 A. Yes, sir.

13 Q. Okay. Now, do you understand the allegations
14 contained in this indictment?

15 A. Yes, sir.

16 Q. Do you agree with these allegations?

17 A. Yes, sir.

18 Q. Okay. How do you plead to this charge of receiving
19 stolen goods valued less than Two thousand?

20 A. Guilty, Your Honor.

21 THE COURT: Thank you, sir. And who's going to go
22 first?

23 SOLICITOR SORENSON: Mr. Bell.

24 THE COURT: Okay.

25 SOLICITOR BELL: Your Honor, as to the malicious

1 injury to real property, that occurred on September
2 Eleventh, Two thousand five, in the early morning hours.
3 the fire department was called to a cash discount drug
4 store which is downtown St. George. It was fully
5 involved, it and a couple of other buildings were
6 completely burned down. The value of damages were over,
7 a couple hundred thousand dollars. The investigation,
8 there was an extensive investigation as to who did this.
9 They did not find any accelerate at the scene, but in the
10 investigation they had a couple of individuals who know
11 Mr. Johnson, one was in jail with him, that stated he
12 admitted to burning the drug store, and I believe another
13 individual was a cousin who stated that he admitted to
14 the cousin of burning the drug store to cover up some
15 evidence and he had gone there looking for money. He
16 also admitted to an officer that he had been in the
17 vicinity, the St. George Police Department were looking
18 for him, but he did not admit to the fire at the that
19 time. And that's the, that's on the malicious injury to
20 real property.

21 As to the receiving stolen goods, that occurred, I
22 believe, back in December Ninth, Two thousand nine, at
23 Thirteen Forty-six Mulberry Road outside the Town of St.
24 George in Dorchester County. And individual who has been
25 charged as well had some guns that were found to be

1 stolen out of Bamberg County. A Browning shotgun is the
2 subject of this one. After talking with the police that
3 co-defendant stated that he had received the gun from a
4 guy named Stan. He was shown a photographic lineup that
5 included Mr. Johnson's photograph and pointed out and
6 said that Mr. Johnson is the individual that he purchased
7 the gun from and was known as Stan. And the value of the
8 shot gun was Eighteen hundred Dollars.

9 THE COURT: Alright, sir. And what's the max for
10 receiving?

11 SOLICITOR BELL: It's Thirty days, Your Honor, under
12 the new regime I think he gets the benefit of that since
13 I think he was charged under the One to Five.

14 THE COURT: And on the malicious injury?

15 SOLICITOR BELL: It's ten years, I think the maximum
16 is ten on that.

17 THE COURT: Ten years? Okay. Alright, sir, thank
18 you, sir.

19 Alright, Mr. Sorenson.

20 SOLICITOR SORENSON: May it please the Court.

21 THE COURT: Yes, sir.

22 SOLICITOR SORENSON: As to the three burglary
23 charges, these all occurred on the afternoon of May the
24 Fourth of Two thousand ten. It kind of all came to a
25 head when a vehicle, a silver suburban, about

JOHN STANFORD JOHNSON, EXAMINATION BY THE COURT

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1 three: fifteen that afternoon was stopped by a Deputy
2 Rawlings with the Berkeley County Sheriff's Office. The
3 defendant, this defendant was a passenger in that
4 vehicle. It was stopped just off of Highway One Seventy-
5 six, just kind of over into Berkeley County, over the
6 Orangeburg County line. At that point in time the
7 officer observed there were a large number of items in t
8 his suburban. There were some guitars, a television, a
9 bunch of boxes, observed a rifle, a pellet gun, just kind
10 of the entire back of the vehicle was just crammed fully
11 of stuff. Subsequently he made contact with dispatch and
12 they learned of a burglary initially that had occurred
13 over in Orangeburg County over, between that afternoon
14 and the following day they learned of three burglaries
15 that occurred, one at the residence of Kenneth Green in
16 Holly Hill, one at the residence of Mr. Baker in Holly
17 Hill, and one at the residence of Mr. and Mrs. Carson in
18 Eutawville, basically, all of them where the front door
19 had been kicked in and items taken. Those items
20 basically they were matched up with all the items that
21 were found in the suburban. The one of them that kind of
22 pinned down the time frame also as far as when this
23 occurred was the Carson residence. They had left home,
24 their house at about two: fifteen, had seen a gray SUV
25 kind of circling around their neighborhood, and they were

1 back within an hour to find their home had been kicked in
2 which basically would have pinned the time frame down to
3 basically those burglaries happening and them being
4 stopped basically right after that. Mr. Johnson did not
5 give a statement at all but both of his co-defendants
6 both gave statements admitting to all three of their
7 involvement in the three burglaries. They had charged
8 him with a burglary, first, because of the rifle that was
9 taken in Mr. Green's burglary. It was an unloaded rifle
10 that was taken, there was never any indication that they
11 brandished it or anything of that nature so that's why
12 we're allowing him to plead to a burglary, second.

13 As to prior record, just real briefly, Your Honor,
14 he's got from Nineteen ninety-seven, an accessory after
15 the fact conviction, actually two counts, one in
16 Orangeburg and one in the Fourteenth Circuit. Then in
17 Nineteen Ninety-seven, in Dorchester County it looks like
18 about nine counts of forgery. Two thousand four,
19 malicious injury to personal property. Two thousand six,
20 a possession of cocaine. And Two thousand seven, use of
21 vehicle without owner's consent. Those last several were
22 all in Dorchester County.

23 Lastly, Your Honor, as I indicated at the outset,
24 there are a couple of charges that are going to be
25 dismissed at the conclusion of this plea. It's my

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understanding that he's also charged with a strong arm robbery in Dorchester County that I believe Mr. Bell will be dismissing.

SOLICITOR BELL: That's correct.

SOLICITOR SORENSON: And then he was, when they were initially stopped in Berkeley County, when they were kind of the initial investigation they, I believe, charged all three individuals in Berkeley County with receiving stolen goods where they had really pinned down the time frame and gotten the co-defendants' statements. So, he has a pending receiving stolen goods over Five thousand Dollars. I spoke this morning to a Ms. Arial Pittman who is the Assistant Solicitor assigned to that charge and she has informed me that at the conclusion of this guilty plea if I notify her she will be dismissing that charge.

THE COURT: Okay.

SOLICITOR SORENSON: He's been in jail, Your Honor, since his arrest on the Orangeburg County charges since May Thirteenth of Two thousand ten.

THE COURT: May Thirteenth?

SOLICITOR SORENSON: Yes, sir.

THE COURT: Two thousand ten?

SOLICITOR SORENSON: That would be on just the Orangeburg charges. I know Ms. Gue's going to address the time that he might get credit for on the Dorchester

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1 charges, that would be different than ...

2 SOLICITOR BELL: We won't dispute that time in
3 Dorchester County.

4 THE COURT: Okay. And the maximum sentence on
5 burglary ...

6 SOLICITOR SORENSON: The maximum would be Fifteen
7 years, yes, sir.

8 THE COURT: Okay. Alright.

9 Q. Alright, Mr. Johnson, you have heard what the
10 Solicitor's office has told me about the circumstances
11 that led to your arrest on these charges?

12 A. Yes, sir, I did.

13 Q. You've also heard what he told me about your prior
14 record?

15 A. Yes, sir, I did.

16 Q. Understanding all that do you still want me to accept
17 your guilt plea here today?

18 A. Yes, sir, I do.

19 THE COURT: Alright, sir. Alright, Mr. Johnson, I
20 find that your decision to plead guilty to these five
21 charges to be freely, voluntarily and intelligently made.
22 I find that you've had the advice and counsel of two
23 competent attorneys. I find that you are satisfied with
24 the services of your attorneys. I find that there is a
25 factual basis for you to plead guilty to all five of

1 these charges. So, I will accept your guilty plea to
2 those charges.

3 Alright, Ms. Gue.

4 MS. GUE: Thank you, Your Honor. Mr. Johnson is
5 standing before you admitting to these charges, Your
6 Honor. We would ask for you to please accept the ten
7 year sentence that's been recommended as running them all
8 concurrent. He served eight months in jail and we would
9 ask you to put that eight months on the sentencing sheet
10 for the Dorchester County charges and give him credit for
11 that. I believe he served ten months in Orangeburg, but
12 if you could put that on the sentencing sheet. Since the
13 date of arrest he's been consistently incarcerated ever
14 since. He is from -- Harleyville?

15 MR. JOHNSON: Yes, ma'am.

16 MS. GUE: I've been knowing him since right after
17 the arson case. So, it's been quite a while, Your Honor.
18 He works, he has -- his girlfriend is in the courtroom
19 with him today, she's in the purple shirt, Your Honor.
20 His mother is working. He has a niece that's almost
21 about two years old that has cancer, that the mother is
22 primary care giver for in many ways and takes care of,
23 very, very strong family support. We've worked very hard
24 to get this plea worked out with the Solicitor, and I
25 think it's in his best interest, and hope that he will be

1 back in the community, living a normal law abiding life
 2 as soon as he can. He is a worker bee and he will work,
 3 and he does work. And I think that he's going to be okay
 4 after we get through this, Your Honor, and I ask you to
 5 please accept the ten year concurrent sentence.

6 THE COURT: Alright, and you said how many months?

7 MS. GUE: he served eight months - - -

8 THE COURT: In Dorchester?

9 MS. GUE: --- in Dorchester County and before he was
 10 able to get out. We'd ask you to put that on his
 11 sentencing sheet. And I know Mr. Williams has a few
 12 things to say since he's been involved with Mr. Johnson
 13 also. And we're glad to have him involved in the case,
 14 Your Honor.

15 THE COURT: Okay. Mr. Williams.

16 MR. WILLIAMS: Yes, Your Honor, I'd just like to
 17 reiterate what Attorney Gue said, and say that Mr.
 18 Johnson is a valuable piece of society. He does have
 19 strong family support, and we hope that you will take the
 20 Solicitor's recommendation of the ten year concurrent
 21 sentence.

22 THE COURT: Okay.

23 SENTENCE OF THE COURT:

24 THE COURT: What I'm going to do in all of these
 25 except the receiving stolen goods, the sentence of this

1 Court is that you are sentenced to the State Department
2 of Corrections for a period of ten years. The sentence
3 are concurrent. I will give you credit for the time that
4 you've served.

5 On the stolen goods, it's a thirty day sentence,
6 which is also concurrent.

7 MS. GUE: Yes, sir, so that's the malicious injury -
8 - the receiving stolen he gets time served, malicious
9 injury ten years concurrent with all the burg, seconds?

10 THE COURT: Yes, ma'am.

11 MS. GUE: Thank you, Judge. Do you have any
12 questions?

13 MR. JOHNSON: No.

14 MS. GUE: Alright, thank you, Your Honor.

15
16 END OF TRANSCRIPT

CERTIFICATE

I, the undersigned, Mrs. Harry A. Walker, of Rowesville, South Carolina, Official Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned cause, relative to appeal, in the Court of General Sessions for Orangeburg and Dorchester Counties, South Carolina, on the Twenty-fourth day of February, 2010:

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

DATE: March 19, 2012

Harry A. Walker

 (MRS.) HARRY A. WALKER

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FORM 5 2011-CP-38-1239

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of ORANGEBURG)

JOHN STANFORD JOHNSON # 150659)

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

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

2011 OCT - 7 P. 18

JW

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 RIDGELAND CI, GB-#26, P.O. Box 2037
RIDGELAND, SC 29956
2. Name and location of Court which imposed sentence COURT OF GENERAL
SESSIONS, ORANGEBURG COUNTY, 1ST JUDICIAL CIRCUIT, ORANGEBURG, SC.
3. Name(s) of co-defendant(s) (if any) JERUZE SALLEY, John
CIRANDAN Johnson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010GS33-1141, 1142, 1143
 - (b) 2008GS190651

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

14
(c) 2010GS180239

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

(a) 2/24/2011 - 10 YEARS TERM OF SERVICE

(b) 2/24/2011 - 10 YEARS TERM OF SERVICE

(c) 2/24/2011 - 30 DAYS

6. Check whether a finding of guilty was made:

(a) after a plea of guilty (SEE APPLICANT'S ATTACHMENT)

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), 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. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) (SEE APPLICANT'S ATTACHMENT TO PCR APPLICATION)

(b) _____

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) DID NOT KNOWINGLY OR INTELLIGENTLY PLEAD GUILTY
- (c) COERCED INTO PLEA OF GUILTY; COUNSEL FAILED TO ADVISE RIGHT TO APPEAL

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

- (a) (SEE APPLICANT'S ATTACHMENT FOR APPLICATION FOR PCR)
- (b) _____
- (c) _____

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

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

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) (SEE APPLICANT'S ATTACHMENT TO APPLICATION FOR PER)
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. ALEXIA W. GAY, LLC ATTORNEY AT LAW
P.O. Box 2144, Mt Pleasant, SC 29465-2144
 - ii. CHARLES H. WILLIAMS III, ATTORNEY AT LAW
1381 RUSSELL STREET, ORANGETHURB, SC 29115
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. ARRAIGNMENT AND PLEA / SENTENCING
 - ii. SENTENCING
 - iii. _____

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

(SEE APPLICANT'S ATTACHMENT TO APPLICATION FOR PCR)

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

NO

STATE OF SOUTH CAROLINA)
County of JASPER)

VERIFICATION

I, John Stanford Johnson, 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.

John Johnson

SWORN to and subscribed before me this 22nd day of Sept, 2011.

Paul K. [Signature] (L.S.)
Notary Public

My Commission Expires: 2/15/2017

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

I, John STANFORD Johnson, 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.

John Johnson, S.
Applicant

SWORN or affirmed to and subscribed before me this
22nd day of Sept, 2016.

[Signature]
Notary Public

My Commission Expires: 2/5/2017

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 County of ORANGEBURG) FIRST JUDICIAL CIRCUIT
)
 John Stanford Johnson, 250659,) C/A No.: 2011-CP-38-1239
 Applicant,)
 -vs.-)
 State of South Carolina,) APPENDAGE TO APPLICANT'S
 Respondent.) APPLICATION FOR POST-CONVICTION RELIEF
)

The Applicant, John Stanford Johnson, 250659, comes before this Honorable Court, proceeding pro-se, to offers the following Appendage to his Application for Post Conviction Relief concerning Indictment Nos.: 2010-GS-38-1141 through 1143; 08-GS-18-0651, and 2010-GS-18-0239:

In regards to question Number Ten (10) of Page Three of the Application for Post Conviction Relief:

State concisely the Grounds on which you base your allegation(s) that you are being held in custody unlawfully.

- A. Ineffective Assistance of Counsel;
- B. Did not knowingly or intelligently plea guilty;
- C. Coerced into plea of guilty;
- D. Counsel failed to advise his client as to his right to appeal;
- E. Violation of Subject Matter Jurisdiction as it relates to indictment Numbers 2008-GS-18-0651, and 2010-GS-18-0239.

In regards to question Number Eleven (11) of Page Three (3) of the Application for Post Conviction Relief:

[A]. Applicant was denied his Sixth and Fourteenth Amendment Right(s) to an effective assistance of counsel insofar as his trial counsel failed to provide competent representation and these omissions were prejudicial to his defense.

The Applicant's counsel failed to properly investigate the facts surrounding the circumstances that lead to his arrest. It has been clearly established that the amount of pre-trial research, or the lack thereof, can

ATTEST: TRUE COPY
Winnys B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

most definitely affect the outcome of a criminal defendant's trial. Davis v. Alabama, 100 S.Ct. 1827 (1980).

Effective assistance of counsel, i.e., will satisfy the requirements of the Sixth Amendment, is counsel "reasonable likely to render and rendering reasonably effective assistance given the totality of the circumstances?" Washington v. Strickland, 693 F.2d 1243, 1250 (CA5, 1982)(en banc) Cert. Granted, 466 U.S. 668, 104 S.Ct. 2052 (1984); Lockhart v. Frétwell 113 S.Ct. 838 (1993); Mays v. Balkcom, 631 F.2d 48, 52, n. 1 (CA5, 1980).

In considering the totality of the circumstances, a court must examine the quality of counsel's assistance from the time of initial retention, through the time of appeal. Goodwin v. Balkcom, 684 F.2d 794, 805 (CA11, 1981); State v. Williams, 571 SE2d 703 (Ct. App. 2002).

Would not justice best be served once a criminal defendant raised the issue of ineffective assistance of counsel, and the court determines there is a question of whether the defendant received effective assistance of counsel, should not the court allow the Applicant be granted a hearing regarding the issue?

[B]. The Applicant contends that his plea cannot be considered voluntary, due to him being denied effective assistance of counsel, and that the pleas was brought about by ignorance, and the "lack" of competence on the part of his attorney, by issuing "erroneous" advice as to the plea entered by the Applicant. Hinson v. State, 377 SE2d 338 (1989).

Applicant makes the following allegations concerning his plea:

- (1) Counsel did not actually or substantially assist him in deciding whether to plead guilty or not;
- (2) Counsel did not familiarize himself with the facts of the case;
- (3) Counsel did not impart to the Applicant an understanding of the law on the relation of the facts;
- (4) Counsel issued erroneous advice to the Applicant as to the length of sentence he would receive by entering his plea;
- (5) Counsel issued advice to the Applicant to the effect that no defense was possible to his charge;
- (6) Counsel "coerced" the Applicant into entering his plea, by making threats as to length of sentence he would receive by not pleading guilty.

For a plea to be entered knowingly and voluntarily, a criminal defendant must possess an understanding of the law in relation to the facts. See: McCarthy v. U.S., 89 S.Ct. 1171 (1969). Providing this "understanding" of the law in relation to the facts, is the function of the accused's counsel.

Note: Nor should we ignore the Supreme Court's admonition in Argersinger v. Hamlin, 407 U.S. 25, 92 S.Ct. 2006 (1972), to the effect that, "Beyond the problem of trials and appeals is that of the guilty plea, a problem which looms large in misdemeanor as well as felony cases." Counsel is needed so that the accused may know precisely what he is doing, so that he is "fully aware" of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.

Can it be said, by the Applicant, after relying on the advice of his counsel, that by him pleading guilty after being told by his attorney that no possible defense existed, when in fact, at least one plausible line did? Then could it be said that the Applicant, prior to entering his plea, possessed an understanding of the law with regards to the facts?

It should not be assumed that counsel had contributed to the case where he concluded there was no defense possible, and that he exercised his best judgment in advising his client to plead guilty. Neither the attorney, nor the Court could say what a prompt and thorough investigation might disclose as to the facts, or what defenses could be yielded?

In Powell v. Alabama 287 U.S. 45, 53 S.Ct. 55 (1933), the Court stated: "the right to be heard would be, in many cases, of little avail, if it did not comprehend the right to be heard by counsel."

Even in today's media driven society, the intelligent and educated laymen have little or sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the Rule of Evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issues, or otherwise, inadmissible. He would lack both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceeding against

him. Without it, though he may be not guilty, he faces the dangers of conviction, because he does not know how to establish his innocence. (Note: As was in the case of the Applicant.)

[C]. In this regard, the Applicant contends that had it not been for his counsel's, offering of advice, which was based on information obtained directly from the State, and not as the fruit of its own investigation, that he would not have entered the plea of guilty that he did.

The Applicant contends that his counsel, from the outset, began to speak of a guilty plea, which counsel, saw, and portrayed, as the Applicant's only opportunity for a reduced sentence. Counsel painted a bleak picture to the Applicant, with little or no hope concerning the likelihood and outcome of any planned trial. Counsel should had enlighten Applicant about his so-call, on-going deal making with the solicitor. The Applicant, being faced with the pressure of the solicitor's office, and his own counsel, concerning the length of sentence he would receive, if convicted by a jury, finally, caved into the demands for his plea of guilty.

The Applicant can see no reason behind the thought that his counsel be considered as having rendered anything near effective assistance to the Applicant. The Applicant would further offer that he has clearly met the burden of proof essential in the two (2) prong requirements under Strickland v. Washington, supra., therefore, based on the forgoing, the Applicant strongly feels that he is entitled to a correction of sentence and judgment, and to have this matter remanded back to the Court of General Sessions for Re-hearing.

[D]. In addition, the Applicant contends that counsel failed to advise him as to his right to appeal. The accused is entitled to be made aware of this right to appeal, as an element of effective assistance of counsel. Weather v. State, 459 SE2d 838 (SC 1995); White v. State, 208 SE2d 35 (SC 1974).

The Applicant was not advised of his right here, doubtlessly because at the time counsel misrepresentation of the facts were not clearly understood by Applicant. Nonetheless even if his advice on this point would have amounted to a mere formality the accused was nonetheless entitled to at least be made aware of this right to appeal, even in the wake of his plea.

[E]. The Applicant further contends his counsel was ineffective insofar as to his advice to plea to indictment(s) from another county, whereas the sentencing Court clearly did not have subject matter jurisdiction. Weinhauer v. State, 513 SE2d 840 (SC 1999); State v. Smalls, 613 SE2d 754 (SC 2005).

It is obviously true that subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings belong. Edwards v. State, 642 SE2d 738 (SC 2007). But it surely violates Applicant's right to Due Process, by allowing indictments from other judicial areas to be adjudicated, without a valid waiver, in a non-indicting judiciary. State v. Means, 626 SE2d 348 (SC 2006). Allowing for the indictment to be a notice document, then the Applicant's counsel should have been competent enough to know that Applicant's Due Process rights were being violated with a plea to a charge in a non-related county or judiciary. State v. Smalls, 610 SE2d 494 (SC 2003).

Counsel can not be considered to be competent when something as basic as giving advise on whether an indictment can be pled to in a certain location, cannot be derived.

RELIEF SOUGHT

Therefore, the Applicant, John Stanford Johnson, 250659, prays that this Honorable Court, by reviewing this record, should conclude that the issues and allegations contained herein, do in fact contain merit, and that the conviction of the Applicant was in violation of the Constitutional laws of the United States, as well as the State of South Carolina, and that this conviction should be vacated, because of the Due Process violation, and at a minimum reversed.

Applicant prays also, that this Honorable Court would ensure that justice and fairplay prevail, and that this Court would take whatever steps necessary to examine every allegation and fact, ensuring a fair and just decision of this Honorable Court.

Respectfully Submitted;

John Stanford Johnson, S.

John Stanford Johnson, 250659

Applicant, Pro-se

RCI, PO Box 2039; GB-26
Ridgeland, SC 29936

Page 5

STATE TO AND COUNTY OF SOUTH CAROLINA
THIS 22nd day of Sept
2011
Paul V. [Signature]
21/5/2011

September __, 2011

Orangeburg County Clerk of Court Office

WINNIFA B. CLARK
CLERK OF COURT

YOJUANA T. CREWS
DEPUTY CLERK OF COURT

SANDRA P. OWEN
DEPUTY CLERK OF COURT



PO Box 9000
ORANGEBURG, SC 29116-9000
PHONE: (803) 533-6260
FAX: (803) 534-3848

PCR APPLICATION

PLEASE BE ADVISED OF THE FOLLOWING WHEN FILING YOUR PCR APPLICATION:

1. To receive a copy of your application you must provide a copy with your original application and a self addressed stamped envelope for its return.
2. If you request any information by mail you must send a self addressed stamped envelope for the response to your question to be returned to you. This includes: Case number/warrant number; attorney's name; charge(s); previous address; date of birth, etc.

ATTEST: TRUE COPY
Winnifa B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

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|---------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF ORANGEBURG |) | FOR THE FIRST JUDICIAL CIRCUIT |
| |) | |
| John Stanford Johnson, #250659, |) | 2011-CP-38-1239 |
| |) | |
| Applicant, |) | |
| |) | |
| v. |) | RETURN |
| |) | (Appointment of Counsel Requested) |
| State of South Carolina, |) | |
| |) | |
| Respondent. |) | |

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 7, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was true bill indicted at the April 2008 term of the Dorchester County Grand Jury for Strong Arm Robbery (2008-GS-18-0650) and at the April 2010 term for Receiving Stolen Goods (Value Between \$1000 and \$5,000) (2010-GS-18-0239). Thereafter, Applicant was true bill indicted at the September 2010 term of the Orangeburg County Grand Jury for Burglary – First Degree and two (2) counts of Burglary – Second Degree (Non-Violent) (2010-GS-38-1141/1142/1143). Applicant was represented by Melisa W. Gay, Esquire, and Charles H. Williams, Esquire, on the charges. On February 24, 2011, the Applicant appeared before the Honorable Edgar W. Dickson where he pled guilty to three (3) counts of Burglary – Second Degree, including one as a lesser included offense to Burglary – First Degree, a one (1) count of the lesser included Receiving Stolen Goods (Value Less Than \$2,000). The remaining Strong Arm Robbery charged was *nolle prossed* as part of the plea. Judge Dickson sentenced Applicant to ten (10) years imprisonment

for each count of Burglary – Second and thirty (30) days imprisonment for Receiving Stolen Goods, all sentences to run concurrently. The Applicant did not appeal his plea or sentences.

Attached herewith and incorporated herein are the records of both the Dorchester County and Orangeburg County Clerks of Court regarding the subject guilty pleas, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.¹ The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. "Failed to properly investigate the facts...plea was brought about by ignorance and the lack of competence on the part of his attorney issuing erroneous advice as to the plea."
 - b. "Counsel did not actually or substantially assist him in deciding whether to plead guilty or not."
 - c. "Counsel did not familiarize himself with the facts of the case."
 - d. "Counsel did not impart to the Applicant an understanding of the law on the relation of the facts."
 - e. "Counsel issued erroneous advice to the Applicant as to the length of sentence he would receive by entering his plea."
 - f. "Counsel issued advise to the Applicant to the effect that no defense was possible to his charge."
 - g. "Counsel coerced the Applicant into entering his plea by making threats as to length of sentence he would receive by not pleading guilty."
2. Did not knowingly or intelligently plea guilty.
3. Coerced into plea of guilty.

¹ As of the date of this Return, the transcript has been ordered but not yet received. The same will be forwarded upon receipt.

4. Counsel failed to advise right to appeal.
 - a. "Applicant was not advised of his right to appeal."
5. Violation of subject matter jurisdiction as it relates to indictment numbers 08-GS-18-0651 and 10-GS-18-0239.

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the 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 the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

V.

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

VI.

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

Respectfully submitted,

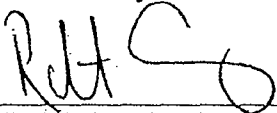
[Signature on Next Page]

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

December 21, 2011.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
)
)
 JOHN STANFORD JOHNSON, 250659,)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2011-CP-38-1239

AFFIDAVIT OF SERVICE BY MAIL

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:

Michael R. Culler, Esquire
1540 Russell Street, SE
Suite 103
Orangeburg, SC 29115

DATED this 21st day of December, 2011.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
 COUNTY OF ORANGEBURG 2011-CP-38-1239

JOHN STANFORD JOHNSON,)
) TRANSCRIPT OF RECORD
) Applicant,)
) October 31, 2012
) -vs-)
))
 STATE OF SOUTH CAROLINA,) St. George, South Carolina
))
) Respondent.)

B E F O R E:

The Honorable Carmen T. Mullen, Judge.

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

Michael Culler, Esquire
 Attorney for the Applicant

Megan Harrigan, Esquire
 Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
 Circuit Court Reporter

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I N D E X

| WITNESS | DIRECT | CROSS | REDIRECT | RECROSS |
|--------------------------|--------|-------|----------|---------|
| John Stanford Johnson | 5 | 18 | -- | -- |
| Melisa Gay | 27 | 35 | -- | -- |

1 (October 31, 2012.)

2 MS. HARRIGAN: The next matter we'll be
3 doing, Your Honor, is John Johnson.

4 THE COURT: Okay. Are you ready to proceed?

5 MS. HARRIGAN: Yes, Your Honor. May it
6 please the Court: The State calls John Johnson versus
7 the state of South Carolina, docket number
8 2011-CP-38-1239. The applicant was true billed indicted
9 at the April 2008 term of the Dorchester County grand
10 jury for strong-arm robbery and at the April 2010 term
11 for receiving stolen goods valued between 1,000 to 5,000.

12 Thereafter applicant was true billed indicted
13 at the December 2010 term of the Orangeburg grand jury
14 for burglary in the first degree and two counts of
15 burglary in the second degree nonviolent. Applicant was
16 represented by Melisa Gay and Charles H. Williams on
17 these charges. On February 24, 2011, the applicant
18 appeared before the Honorable Edward W. Dickson where he
19 pled guilty to three counts of burglary in the second
20 degree, nonviolent, including one in the lesser included
21 offense to his burglary in the first degree charge as
22 well as one count of the lesser included receiving stolen
23 goods, value less than \$2,000. Remaining strong-arm
24 robbery charge was nolle prossed as part of the plea.

25 Judge Dickson sentenced the applicant to ten

1 years' imprisonment for each count of burglary in the
2 second degree and 30 days' imprisonment for receiving
3 stolen goods with all sentences to run concurrently. The
4 applicant did not appeal his plea or sentences. However,
5 he did file a timely application for post-conviction
6 relief on October 7, 2011, alleging that he was being
7 held in custody unlawfully due to ineffective assistance
8 of counsel for various grounds, such as failed to
9 properly investigate the facts; counsel did not actually
10 or substantially assist him in deciding whether to plead
11 guilty or not; counsel did not familiarize herself with
12 the facts of the case; counsel did not impart the
13 applicant with an understanding of the law in relation to
14 the facts of the case; counsel erroneously advised the
15 applicant as the length of sentence he would receive by
16 entering a guilty plea; counsel issued advice to the
17 applicant to the effect that no defense was possible to
18 any of the charges; and counsel, of course, the
19 applicant, is entering the plea as making threats as to
20 the length of the sentence he would receive and that
21 counsel did not advise him of his right to appeal.

22 The State made its return on December 21,
23 2011, and he's represented in this action by Michael
24 Culler.

25 THE COURT: And I see this was a negotiated

1 plea; is that correct? That's what it says on the
2 sentencing sheets.

3 MS. HARRIGAN: Yes, Your Honor.

4 MR. CULLER: Yes, Your Honor.

5 THE COURT: Sir?

6 MR. CULLER: Your Honor, I would call
7 Mr. Johnson.

8 THE COURT: Come on, Mr. Johnson. Come
9 forward and we'll swear you, sir.

10 JOHN STANFORD JOHNSON,
11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 THE COURT: Go ahead and be seated, sir.

15 BY MR. CULLER:

16 Q. Mr. Johnson, where are you currently housed?

17 A. At Ridgeland Correctional Facility.

18 Q. And we met down there, have we not?

19 A. Yes, sir.

20 Q. And we met this morning as well, correct?

21 A. Yes, sir.

22 Q. And you've indicated you want to go forward on
23 this?

24 A. Yes, sir.

25 Q. Mr. Johnson, I've got your appendage to your

1 application, which I'll hold as well as a handwritten
2 note which you provided with me. I'm going to use those
3 as guides. Your main concern, I think -- you had two
4 lawyers; is that right?

5 A. Yes, sir.

6 Q. You had two sets of charges?

7 A. Yes, sir.

8 Q. A set in Dorchester and a set in Orangeburg?

9 A. Yes, sir.

10 Q. And the Dorchester County charges were strong-arm
11 robbery and receiving stolen goods, or do you recall what
12 your charges were in Dorchester?

13 A. Arson, strong-arm robbery, and the possession and
14 receiving stolen goods.

15 Q. And what were the Orangeburg charges?

16 A. First degree burglary and two second degree
17 burglary.

18 Q. Who represented you on your charges initially?

19 A. Melissa Gay.

20 Q. And how long did you have Ms. Gay as your
21 attorney?

22 A. Probably like four years.

23 Q. On this charge?

24 A. On, like, the arson charge because I was out for,
25 like, three or four years.

1 Q. How many times did you meet with her during the
2 three or four years? Guess, your best estimate.

3 A. Ten.

4 Q. All right. And were those meetings about the
5 case?

6 A. It was basically, like, on roll calls, like, every
7 roll call she would have to be at court with me and, we
8 would just discuss this and that and the third and so on
9 and so forth.

10 Q. Specifically, what would you discuss? Because one
11 of your allegations is she didn't discuss this with you.
12 Tell the Court what you discussed with Ms. Gay during
13 those ten meetings.

14 A. What you want to do? That's basically. We ain't
15 never talked about no factor, this, that and the third.
16 She was just, like, a sentence.

17 Q. And did you have discovery in the case, by which I
18 mean statements and interviews and arrest warrants and
19 things like that?

20 A. Yeah.

21 Q. And did you have a chance to look at some of that
22 material?

23 A. When she gave it to me, I just, like, had it for
24 probably that long, three or four years.

25 Q. Sure. So she provided you with the discovery at

1 some point?

2 A. Yeah.

3 Q. And did you have a chance --

4 A. Yeah, so I just did my own research of it.

5 Q. I see. And did you have chances in any of those
6 ten meetings to discuss with her your research, or
7 questions that you had?

8 A. Yeah. I told her you understand what I'm saying,
9 there was nothing factual stipulated inside the
10 discovery.

11 Q. I'm not sure I understand.

12 A. Ain't nothing factual inside the discovery, so
13 what she was trying to get me to plead to, I always
14 denied it, like, no --

15 THE COURT: Let me ask you, sir: Were there
16 police reports in there? Did you read police reports as
17 to your case?

18 THE APPLICANT: As to --

19 THE COURT: As to each of the charges, did
20 you read the police reports?

21 THE APPLICANT: Like warrants, affidavits?

22 THE COURT: No. There is an arrest warrant.
23 That is something different, and it's usually pretty
24 generic, but there is always a police report as to each
25 of the incidents that is written after the fact as the

1 investigating officer?

2 THE APPLICANT: Like a summary report?

3 THE COURT: Right, like a summary of what
4 they allege you did. They said you went in and stole
5 whatever it was.

6 THE WITNESS: No, no. It wasn't in that
7 Alston case because Harrison Bell was, like, my
8 prosecutor, solicitor at the time over there, and it was
9 just like what Harrison assumed happened, you know what
10 I'm saying, from him.

11 THE COURT: You don't remember reading police
12 reports.

13 THE WITNESS: No, ma'am.

14

15 BY MR. CULLER:

16 Q. How big was the discovery you got from Ms. Gay?
17 How many pages?

18 A. About 300.

19 Q. So 200 pages is -- were there some statements in
20 there about the case? I believe there were some
21 statements from your codefendants in this case. Were
22 they included?

23 A. I ain't had no codefendants in this case.

24 Q. In the burgs?

25 A. Not about that.

1 Q. Were there any statements that were going to be
2 used against you that she discussed with you?

3 A. She was trying to say they were, but --

4 Q. Did you have a chance to -- I'm sorry. Don't let
5 me cut you off.

6 A. Like, the people she said they was trying to use
7 against me, I don't have that -- I ain't even know them
8 people. Like, there was one, allegedly a cell mate that
9 I don't even know who he is, you understand what I'm
10 saying? So I never let it bother me.

11 Q. And were any of these gentlemen in the car with
12 you when you were stopped in Berkeley County?

13 A. No, no, sir.

14 Q. Okay. So your testimony at this point, and I
15 certainly don't want to cut you off, is that Ms. Gay did
16 not discuss the facts adequately with you, and, really,
17 you didn't have a chance -- you had 200 pages of
18 discovery, but within that there was no police report or
19 statement of a witness. Is that your statement?

20 A. Yeah, and everything just basically from the onset
21 is this is the best ultimate -- to take this plea and so
22 on and so forth.

23 Q. But you were out for four years; is that right?

24 A. Like, almost four years.

25 Q. All right. And then tell me about Mr. Williams

1 and his involvement. When did he become your lawyer?

2 A. Probably like a month before I actually took the
3 plea.

4 Q. Right. And the plea was February the 24th of
5 2011?

6 A. Yeah. So probably, like, around January; like,
7 the beginning of January, like -- I think my family,
8 like, retained him.

9 Q. Okay. And was he working again with Ms. Gay on
10 all of these charges?

11 A. He basically just assisted her, and, like, being
12 that Ms. Gay was from a different county, I ain't feel
13 like she knew enough to, like, handle, like, the
14 Orangeburg case all by herself, so we just, like,
15 retained him to assist us, you know what I'm saying.

16 Q. Because you had three charges that were in
17 Orangeburg?

18 A. Right, and just listening to the jailhouse talk,
19 they were some of the best attorneys in Orangeburg
20 County, so I felt, like, a little more comfortable with
21 him, and, like, when I really retained him, you
22 understand, he gave me, like, some talk that really,
23 like, really made me lean to him, like, favoring towards
24 letting him represent me.

25 Q. Good. I see. And did he discuss the facts of

1 this case with you, the burglaries, three different
2 charges you had? I mean, let me ask you this: What did
3 you talk with with Mr. Williams? Let me ask it that way.

4 A. My very first meeting with him was, like, how did
5 I, like, come into contact, like, hearing his name; so I
6 was, like, through the jailhouse talk about, like, he was
7 telling me, like, they got, like, a good law firm.

8 Q. I don't mean to cut you off. I mean more like
9 related to the facts of the case. What did you discuss
10 about the case?

11 A. Basically, my sentence -- like, they're trying to
12 offer you 15 to 20 years, 85 percent. Basically, I know
13 that we're, like, a decent law firm. I can probably get
14 you in, like, the nonviolent category, but it wasn't
15 nothing like were you there, were you not there, did you
16 do it, did you not do it. It wasn't like that.

17 Q. Well, did you make your position known to
18 Mr. Williams when he was discussing a sentence with you?
19 Did you tell him that that was not what you wanted?

20 A. Yeah. He told me to write it down on paper, and I
21 wrote down zero to five possession and receiving -- he
22 was, like, What would you take?

23 And I wrote it down on a paper, and he was, like,
24 Sign right here, and I'm going to go to the solicitor
25 with this.

1 That's what he told me, so I wrote down a zero to
2 five, what I would plead to, the charge I would plead to,
3 and then, like, I think, like, two weeks, two days or
4 something like that, after that, he came in, and he
5 like -- and he don't want to budge. I can get him in,
6 like, the nonviolent range, but he don't want to budge
7 off nothing under ten.

8 THE COURT: Sir, let me ask you this: Did
9 you ever tell your attorney you were not guilty of any of
10 these charges?

11 THE WITNESS: Yes, and Mr. Williams was,
12 like, we would go to trial, but at the time that I got --
13 I retained Mr. Williams, I already had -- my family
14 already had, like, \$20,000 invested in Ms. Gay, so the
15 financial problem wasn't there for me to, like, fully
16 retain Mr. Williams to go forward like we intended or we
17 should have.

18 So that was a problem with the case too, so
19 the money that my family had at the time was only enough
20 money for him to assist Ms. Gay.

21 THE COURT: So my question to you is, is
22 that -- it sounds like what you were talking to him about
23 is what you were willing to take in a plea offer. My
24 question to you is, today are you maintaining you are not
25 guilty of any of these charges?

1 THE WITNESS: Honestly.

2 THE COURT: You didn't do any of it.

3 THE WITNESS: (Shakes head.)

4 THE COURT: And you told your lawyers that.

5 THE WITNESS: Ms. Gay and all of them.

6 THE COURT: All of them. Mr. Williams; is
7 that correct?

8 THE WITNESS: Because all they got enough to
9 prove is possession of stolen goods. They stopped us on
10 a routine traffic stop.

11 THE COURT: Go ahead. And I don't mean to
12 cut you off.

13 MR. CULLER: I appreciate the Court's help.
14 I was going exactly there.

15

16 BY MR. CULLER:

17 Q. Now, with regard to the other thing you have that
18 you were concerned about is that you were coerced into
19 this plea, and coercion would be did someone force you to
20 do this, Mr. Johnson? It sounds like y'all were
21 negotiating, you with your attorneys, about a plea. Were
22 you forced to do that? Did they force you?

23 A. No plea was never negotiated with me, Mr. Donald
24 Sorenson, neither one of my attorneys sat down and
25 negotiated or nothing. When I got to court, all of a

1 sudden, it was just like, I got a plea that you can't
2 refuse. That's all that was.

3 Q. I see. And did you tell them you weren't going to
4 do it?

5 A. I think he got a secretary. When he first came to
6 me with the ten nonviolent, I told him and the secretary,
7 like, ain't no way possible I'm going to take that plea
8 because I feel like I'll give up everything that I worked
9 so hard for.

10 Q. I understand, but at some point didn't Judge
11 Dickson inquire of you whether the plea was voluntarily
12 made?

13 A. Yes, sir.

14 Q. And what did you tell Judge Dickson?

15 A. That I was like, dissatisfied with, like, the
16 services of my attorney because I ain't want to, like --
17 because we already had proceeded to go forward with it,
18 so I just didn't want to make nobody look bad so I
19 just --

20 Q. I got you. I understand. With regard to item
21 D in your appendage, you have that they failed to advise
22 you of your right to appeal, and after the plea, were you
23 advised by either Ms. Gay or Mr. Williams that you had a
24 right to appeal?

25 A. No. I was asking him that.

1 Q. Did the Court not as part of the plea make an
2 inquiry of you that -- and instruct you that you did have
3 time within --

4 A. Yeah, ten days after the fact, and I asked --

5 Q. I beg your pardon?

6 A. Yes, like ten days after the fact I would be,
7 like, obligated to an appeal.

8 Q. Okay.

9 A. So when I asked them about it, they was, like, you
10 don't want to do that. You probably got the best thing
11 that, you know --

12 Q. Did you specifically say, No, I really didn't get
13 a best thing and this is a bad deal and I want to appeal?

14 A. No, because I was in the mindset that okay, they
15 trained -- they are professionals. They defend people,
16 so I figured they was leading me in the right direction.

17 Q. I understand. Now, the last item, E, you allege
18 there was a violation of subject matter jurisdiction.

19 There were some cases in Dorchester that were
20 heard in Orangeburg before Judge Dickson, and was that
21 something that you were comfortable having all of your
22 cases handled at one time or did you raise that issue with
23 your lawyers, that you wanted to be in Dorchester County?

24 A. I'm going to say this: I was -- listen, this
25 Dorchester County case?

1 Q. Yeah.

2 A. For three or four years, my family, anybody can
3 vouch for this. This was a charge that they never had
4 nothing on. They offered me time served, four, five
5 years ago.

6 Q. Right. And so were you comfortable handling that
7 in Orangeburg, or was there some problem you had with
8 that?

9 A. Because they made it sound so good like, this is
10 what you --

11 Q. Did you tell them you had a problem with that and
12 you wanted to have it heard in Dorchester? Did you tell
13 your lawyers that?

14 A. I wasn't going to never plead to the case, period.

15 Q. I understand that, but that's not really
16 responsive. Did you tell them you wanted to have the
17 cases dealt with in Dorchester?

18 A. Yeah, honestly.

19 Q. You did tell them that?

20 A. Yeah, because they made it sound so good, but I
21 was never going to plead to the charge, period, because
22 they offered me time served. Why would I take ten years
23 for a charge you offered me time served for?

24 Q. What else would you have for Court's consideration
25 in this matter that you believe your attorneys did not do

1 in representing you?

2 A. Whether it helps or not, good or bad, I really
3 just feel like now it's a money thing, honestly.

4 Q. Okay. I'm not sure I understand that, but that's
5 fine. I don't have any further questions. Answer any
6 questions the Attorney General may have.

7 THE COURT: Are you stating, sir, that you
8 didn't feel like they didn't represent you because you
9 didn't have any money?

10 THE WITNESS: Yeah. It was just like
11 Ms. Melisa, Ms. Gay. She represented me for four or five
12 years, and, like, as long as the money was there, she was
13 talking good, but when it wasn't, she was, like -- and
14 then when she heard I was going to retain that
15 Mr. Williams guy for like 10, 15 grand and it was like
16 this and that, so --

17 MS. HARRIGAN: May it please the Court?

18 THE COURT: Yes, ma'am.

19 CROSS-EXAMINATION

20 BY MS. HARRIGAN:

21 Q. Mr. Johnson, so your testimony to the Court is
22 that you met with Ms. Gay around ten times during her
23 course of representation. Could you respond, please?

24 A. Yes, ma'am.

25 Q. And how many times did you meet with Mr. Williams?

1 A. Like, twice, I think, two times. He was only on
2 the case -- he, like, help assist in like 30 days, for,
3 like, 30 day.

4 Q. So your testimony is that Mr. Williams only
5 represented you for 30 days before your plea.

6 A. Yeah. He help assist Ms. Melissa, Ms. Gay.

7 Q. And your testimony to this Court is that you never
8 discussed the facts of either of your sets of charges,
9 your Dorchester or your Orangeburg, with either of your
10 attorneys? They never went over with facts with you?

11 A. Like, the fact -- this is the facts, like what
12 happened, like what transpired --

13 Q. Yes, did they discuss those facts with you?

14 A. No, they just gave me everything that was within
15 the discovery. That's all they said, and they just ran
16 and come up with a theory from there and like this is the
17 best ultimatum.

18 THE COURT: Did you read the discovery jury?
19 Did you read what they gave you? Is that a yes for the
20 record?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Okay.

23 BY MS. HARRIGAN:

24 Q. You just testified that you did discuss possible
25 defenses with your attorney, correct, with your

1 attorneys, correct?

2 A. The specifics or the facts of the case was, like,
3 were you there? Did you do this, do that --

4 THE COURT: Her question was, did they
5 discuss with you defenses to the charges, or defenses to
6 your case?

7 THE WITNESS: No, no.

8 THE COURT: Did they discuss that with you?

9 THE WITNESS: No, ma'am.

10 BY MS. HARRIGAN:

11 Q. Did you give your attorneys any leads or potential
12 witnesses for them to investigate?

13 A. I have to say --

14 THE COURT: Like an alibi witness or that you
15 were somewhere else when these occurred?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Where did you tell them you were?
18 Who did you tell them were you with?

19 THE WITNESS: My statement is I'm home.

20 THE COURT: On each one of the incidents?

21 THE WITNESS: My statement is inside of my
22 discovery.

23 BY MS. HARRIGAN:

24 Q. So there is a statement inside your discovery your
25 testimony to the Court is saying you were at home for

1 each of these various incidents spanning Dorchester and
2 Orangeburg County?

3 A. No -- for the Orangeburg County case I been home.

4 THE COURT: Okay.

5 THE WITNESS: And the little summary of the
6 Dorchester County cases was, like, it was depicted
7 saying, oh, he was in the area at this time from what I
8 told him, from my interrogation, so that day Mr. Johnny
9 Garrison was on the Dorchester case in Orangeburg County.
10 That was the prosecuting detective.

11 BY MS. HARRIGAN:

12 Q. Did you indicate to either of your attorneys,
13 Ms. Gay or Mr. Williams that you wished to plead guilty
14 to these various charges?

15 A. Yeah, after they let me, I think that was the best
16 ultimatum.

17 Q. So, you never indicated to either of your
18 attorneys, Mr. Williams or Ms. Gay, that you wanted a
19 trial? You never wanted a trial in these?

20 A. Yes, I did.

21 Q. And did you tell your attorneys that you wanted a
22 trial?

23 A. Yes, I did.

24 THE COURT: Did you tell the judge you wanted
25 during your guilty plea a jury trial in any of the

1 charges?

2 THE WITNESS: Did I? No, ma'am.

3 BY MS. HARRIGAN:

4 Q. If you wanted a trial and you indicated that to
5 both of your attorneys, why did you end up pleading
6 guilty?

7 A. Because they kept threatening me with you're going
8 to catch this amount of time, so just to like secure my
9 family, honestly, I just caved into a plea.

10 Q. So one of your allegations is that you were
11 coerced into this plea. Who coerced you, was it Ms. Gay
12 or Mr. Williams or both?

13 A. I really can't say nothing bad about Mr. Williams.
14 I was really, like, pleased with him, but Ms. Gay was,
15 like, she was, like, iffy.

16 Q. So your testimony today is only Ms. Gay coerced
17 you into entering a guilty plea. The only reason
18 Ms. Williams was included in this ineffective assistance
19 of counsel because that was a questionnaire. My, like,
20 questionnaire, who represented you at the time. That's
21 all.

22 A. Like, Mr. Williams, he ain't really have time to
23 do nothing, but I was, like, happy with his services
24 because, like, when I went to court I was supposed to
25 plead to 20/85 and I got ten nonviolent.

1 Q. So your testimony today is you were happy with Mr.
2 Williams' services. That's what you just told the Court?

3 A. Yeah, he really didn't, like, do nothing. He
4 wasn't the bad guy.

5 Q. So you have no allegations that you want to go
6 forward with against Mr. Williams today?

7 A. No.

8 Q. Okay.

9 A. But Ms. Gay, she was just, like, over my case for,
10 like, so long and my family had like so much money
11 invested in her, like she responsible for everything.

12 MS. HARRIGAN: And, Your honor, I would like
13 to note for the record that he's abandoning all
14 representations in regard to Mr. Williams.

15 BY MS. HARRIGAN:

16 Q. This was a negotiated plea, correct?

17 A. Honestly, this is what I'm saying. Ain't nothing
18 was negotiated with me. All it was, was I guess the
19 attorney and the solicitor, whatever it's negotiated or
20 discussed, he came to me with it. At the time when I
21 plead to the ten years, Ms. Gay wasn't even in the
22 courtroom.

23 Q. Okay.

24 A. She was not even in the courtroom.

25 Q. If the sentencing sheets indicate this was a

1 negotiated plea, would you argue with that?

2 A. No.

3 MS. HARRIGAN: And may I approach the
4 witness, quickly?

5 THE COURT: You may.

6 BY MS. HARRIGAN:

7 Q. If you'll look at that sentencing sheet, is that
8 your signature on these sentencing sheets?

9 A. Yes, ma'am.

10 THE COURT: Sir, let me ask you a question.
11 You said you felt like you were forced into accepting
12 this plea because you were afraid of them telling you you
13 would get a much longer sentence if you didn't accept the
14 negotiated plea; is that correct? Is that a yes, for the
15 record?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Did your lawyers explain to you
18 that you were facing a burglary first violent charge
19 which carries a mandatory minimum sentence of 15 years up
20 to life? Did they instruct and tell you that?

21 THE WITNESS: With my prior record, yes,
22 ma'am.

23 THE COURT: Okay. And understanding --
24 regardless of your prior record, a burglary first degree
25 is, number one, a violent offense. It is also a strike,

1 and additionally it carries a mandatory minimum sentence
2 of 15 years up to life. Are you stating the reason why
3 you accepted a negotiated plead here is because you were
4 fearful if you had gone to trial and been convicted of
5 that burglary first that you, in fact, could have been
6 sentenced up to life? Is that what you're saying?

7 I mean, did they tell you that and was that
8 one of your concerns and one of your considerations in
9 entering or accepting this negotiated plea?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Okay.

12 BY MS. HARRIGAN:

13 Q. In regards to your allegation that Ms. Gay filed
14 an appeal on your behalf, you testified before that you
15 did discuss an appeal with her but decided not to go
16 forward with an appeal, correct?

17 A. No, ma'am. I didn't say that.

18 Q. Okay.

19 A. When the Court was, like, you got ten days to
20 appeal, I asked her, like, are we going to appeal? Why?
21 You probably got like the best --

22 Q. Did you ever ask her to appeal your sentences?

23 A. You only got ten days to appeal after the guilty
24 plea, to my knowledge.

25 Q. I know that, sir. Did you ask her, I would like

1 you to appeal these sentences?

2 A. Yes, ma'am.

3 Q. How did you ask her, verbally or in writing?

4 A. After me and Mr. Williams proceed with it before
5 she even got to the courtroom, after the fact we talked,
6 like, two three seconds, like, good luck, I hope you be
7 like a law abiding citizen after you get out, dada dada,
8 so I'm like, What is up with the appeal?

9 She's like, Don't worry about it, like you
10 probably got the best deal.

11 Q. And you asked her to appeal and she did not appeal
12 on your behalf.

13 A. Yes, ma'am.

14 Q. Okay. And your final allegation, that the subject
15 matter jurisdiction issue in regards to having your
16 Dorchester charges heard in Orangeburg, the judge went
17 over that with you during your plea, correct?

18 A. Yes, ma'am.

19 Q. And you waived any jurisdictional issues so that
20 you could have them all taken care of at once, correct?

21 A. Yes, ma'am.

22 MS. HARRIGAN: No further questions, Your
23 Honor.

24 THE COURT: Anything further?

25 MR. CULLER: No, Your Honor.

1 THE COURT: Anything further you want to tell
2 me, sir? Are you sure? Is that no, for the record?

3 THE WITNESS: Yes, ma'am. I'm positive.

4 THE COURT: All right. You may step down,
5 sir. Thank you. Sir, if you'll call your next witness.

6 MR. CULLER: Yes. We'll call Ms. Gay.

7 MELISA GAY,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. CULLER:

12 Q. You represented Mr. Johnson in this matter?

13 A. Yeah. I know Mr. Johnson very well. I
14 represented him from 2008 on. Hi, Mr. Johnson.

15 Q. For several years?

16 A. For several years.

17 Q. You heard his testimony under oath. Is it
18 accurate to say you had met with him how many times?

19 A. After four years? I don't know how many times I
20 physically met with him. I had hundreds of conversations
21 with him.

22 Q. Did you, in fact, give him a copy of discovery in
23 this case?

24 A. Yes, in all of the cases.

25 Q. And did you discuss elements or factors from the

1 discovery with him in response to any questions he had?

2 A. Yes.

3 Q. Did he have some questions and some opinions about
4 things?

5 A. Yes, many.

6 Q. Did he indicate after y'all's review that he
7 wanted to go to trial in this matter?

8 A. He was always going to trial on the Dorchester
9 County case. That was his approach. We had been up
10 there -- it was when it was in the old courthouse. We
11 had been up there I don't know how many times on roll
12 calls and appearances and all kinds of different things.
13 He wanted to go to trial.

14 From the time he was arrested on that charge to
15 the time that the cases were resolved, he had other
16 charges and things that we would work out different ways,
17 get dismissed, whatever. There is a case in Charleston
18 that we did some time served on, simple stuff, but his --
19 at all times he wanted a trial on the Dorchester case.

20 Q. And subsequently there were three Orangeburg
21 charges that have been referenced burglary first and two
22 nonviolent burglary charges?

23 A. Yes.

24 THE COURT: Did he pick those up after he was
25 out on bond on the first set or did they precede?

1 THE WITNESS: No, they were after, years
2 after.

3 THE COURT: But while he was on bond on the
4 others?

5 THE WITNESS: Yes.

6 BY MR. CULLER:

7 Q. And after those subsequent charges had been
8 acquired, he was not out on bond, did you then have
9 occasion to discuss a plea with him with regard to the
10 entire matter?

11 A. Yes. He at some point did retain the services of
12 someone else who as he said was involved for about a
13 month.

14 Q. I understand.

15 A. So most of the conversations that were had on
16 behalf of any type of negotiations or what was going to
17 happen in the case I had with Harrison, or whoever was
18 prosecuting him in Orangeburg at the time. I don't know
19 that it was Harrison.

20 Q. And you met with Mr. Johnson. Did he have a
21 position change about his Dorchester charges or did he
22 still want a trial?

23 A. I think ultimately he wanted them dismissed as
24 part of the process of working out the case.

25 Q. And, in fact, one was; is that correct?

1 A. Yes. The most serious one was, but as a part of
2 the plea negotiations in the whole mess, that's why there
3 was part of this -- Harrison Bell wanted to have some
4 conviction on this Dorchester County thing where the
5 allegation was that half of St. George had burned down
6 from some situation that was supposed to have something
7 to do with Mr. Johnson. It was an arson charge.

8 Q. I see.

9 A. I don't think they ever really had much of any
10 evidence to connect him to the arson.

11 Q. I'm directing you -- this plea of February 24,
12 2012 before Judge Dickson, prior to that day, did you
13 discuss with Mr. Johnson, including, I guess,
14 Mr. Williams the Dorchester County charges, the
15 Orangeburg County charges, and discuss fashioning a
16 sentence on all of this?

17 A. Yes.

18 Q. And did you talk to the solicitor and come up with
19 a recommendation that you presented to Mr. Johnson?

20 A. Yes.

21 Q. And what was Mr. Johnson's position at that point
22 with regard to the Dorchester County charges and the
23 Orangeburg charges?

24 A. Well, up until the very end, I was still trying to
25 get the Dorchester County charges dismissed.

1 Q. Understood.

2 A. At the last hour when we were able to make some
3 kind of negotiation that would make some sense, but the
4 Dorchester County case, he made a decision to plead to a
5 charge in the Dorchester County, and ultimately one of
6 the charges was dismissed.

7 Q. I see.

8 A. So he would -- if there had never been Orangeburg
9 County charges, he would have taken that case to trial,
10 in Dorchester, I would have been prepared and willing to
11 do that trial for him. The Orangeburg cases were much
12 more serious, and they had a different form of evidence,
13 and so as he testified, his exposure -- and as the judge
14 cited, his exposure was out there with, you know, what
15 could happen on the burg first, and so, you know, the
16 goal was to minimize his time incarcerated, change it to
17 55 percent nonviolent, those kinds of things.

18 Q. Understood. And do you believe he understood that
19 strategy?

20 A. Yes.

21 Q. And did he endorse that strategy?

22 A. Yes.

23 Q. And did he articulate at any point he wanted to go
24 to trial prior to the plea, after you had this
25 negotiation in the courtroom? Did he understand that

1 people may waffle if they specifically heard testimony
2 telling you that he wished to go to trial?

3 A. Maybe. He may have told me he wished to go to
4 trial, but in the tenth hour I don't believe the decision
5 was made to go to trial. He voluntarily chose to plead
6 guilty.

7 Q. As you said, he endorsed the negotiation you had?

8 A. Yes.

9 Q. In terms of investigation, you had a chance to
10 review the discovery with him and, in fact, provide him
11 with a copy? What other investigation, if any, did you
12 undertake? And I don't mean to open a Pandora's Box.

13 A. In a way, it is a Pandora's Box because I had done
14 some other investigation, and I did not believe it was in
15 his best interest to go to trial. Now, what kind of
16 evidence they had to support the conviction was
17 codefendants and stolen property in the car, and if he
18 had chosen to go to trial, you know, he may have been
19 able to support a defense, but it was my professional
20 opinion he did not need to go that route. He needed to
21 consider a guilty plea, and that's what we did.

22 Q. That's what I understand from your statement, that
23 you did review the statements of the codefendants with
24 him as well as possible challenges to the evidence found
25 in the car?

1 A. Yes.

2 Q. I see. And you obviously would infer -- explain
3 to him what your opinion was and he made a decision based
4 on that?

5 A. Yes.

6 Q. Beg the Court's indulgence, Your Honor.

7 With regard -- I think one more question. With
8 regard to the statements of the codefendants, did
9 Mr. Johnson -- was he impressed with that or what was his
10 statements to you or his position on that, on the weight
11 of evidence, I guess?

12 A. Well, I think the codefendants had their own set
13 of credibility issues. You know, I've done this for
14 almost 22 years, and just about anybody that's not any
15 type of witness can be impeached on some level or some
16 form of credibility issues can be brought up, so if he
17 had gone to trial, those people might have crumbled and
18 not -- the other part of the problem was that those guys
19 were pleading out themselves, or trying to negotiate
20 pleas themselves, so I can't remember right now whether
21 any of them -- I think at least one of them might have
22 pled already by the time he pled, but, you know, you have
23 issues with defendants who are pleading and --

24 Q. Understood.

25 A. And whether or not they have value as State's

1 witnesses at that point, but I talked a lot with him
2 about what he wanted to do and, you know, he was the kind
3 of person -- he put off a charge in Dorchester County for
4 four years, not choosing a plea.

5 Q. Let me ask you this: Was it a component -- part
6 of his decision, in your opinion, that the statements
7 were going to be a problem for him and that he needed to
8 enter this plea?

9 A. I don't know that it was the statements that was
10 the problem. It was the way he was arrested. As he
11 said, he was arrested on a traffic stop, but they were
12 in -- somewhat in the proximity of where this occurred
13 and there was stolen property in the car.

14 Q. I see.

15 A. And so the only evidence that put him in the house
16 and/or created elements of the burglary as opposed to
17 receiving stolen goods was the codefendants.

18 Q. Understood.

19 A. If he had chosen to have a trial, there could have
20 been some impeachment issues, but there was a lot of risk
21 associated with that, and if it didn't go his way, he was
22 going to end up with at least 15 years, 85 percent, and
23 that was something he chose as part of the plea process
24 to avoid.

25 MR. CULLER: Understood. Thank you, Your

1 Honor. I don't have anything further.

2 MS. HARRIGAN: May it please the Court?

3 THE COURT: Yes, ma'am.

4 CROSS-EXAMINATION

5 BY MS. HARRIGAN:

6 Q. Ms. Gay, you've been practicing for almost 22
7 years?

8 A. Yes, ma'am.

9 Q. How much of that is criminal law would you say you
10 practice?

11 A. I do other things, but I practice criminal law for
12 the entire time.

13 Q. And were you retained in this case?

14 A. Yeah, yes, ma'am. I didn't get 20,000. That
15 would have been nice.

16 Q. Your testimony was you couldn't remember exactly
17 how many times you met with him, but you discussed the
18 case with him hundreds of times.

19 A. Yes.

20 Q. And you fully discussed all of the charges that he
21 was facing, once he picked up the additional charges?

22 A. Yes. Mr. Johnson had family members that would
23 three way me to him from the jail, so I talked to him a
24 lot.

25 Q. Do you believe you received all the discovery

1 materials from the State in regard to these cases?

2 A. Yes.

3 Q. Did you discuss this with him?

4 A. Yes.

5 Q. In regards to his allegation that you coerced him
6 into pleading guilty, is it your general practice to
7 coerce your clients into pleading guilty?

8 A. No. I think that as an example the Dorchester
9 County case had been pending for four years, waiting it
10 for it to go on the docket, so I was not in any hurry.
11 You know, in the Orangeburg County case, I think that
12 there was a discussion about trying the case and actually
13 putting it on a docket -- you know, like anybody, you
14 have certain time frames, do it by X date or else, so I
15 remember that there was going to be some not so fun
16 consequences if it turned out that he didn't make some
17 decisions. He's going to lose control of what he could
18 do with his case if he waited to late.

19 Q. This was a negotiated plea?

20 A. Yes, that we did not negotiate for ten nonviolent,
21 probably until the day of, so when he said nobody really
22 told him until the last minute, there was discussion
23 about what they wanted, which was not as good as he got,
24 and then on the day of or the day before it got to be a
25 better plea.

1 Q. Did you inform your client that it was negotiated,
2 he would be getting ten years if he pled that day?

3 A. Yes.

4 Q. And did he have any hesitation in regards to
5 entering a plea that day?

6 A. I would imagine he had hesitation about entering a
7 plea, but in the long run he chose to --

8 Q. So he weighed after the options after the advice
9 of you and decided to enter the plea?

10 A. And also the other attorney involved. It was at
11 that point there were two heads. We were both talking to
12 him, and he had gotten an Orangeburg attorney in his mind
13 because he thought he maybe was going to go to trial, and
14 then, you know, it sort of ended up evolving into
15 something he was willing to do.

16 Q. With regards to his allegation that you didn't
17 file an appeal on his behalf after he requested, did he
18 ever request that you file an appeal for him?

19 A. I don't remember. He -- he's right. I probably
20 said, Why bother? You have a great sentence, but his
21 family members probably called me afterwards, and there
22 may have been some discussion about it, but I don't
23 remember being specifically told to do it.

24 I've had a lot of clients who have specifically
25 told me to do it, and even if I didn't think they could

1 prevail, I've done it anyway, but I don't recall being
2 told that in this case. It's possible; I just don't
3 remember.

4 Q. Do you have any reason to believe that you
5 deviated from your standard of care where if a client
6 asks you to file an appeal that you do file an appeal?

7 A. No. I don't have any reason to believe I deviated
8 from that.

9 Q. Did Mr. Johnson ever indicate to you that he had a
10 problem pleading to the Dorchester County charges in
11 Orangeburg all at the same time?

12 A. No. I think the goal was to get it all resolved
13 at the same time, so -- because there was, you know --
14 once it happens in one place, part of the problem is if
15 you get sent to the Department of Corrections and then
16 you don't get credit for time and different things like
17 that, so we had intended, intentionally intended, to have
18 it resolved in the same place.

19 MS. HARRIGAN: No further questions, Your
20 Honor.

21 THE COURT: Anything further?

22 MR. CULLER: No, Your Honor.

23 THE COURT: All right. You can step down.

24 THE WITNESS: May I be excused?

25 THE COURT: Absolutely. Any further

1 witnesses?

2 MR. CULLER: No, Your Honor.

3 MS. HARRIGAN: And the State does not have
4 any witnesses to call, but we would like to place on the
5 record that Mr. Johnson has waived any allegations in
6 regards to the representation by Charles Williams.

7 THE COURT: Okay. And let me go ahead and
8 release Mr. Williams. I don't see that he's a witness on
9 any other cases.

10 THE WITNESS: I appreciate that, but I do
11 have one more case.

12 THE COURT: All right, sir.

13 MS. HARRIGAN: The State has no additional
14 evidence to present.

15 THE COURT: All right. Anything further?

16 MR. CULLER: No, Your Honor.

17 THE COURT: Okay. Thank you.

18

19 (Whereupon, the proceedings were concluded.)

20

21

22

23

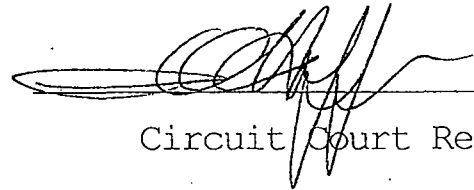
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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 31st of October 2012.

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

March 8, 2013



Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

John Stanford Johnson, #250659,)
Applicant,)

Case No. 2011-CP-38-1239

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
2012 JUN 9 9 51 AM '12

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed October 7, 2011. The Respondent made its Return on December 21, 2011. An evidentiary hearing into the matter was convened on October 31, 2012, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by Michael R. Culler, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg and Dorchester County Clerks of Court. Applicant was indicted during the April 2008 term of the Dorchester County Grand Jury for Malicious Injury to Real Property More than Ten Thousand Dollars¹ (2008-GS-18-0650) and at the April 2010 term for Receiving Stolen Goods (Value between \$1,000 and \$5,000) (2010-GS-18-0239). Thereafter, Applicant was indicted at the September 210 term of the Orangeburg County Grand Jury for Burglary in the First Degree and two counts of Burglary in the Second Degree (Non-Violent) (2010-GS-38-1141, -1142, -

¹ Applicant was originally charged with Arson, as indicated on page 3 of the guilty plea transcript.
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ATTEST: TRUE COPY
Winaya B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

1143). Applicant was represented by Melissa W. Gay, Esquire, and Charles H. Williams, Esquire.

On February 24, 2011, Applicant appeared before the Honorable Edgar W. Dickson and pled guilty to three counts of Burglary in the Second Degree (including one as a lesser included offense to the Burglary in the First Degree charge), one count of the lesser included Receiving stolen Goods (Value less than \$2,000), and Malicious Injury to Personal Property More than Ten Thousand Dollars. The remaining Strong Arm Robbery charge was *nolle prossed* pursuant to the plea. Judge Dickson sentenced Applicant to ten years imprisonment for each count of Burglary in the Second Degree, ten years imprisonment Malicious Injury to Personal Property More than Ten Thousand Dollars, and to time served for Receiving Stolen Goods, with all sentences to be served concurrently. Applicant did not appeal his plea or sentences.

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

1. Ineffective assistance of counsel.
 - a. "Failed to properly investigate the facts...plea was brought about by ignorance and the lack of competence on the part of his attorney issuing erroneous advice as to the plea."
 - b. "Counsel did not actually or substantially assist him in deciding whether to plead guilty or not."
 - c. "Counsel did not familiarize himself with the facts of the case."
 - d. "Counsel did not impart to the Applicant an understanding of the law on the relation of the facts."
 - e. "Counsel issued erroneous advice to the Applicant as to the length of sentence he would receive by entering his plea."
 - f. "Counsel issued advise to the Applicant to the effect that no defense was possible to his charge."
 - g. "Counsel coerced the Applicant into entering his plea by making threats as to length of sentence he would receive by not pleading guilty."
2. Did not knowingly or intelligently plea guilty.
3. Coerced into plea of guilty.
4. Counsel failed to advise right to appeal.
 - a. "Applicant was not advised of his right to appeal."

5. Violation of subject matter jurisdiction as it relates to indictment numbers 08-GS-18-0651 and 10-GS-18-0239.

At the evidentiary hearing, Applicant expressly and unequivocally waived any and all allegations against Charles H. Williams, Esquire, and stated he only wished to proceed with allegations regarding Melissa W. Gay's representation.

TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from plea counsel Melissa W. Gay, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Dorchester and Orangeburg County Clerks of Court, and the Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he retained Counsel to represent him three to four years prior to his guilty plea and retained Charles H. Williams, Esquire, approximately one month before his guilty plea to assist with his Orangeburg County charges. He testified that he met with Counsel ten times prior to his guilty plea. He testified that he never discussed the facts of his case with Counsel and only discussed whether he would plead guilty; however, he testified that Counsel provided him with a copy of all discovery materials and he reviewed this material with Counsel. Applicant stated that he did not know any of the co-defendants involved in these incidents and that he believed the discovery contained only the "thoughts of Harrison Bell," the Assistant Solicitor who was prosecuting the case. Applicant testified that he did not want to plead guilty and only did so due to Counsel's coercion. He stated that he told his attorneys that he was not guilty. Applicant testified that he did not request either of his attorneys to file an appeal on his behalf.

Applicant also testified that he did not want to plead guilty to the Dorchester County Charges in Orangeburg and that he feels this is a violation of subject matter jurisdiction. He testified that he told his attorneys that he did not want to waive venue and have the Dorchester County charges disposed of at the same time as his Orangeburg County charges. However, Applicant acknowledge that he told Judge Dickson during his guilty plea that he wanted to waive venue to have all charges heard in Orangeburg County at the same time.

Following Applicant's testimony, Counsel was called to the stand by Applicant. Counsel testified that she has been a member of the South Carolina bar for approximately twenty-two years and has been practicing criminal defense for the duration of her career. She testified that she was retained by Applicant in 2008; met with Applicant at least ten times, and had "hundreds of conversations" with Applicant regarding his case. Counsel testified that she discussed the elements of the charges Applicant was facing with him and what the State would be required to prove if he proceeded to trial. She testified that she fully discussed Applicant's version of the facts for all the different incidents, as well as possible defenses Applicant may have. Counsel testified that she thoroughly investigated the cases and felt prepared for trial. Counsel testified that she advised Applicant of all possible sentences he could receive for each charge, including minimum and maximum sentences. Counsel testified that she did not promise Applicant he would receive a particular sentence or threaten him he would receive an unduly harsh sentence if he did not enter a guilty plea. Counsel testified that she gave him a copy of all discovery materials and reviewed the materials with him. Counsel stated that she advised Applicant of his constitutional rights and what rights he would be giving up by entering a guilty plea. She testified that Counsel never told her he did not understand their conversations and that she

believed he understood the charges he was facing, the evidence the State would present against him at trial, and his constitutional rights.

Counsel testified that Applicant wanted a trial on the arson charge from Dorchester County, as based on her investigation and review of the discovery material, she believe Applicant had several viable defenses to this charge. Counsel testified that Applicant ultimately decided to resolve all charges through a plea deal with the State that would allow him to plead to several lesser included offenses. Counsel stated that she had discussions with the assistant solicitors handling the Orangeburg and Dorchester County cases with Applicant and Charles Williams present. She testified that she was able to negotiate a plea deal that allowed Applicant to resolve all charges at once. Counsel stated that Applicant's Orangeburg County charges were "much more serious" and that Applicant was facing significantly more imprisonment for these charges. Counsel stated she believed it was in his best interest to plead guilty and resolve all charges at once. Counsel testified that she advised Applicant that she believed it was in his best interest to accept the State's plea deal and advised him of the consequences of accepting and rejecting the State's plea offer. She stated it was ultimately Applicant's decision to plead guilty.

Counsel testified that she advised Applicant that he would need to waive venue to plead guilty to the Dorchester County charges in Orangeburg and that he had the right to have the Dorchester County charges heard and disposed of in Dorchester County. She testified that Applicant wanted to take care of all pending charges at once and never told her that he did not wish to waive venue as to the Dorchester County charges. Additionally, Counsel testified that she advised Applicant of his right to appeal and that Applicant never requested that she file an appeal on his behalf.

Charles H. Williams, Esquire, was present at the evidentiary hearing. However, Applicant expressly and unequivocally waived any and all allegations against Mr. Williams and stated he only wished to proceed with allegations regarding Melissa W. Gay's representation. Therefore, Mr. Williams was not called to testify.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel was ineffective for "fail[ing] to properly investigate the facts . . . plea was brought about by ignorance and the lack of competence on the part of his attorney issuing erroneous advice as to the plea."

The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant in regards to this allegation. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345,

495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding an applicant not entitled to relief where no evidence presented at post-conviction relief hearing to show how additional preparation would have had any possible effect on the result at trial). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); United States v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Counsel testified that she fully reviewed the discovery with the Applicant and discussed Applicant's version of the facts with him. Counsel testified that she fully investigate the facts surrounding each incident and felt prepared for trial. Counsel testified that advised Applicant of the elements of each charge he was facing, what the State would be required to prove if he proceeded to trial, and the possible sentences Applicant was facing for each charge. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as the Applicant failed to provide the Court with any evidence of how specifically Counsel was ineffective in this regard or what additional investigation could have been performed. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

"Counsel did not actually or substantially assist him in deciding whether to plead guilty or not."

The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant in regards to this allegation. Counsel testified that she advised Applicant that she

believed it was in his best interest to accept the State's plea deal and advised him of the consequences of accepting and rejecting the State's plea offer. She stated it was ultimately Applicant's decision to plead guilty. She stated that Applicant appeared to understand these conversations and never told her he did not understand their discussions. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as the Applicant failed to provide the Court with any evidence of what additional information Counsel could have provided him before entering a guilty plea. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

"Counsel did not familiarize himself with the facts of the case."

The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant in regards to this allegation. Counsel testified that she fully reviewed all discovery material with the Applicant. Additionally, she testified that she discussed the facts of the various incidents with Applicant and performed a thorough investigation. Counsel also testified that she met with both assistant solicitors handling these matters to discuss the cases. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

"Counsel did not impart to the Applicant an understanding of the law on relation of the facts."

The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant in regards to this allegation. Counsel testified that she reviewed the elements of the charges that Applicant was facing, as well as what the State would be required to prove for each charge if Applicant proceeded to trial. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

"Counsel issued erroneous advice to the applicant as to the length of sentence he would receive by entering his plea."

The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant in regards to this allegation. Counsel testified that she reviewed the possible minimum and maximum sentences with Applicant for each charge he was facing. Counsel did not advise Applicant he would receive a particular sentence or threaten him he would receive an unduly harsh sentence if he did not enter a guilty plea. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

"Counsel issued advice to the Applicant to the effect that no defense was possible to his charge."

The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant in regards to this allegation. Counsel testified that she discussed with Applicant viable defenses for his arson charge and intended on going to trial on this charge until Applicant was charged with "more serious charges" in Orangeburg County. At that time, she advised Applicant that it was in his best interest to accept the State's plea offer, allowing him to plead to several lesser included offenses that significantly reduced his incarceration exposure. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

"Counsel coerced Applicant into entering his plea by making threats as to the length of sentence he would receive by not pleading guilty."

The Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant in regards to this allegation. Counsel testified that she reviewed the possible minimum and maximum sentences with Applicant for each charge he was facing. Counsel did not advise Applicant he would receive a particular sentence or threaten him he would receive an unduly harsh sentence if he did not enter a guilty plea. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel. Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed.

Involuntary Guilty Plea

This Court interprets Applicant's second and third allegations as an involuntarily guilty plea allegation. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the post-conviction relief hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, [an Applicant's] right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Statements made during a guilty plea should be considered conclusively, unless an [Applicant] presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir. 1975) overruled on other grounds by United States v. Whitley, 759 F.2d 327 (4th Cir. 1985). This Court finds that the Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An Applicant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that trial counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360,

426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such. As shown in Applicant's various allegations of ineffective assistance of counsel presented above, this Court finds that Counsel acted reasonable and effective. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel was ineffective for failing to advise Applicant of his right to appeal

Applicant alleges that he is entitled to a belated direct appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974), as Counsel did not advise him of his right to appeal.

"[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000). "Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights." Id. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). "One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Specifically, this Court finds that

Counsel's testimony is credible while Applicant's testimony is not credible. Counsel testified that she never received any requests from Applicant to file an appeal on his behalf and had no reason to believe that Applicant wished to file an appeal. Counsel testified that she reviewed Applicant's right to appeal with him prior to his guilty plea and that the plea court also reviewed these rights during the guilty plea. This Court finds that Counsel's performance was reasonable and effective. Therefore, this Court finds that the application must be denied and dismissed.

Subject Matter Jurisdiction as to Dorchester County Indictments

Applicant alleges that the plea court did not have subject matter jurisdiction to accept his guilty plea in regards to his two Dorchester County charges, as his plea was entered in Orangeburg County. This allegation does not warrant relief. This Court finds the indictments sufficiently stated the offenses and any alleged defects in the indictments did not deprive the trial court of jurisdiction to accept the Applicant's guilty plea. Subject matter jurisdiction is the power of a court to hear a particular class of cases. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

A review of the record clearly indicates that there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. The Applicant's conviction involved a criminal charge in General Sessions Court. The indictments in this case are facially valid; they contain all the necessary elements of the offenses intended to be charged, state the date of the offenses, county where the offense occurred, and the name of the accused. Applicant knowingly and voluntarily waived venue to allow his Dorchester County charges to be heard and disposed of in Orangeburg County after being advised of his rights by Counsel and the plea court. Furthermore, the Applicant has shown no prejudice by any alleged defects in the indictments.

Therefore, this Court finds the circuit court had subject matter jurisdiction to accept the Applicant's guilty plea, and this allegation is dismissed.

CONCLUSION

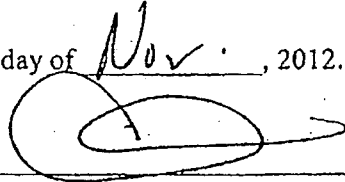
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that 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. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29 day of Nov, 2012.


 CARMEN T. MULLEN
 Presiding Judge
 First Judicial Circuit

Beauf, South Carolina

DOCKET NO. 2010GS38-1142

The State of South Carolina

County of ORANGEBURG

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2010 SEP 15 12 18 00

RECORD
WANDA E. CLARK
CLERK OF COURT
ORANGEBURG, SC

WITNESSES

James Etheridge

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M213666

Arrested: May 13, 2010

ACTION OF GRAND JURY
TRUE BILL

Marybeth W. Brown

SEP 15 2010

Date
Foreperson of Grand Jury

Date: September 15, 2010

VERDICT

Foreperson of Petit Jury

Date:

COURT OF GENERAL SESSIONS

September 13, 2010 TERM

THE STATE
vs.

John Stanford Johnson

Indictment for

BURGLARY (NON - VIOLENT) -
SECOND DEGREE

ATTEST: TRUE COPY

Wynnie B. Clark

CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-11-312

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2010GS38-1142

At a Court of General Sessions, convened on September 13, 2010 the Grand Jurors of Orangeburg County present upon their oath:

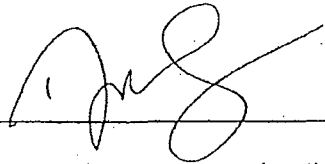
BURGLARY (NON - VIOLENT) - SECOND DEGREE

That in Orangeburg County, South Carolina, on or about May 4, 2010, the Defendant, John Stanford Johnson, did willfully and unlawfully enter a dwelling belonging to Kim & Brian Carson, without consent and with the intent to commit a crime therein. This offense in violation of Section 16-11-312 of the South Carolina Code of Laws, as amended.

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

ATTEST: TRUE COPY

Winnyja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC



Donald N. Sorenson, Solicitor

DOCKET NO. 2010GS38-1141

The State of South Carolina
County of ORANGEBURG

WITNESSES

James Etheridge

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M2T3665

Arrested: May 13, 2010

ACTION OF GRAND JURY

Mary Beth W. Brown
SEP 15 2010

Date

Foreperson of Grand Jury

Date: September 15, 2010

VERDICT

Foreperson of Petit Jury

Date:

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

COURT OF GENERAL SESSIONS

September 13, 2010 TERM

THE STATE
vs.

John Stanford Johnson

Indictment for

BURGLARY - FIRST DEGREE

ATTEST: TRUE COPY

Winifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

SC Code: 16-11-311

2010 SEP 15 P.12:00

FILED IN RECORD
WINIFRED B. CLARK
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2010GS38-1141

At a Court of General Sessions, convened on September 13, 2010 the Grand Jurors of Orangeburg County present upon their oath:

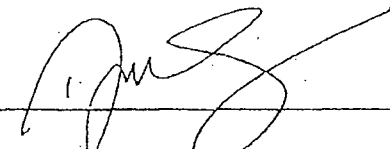
BURGLARY - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about May 4, 2010, the Defendant, John Stanford Johnson, did willfully and unlawfully enter the dwelling of Kenneth Green, without consent and with the intent to commit a crime therein and the defendant when in effecting entry or while in the dwelling or immediate flight there from, he or another participant was armed with a deadly weapon. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

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

ATTEST: TRUE COPY

Winnys B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC



Donald N. Sorenson, Solicitor

DOCKET NO. 2010GS38-1143

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

September 13, 2010 TERM

THE STATE
vs.

John Stanford Johnson

Indictment for

BURGLARY (NON - VIOLENT) -
SECOND DEGREE

ATTEST: TRUE COPY

Wynne B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SC

SC Code: 16-11-312

WITNESSES

James Etheridge

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M213667

Arrested: May 4, 2010

ACTION FOR GRAND JURY

Mary Beth Williams
SEP 15 2010

Date

Foreperson of Grand Jury

Date: September 15, 2010

VERDICT

Foreperson of Petit Jury

Date:

After being fully advised as to my legal rights, I hereby waive presentation to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

2010 SEP 15 P 12:00

CLERK OF COURT
VIRGINIA B. CLARK
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

INDICTMENT
 2010GS38-1143

At a Court of General Sessions, convened on September 15, 2010 the Grand Jurors of Orangeburg County present upon their oath:

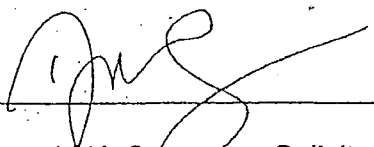
BURGLARY (NON - VIOLENT) - SECOND DEGREE

That in Orangeburg County, South Carolina, on or about May 4, 2010, the Defendant, John Stanford Johnson, did willfully and unlawfully enter a dwelling belonging to Gaius Baker, without consent and with the intent to commit a crime therein. This offense in violation of Section 16-11-312 of the South Carolina Code of Laws, as amended.

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

ATTEST: TRUE COPY

Winnys B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SC



 Donald N. Sorenson, Solicitor

ORANGEBURG COUNTY
 CLERK OF COURT
 2010-09-15