

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Florence County

Honorable Clifton Newman, Circuit Court Judge

JAMES EDGAR HUTCHINSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000638

APPENDIX

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2018-GS-21-01520
	)	Case No. 2018-GS-21-01523
	)	
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
James Edgar Hutchinson,	)	
	)	
Defendant.	)	
	)	

January 8, 2019
 Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

John Jepertinger, Esquire
 Attorney for the Plaintiff

Caroline Lawson, Esquire
 Attorney for the Defendant

Krystal J. Smith
 Circuit Court Reporter

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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption

or change in thought

ellipses . . . trailing off

[ph] phonetically written

[sic] written as said

1 JANUARY 8, 2019

2 (WHEREUPON, the proceedings began at 10:15 a.m.)

3 THE COURT: All right. Ladies and gentlemen, if I could
4 have everyone's attention. If you're here in the courtroom
5 today and you think you might want to resolve your case by
6 way of a guilty plea, then I need to have your attention.

7 I'm going to go over with you the constitutional rights
8 that you have, and it's important that you understand those
9 rights because if you decide to go forward with a guilty
10 plea, then for purposes of your plea you waive or you give up
11 these constitutional rights as it relates to your plea. And
12 any time you give up a constitutional right, it's important
13 that you understand what it is you're giving up.

14 Now, I'm going to go over these rights with you as a
15 group because these are rights that are common to all of us.
16 We all have these same rights. It doesn't matter who you
17 are, what you're charged with or whether you're even charged
18 with anything at all or not. All of us have these same
19 constitutional rights. So rather than repeat it 30 times,
20 I'm going to go over it with you once now.

21 If you have any questions about anything that I go over,
22 I will be happy to give you whatever time you need to talk to
23 your lawyer and have those questions answered. It's just
24 it's important that you understand these rights if you decide
25 to go forward with a guilty plea.

1 Also, the fact that I'm going over these rights with you
2 as a group does not bind you or commit you to do anything.
3 In other words, if after I go over these rights the State
4 calls your case, if you've changed your mind and you don't
5 want to go forward, that's fine. That's your decision. No
6 one is going to force you to do something against your will.
7 But if you do decide that you want to enter a guilty plea,
8 then it's important that you understand these rights.

9 All of us have these rights, as I said earlier. We all
10 have the right to a jury trial. We all have the right to
11 remain silent.

12 If you decide to go forward with a guilty plea, then for
13 purposes of your plea you waive those two important
14 constitutional rights. And when you waive your right to a
15 jury trial, you waive all the rights that are connected to or
16 associated with a jury trial.

17 For example, if you were to have a jury trial, you would
18 be presumed innocent of the charge or the charges that you're
19 facing. That presumption of innocence places the burden of
20 proof on the State to prove guilt. The way they would try to
21 do that is during the course of that trial, they would call
22 witnesses to the stand, those witnesses would be placed under
23 oath, and they would testify.

24 The Constitution of the United States says that every
25 person charged with a criminal offense has the right to face

1 their accusers or to confront their accusers. What that
2 means is during that jury trial you would have the right to
3 question those witnesses, to cross-examine those State's
4 witnesses. That is your right of confrontation under the
5 Constitution.

6 You have the right to challenge any evidence the State
7 would put up against you, but when you plead guilty by
8 entering that plea of guilt, you give up that presumption of
9 innocence that I spoke about, you relieve the State of their
10 burden of proof and, since they don't have to prove your
11 guilt, they don't have to bring their witnesses into court
12 and so you waive or you give up the right to confront those
13 folks.

14 Now, the State is not the only one that can call
15 witnesses at a trial or to present evidence. You could
16 present evidence in your defense. You could call witnesses.
17 You yourself could testify. You could do either one of those
18 things or you could do both of those things, but the
19 important thing to understand is this: You don't have to do
20 anything.

21 In this country, a person charged with a criminal
22 offense is never required to prove him or herself innocent.
23 The burden of proof is on the State to prove guilt. You
24 don't have to prove anything. You could remain silent and,
25 if you chose to remain silent, I would instruct the jury that

1 that is your constitutional right and that they could not
2 consider your exercise of that right during their
3 deliberations. As a matter of fact, I would take it a step
4 further and tell them that the fact that you chose to remain
5 silent could not even be discussed in the jury room. They're
6 to give it no consideration whatsoever because you don't have
7 to prove anything. The burden of proof is on the State to
8 prove guilt.

9 Now, the State has to prove guilt to a unanimous
10 decision. In other words, they have to convince all twelve
11 members of the jury that you are guilty or they cannot
12 convict you. But if you did go forward with a jury trial and
13 if you were convicted, you could appeal that conviction to a
14 higher court, if you felt that was appropriate.

15 Now, these are the rights that we all have, but if you
16 decide to go forward with a guilty plea, then for purposes of
17 your plea you waive or you give up these rights, you will not
18 have a jury trial, and your case will be resolved pursuant to
19 your plea.

20 Like I said earlier, if you have any questions about
21 anything that I just went over, I'll give you whatever time
22 you need to talk to your lawyer and have those questions
23 answered, but it's important that you understand these rights
24 if you go forward because if you go forward with a plea, then
25 for purposes of that plea you waive or you give up these

1 rights that we just went over.

2 All right. We're going to take the cases one at a time.
3 So if y'all would step back here and, Solicitor, you may call
4 them in whatever order.

5 (WHEREUPON, there was a break in the proceedings
6 regarding this defendant from 10:24 a.m. until 11:16
7 a.m., after which the proceedings resumed as follows.).

8 MR. JEPERTINGER: James Hutchinson.

9 All right. May it please the Court, Your Honor.

10 THE COURT: Yes, sir.

11 MR. JEPERTINGER: Standing in front of you is James
12 Edgar Hutchinson on two separate and distinct indictments,
13 2018-GS-21-1520 and 2018-GS-21-1523.

14 Judge, the first order of business, I suppose, is upon
15 your acceptance of these pleas to burglary first degree, for
16 which Caroline Lawson, the defense attorney, and I have
17 negotiated a sentence of 26 years concurrent on these
18 burglary firsts, the State has previously made a motion for a
19 life without parole sentence that we had taken in front of
20 you, Judge, back on October the 3rd of this past year.

21 THE COURT: Okay.

22 MR. JEPERTINGER: Upon your acceptance of the plea, the
23 State will withdraw that motion for life without parole on
24 these two separate and distinct cases, 1520 and 1523.

25 THE COURT: All right.

1 MR. JEPERTINGER: Your Honor, in regards to this case,
2 this defendant also has two separate other indictments of
3 1644, which is a burglary second degree, and 16 -- excuse me.
4 1644 is a burglary third-degree, second offense, and a
5 burglary second-degree on 1645. So we're dismissing two
6 burglary cases on him as well.

7 THE COURT: All right.

8 MR. JEPERTINGER: It's also my understanding that there
9 may be -- I don't know if they've served it or if they're
10 holding it in Marion County -- another burglary warrant or
11 some sort of warrant there. If they do, I'm going to take
12 care of that and it won't be served and that'll be taken care
13 of over in Marion County as well. I have --

14 THE COURT: Okay. So this would resolve any matters --

15 MR. JEPERTINGER: Yes, sir.

16 THE COURT: -- in the 12th Circuit that Mr. Hutchinson
17 may have?

18 MR. JEPERTINGER: That is correct.

19 MS. LAWSON: I have searched the public index high and
20 low and made calls. I can't find anything with respect to
21 his -- he was concerned about the burglary --

22 THE COURT: Yeah.

23 MS. LAWSON: -- or any kind in charge in Marion. I
24 can't find anything.

25 MR. JEPERTINGER: I don't think they've served him, and

1 that's -- you know. So I don't think --

2 THE COURT: All right.

3 MR. JEPERTINGER: If they do, I'm going to handle it.

4 THE COURT: You're going to handle that and they're
5 going to be dismissed?

6 MR. JEPERTINGER: They're going to be dismissed. If
7 they serve him, they're going to be dismissed.

8 THE COURT: All right.

9 MR. JEPERTINGER: So that will --

10 THE COURT: All right. So this plea here today resolves
11 any matters in the 12th Circuit involving Mr. Hutchinson?

12 MR. JEPERTINGER: Absolutely.

13 THE COURT: All right. Thank you, sir.

14 MR. JEPERTINGER: Yes, sir.

15 THE CLERK: Sir, will you please raise your right hand?
16 Do you swear to tell the truth, the whole truth, and nothing
17 but the truth, so help you God?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. Sir, you are James Edgar
20 Hutchinson; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Mr. Hutchinson, Indictment
23 2018-GS-21-1520 and 2018-GS-21-1523, both of those
24 indictments are indictments for burglary in the first degree.
25 Each of those individually carries 15 -- anywhere from 15

1 years to life in prison. Do you understand that?

2 THE DEFENDANT: Yes, sir, I do.

3 THE COURT: Understanding the nature of the charges
4 against -- oh, well, let me back up a little bit.

5 Under South Carolina law, Mr. Hutchinson, these charges
6 are classified as violent and most serious. The significance
7 of the most serious designation is that if you were to
8 receive -- and I think that's what has occurred in this case.
9 That you apparently had a prior most serious offense; is that
10 correct?

11 MS. LAWSON: He had two burglaries.

12 THE COURT: All right.

13 MR. JEPERTINGER: Yeah. He had -- he had -- he had a
14 burglary first --

15 THE COURT: Oh, okay.

16 MR. JEPERTINGER: -- and we'll go through that in just
17 the second, Judge.

18 THE COURT: And so -- and that is why the State had the
19 option to notice you for life without parole. However, it's
20 my understanding pursuant to your plea to these charges, the
21 State is going to withdraw that -- that notice.

22 Understanding the nature of the charges against you and
23 the possible punishment that is associated with these
24 charges, how do you plead to these two charges, sir? Guilty
25 or not guilty?

1 THE DEFENDANT: Guilty, Your Honor.

2 THE COURT: Thank you, sir.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Ms. Lawson, you represent Mr. Hutchinson on
5 these matters?

6 MS. LAWSON: I do, Your Honor.

7 THE COURT: Have you discussed with him each of these
8 charges, as well as his constitutional rights to a trial?

9 MS. LAWSON: Yes, sir.

10 THE COURT: Mr. Hutchinson, am I correct that you are 47
11 years of age? Is that correct, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And how long have you been in jail on these
14 matters, sir?

15 MS. LAWSON: 263 days, Your Honor.

16 THE COURT: Earlier this morning when I went over the
17 constitutional rights with everyone, Mr. Hutchinson, you were
18 present for that; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did you understand those rights, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any question about those rights?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you understand that by entering your plea
25 here today that you waive or you give up those rights and

1 that you will not have a jury trial as it relates to these
2 two charges? Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right, sir. The State has entered into
5 negotiations and if I understand those negotiations
6 correctly, if I follow the negotiations, I would sentence you
7 on each of these charges to 26 years in the Department of
8 Corrections, run them concurrently or together, give you
9 credit for the 263 days that you have served, and that any
10 other charges that are pending here in the 12th Judicial
11 Circuit will be dismissed as a result of your plea to these
12 two charges. Is that your understanding of the negotiations?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Other than those negotiations, has anyone
15 promised you anything, held out any hope of reward or
16 threatened you in any way to get you to enter these pleas?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you satisfied with the representation
19 and the advice that Ms. Lawson has provided?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you today under the influence of any
22 substance that would affect your ability to understand what
23 you're doing here today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you entering your plea on these two

1 charges of your own free will, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And are you guilty of these two burglaries,
4 sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. I'm going to ask Mr. Jepertinger
7 to go over the facts for me briefly. If you'd listen
8 carefully, I'll get back with you in just a moment.

9 MR. JEPERTINGER: Okay.

10 THE COURT: Mr. Jepertinger?

11 FACTS

12 MR. JEPERTINGER: Your Honor, these were both daytime
13 burglaries of a residence. The enhancement provisions to
14 elevate this to a burglary first would have been his prior
15 record. He had two or more prior burglaries, and let me put
16 those on the record.

17 Back on 4/29/99, he pled guilty to a burglary, second
18 offense, nonviolent, and a grand larceny, but he had that
19 burglary second offense back in '99. And then on December
20 the 5th, 2002, he also had a burglary second, nonviolent, a
21 burglary first degree, and another burglary first degree that
22 he pled guilty to. On that date that I just mentioned, he
23 received a 15-year sentence on those burglary first degrees,
24 Your Honor, and I think he was out for about maybe two years
25 before the current offenses occurred.

1 Judge, the current offenses happened here in Florence
2 County over on East Old Marion Highway back on April the 9th,
3 2018, and April the 10th, 2018. The victim was the identical
4 victim for both crimes, a lady by the name of Rita Pattillo.

5 Now, Ms. Pattillo works over in Darlington at a
6 healthcare facility there. She goes to work. She's been
7 going to work there for 30 years. She's an x-ray technician.
8 She lives by herself. She's never met the defendant. She
9 has heard of the defendant's family, as they live down the
10 road from her. She's heard the name of the family, but had
11 no dealings with this defendant in any way, shape or form.

12 She was at work on April the 9th, and she had an alarm
13 system with ADT at her house and received a phone call from
14 them, but was busy with a patient and could not return the
15 phone call immediately. She got done working with that
16 patient. The phone rang again. At that time it was a 665
17 number and it was the Florence County Sheriff's Office. They
18 were calling her. They informed her that her house had just
19 been burglarized.

20 So she drives over to the Old Marion Highway address
21 from Darlington and she notices that her front door has been
22 busted open. When she left that morning to go to work, both
23 doors were locked and the alarm was set. The front door had
24 not been opened in years. She always goes out the back door.
25 By the way, both of these doors had deadbolts on them.

1 She walked through the house and noticed a TV in her
2 bedroom was missing. There was another TV in the living room
3 which, in fact, was a larger TV and it was still in its
4 place. And the only thing missing was this TV. The remote
5 control was also missing.

6 So at that point her ex-husband and son came over and
7 they jerry-rigged a two-by-four against the front door and on
8 the flooring so the front door could not be opened. It was
9 -- it was shut. I think she came home that evening. She
10 went back to work, came home, and got up the next day,
11 Tuesday the 10th. She goes off to work again. The same
12 deal. She gets a phone call from ADT. She can't believe it.
13 She told ADT to call Florence County Sheriff's Office.

14 She gets in her car and drives back home. They get
15 there. This time the back door has been broken off. The
16 casing is completely shot. The door is down on the ground,
17 completely knocked off. She walks through the house and the
18 only thing missing this time is the large TV that wasn't
19 stolen the first occasion that was in the living room.

20 The nephew came over and they had to get a new door at
21 Lowe's and he tries to -- and he puts it up that day. So she
22 was hit twice by the same individual.

23 Now, the police are looking for suspects. The reason
24 Marion County kind of came up in the conversation is James
25 Lee, who is an investigator over there, when he hears about

1 what's been going on on Old Marion Highway, somehow he gets a
2 hold of James Allen here with the Florence County Sheriff's
3 Office. Either James calls him or he calls James, but he
4 said we've kind of had a rash of those type things.

5 He goes, "Yeah, I'm just -- you know, the lady has had
6 her TVs stolen. What can we do?"

7 He goes, "Have you gone over to Dillon to check to see
8 the pawn shops over there?"

9 Well, it hadn't occurred to James to do that. So James
10 goes over to Dillon County and on that day, on April the 9th,
11 Ms. Pattillo's TV that was stolen on April 9th was pawned by
12 this defendant, James Edgar Hutchinson, and we have the
13 receipt and we were going to have the pawnbroker come in here
14 to testify that Hutchinson came in and he pawned that TV that
15 was taken on the 9th at Main Street Pawn and Gun over on West
16 Main Street in Dillon.

17 He checks another pawn shop. The TV that was taken on
18 April the 10th was pawned by James Edgar Hutchinson at Rick's
19 Pawn Shop #6 over on Radford Boulevard over in Dillon, and we
20 were going to bring in the pawnbroker to say that James Edgar
21 Hutchinson took -- pawned that TV that belonged to Ms.
22 Pattillo.

23 They bring in James Edgar Hutchinson to the Florence
24 County Sheriff's Office, and he gives a full confession that
25 he committed these crimes. He alleges that another

1 individual was with him. That they drove up in a vehicle in
2 the front yard and the doors were broken into, just like Ms.
3 Pattillo said, and the TVs were taken. That's it.

4 THE COURT: All right. Mr. Hutchinson, are those facts
5 that Mr. Jepertinger gave me as to -- as regarding these two
6 charges, are those facts correct, sir?

7 THE DEFENDANT: Yes, sir.

8 FINDINGS

9 THE COURT: All right. I find that the State has
10 provided a substantial factual basis to support the charges
11 that Mr. Hutchinson has pled guilty to. I find that his
12 decision to enter these pleas has been done freely,
13 voluntarily, and intelligently.

14 He's had the advice and counsel of an outstanding
15 attorney in Ms. Lawson. Mr. Hutchinson has indicated he is
16 satisfied with that representation, and I'm going to accept
17 his pleas.

18 Ms. Lawson, I'll be happy to hear from you, ma'am.

19 MS. LAWSON: Thank you, Your Honor.

20 I know that this is negotiated; so I'll keep it brief,
21 but I wouldn't be fair to Mr. Hutchinson if I didn't tell you
22 a little bit more about how we got here.

23 Mr. Hutchinson, unfortunately, after serving his older
24 sentence, just like many people had a hard time coming back
25 into society, getting back on his feet and, you know,

1 conforming to our normal rules that we need to conform to.
2 He got out in 2015. A lot of good things happened for him.
3 He tells me that year was the best year of his life. He got
4 back with this high school sweetheart, married his wife
5 Marie, and began remodeling work for a lot of people around
6 here that you and I both know. He's a very skilled laborer,
7 was making decent money.

8 However, kind of later on, probably about a year later,
9 he developed diverticulosis. He goes to the hospital, is
10 prescribed Percocets. He starts using those. That
11 prescription runs out. Not too much longer, he falls at work
12 and injured his back. What do you know? He's prescribed
13 Percocets again. A couple months later, he gets in a really
14 bad car accident here in Florence, is prescribed more pain
15 medication.

16 He just -- after each incident, his prescription would
17 run out. He is on a constant hunt for money trying to figure
18 out how to get his next amount of pills that's going to give
19 him the same high that he's gotten before.

20 He thinks that it's important for you to know and so do
21 I that none of these crimes were violent, while it was a
22 horrible violation of Ms. Pattillo's safety. I told him this
23 is the worst position to put a woman that lives by herself
24 in. I live alone. The thought of somebody coming in and
25 taking something from me just during the day and me coming

1 home is absolutely terrifying. I don't know how she could
2 sleep at night after that. That's just got to be
3 unimaginable.

4 He just wants to come here and take responsibility for
5 this. He's got an 18-year-old daughter, as well as a
6 granddaughter. He just wants to take care of his health
7 while he serves his sentence so that he can go forward when
8 he gets out and spend some time with them, and he prays that
9 his mother is still alive when his sentence is resolved. He
10 may wish to say a little bit also.

11 THE COURT: I would be happy to hear -- hear from you,
12 Mr. Hutchinson. If you have anything you want to share with
13 the Court, I'll be happy to hear from you, sir.

14 THE DEFENDANT: I just want to the victim to know that
15 I'm sorry for my actions. I take responsibility and I'd give
16 it back if I could.

17 THE COURT: Yes, sir. Well, I appreciate that, Mr.
18 Hutchinson.

19 SENTENCE

20 THE COURT: All right. On Indictment 2018-GS-21-1520
21 and 1523, as to both of those charges the sentence of the
22 Court is that you be committed to the State Department of
23 Corrections for a period of 26 years. I'm going to give you
24 credit for the 263 days that you have served on these
25 matters, and both of these charges are to run concurrent with

1 each other.

2 Good luck to you, sir.

3 MR. JEPERTINGER: Thank you, Your Honor.

4 (WHEREUPON, the proceedings ended at 11:35 a.m.)

5

6 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 21, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 8th day of January, 2019.

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

Krystal J. Smith

Court Reporter

Florence, South Carolina

October 6, 2020

FORM 5

2019 CP 21-2708

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF)

James Hutchinson, #)

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

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEFFILED
FLORENCE COUNTY, SC

2019 OCT 24 PM 2:46

FILED

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 Lee Correctional, 990 W. Sackville Hwy, Bishopville, SC
2. Name and location of Court which imposed sentence General Sessions 29010
3. Name(s) of co-defendant(s) (if any) 0 12th Circuit, Florence, S.C.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-21-01520 Burglary - 16-11-311
 - (b) 2018-GS-21-01523 Burglary - 16-11-311
 - (c)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1-8-2019 - 26 years
 - (b) 1-8-2019 - 26 years > concurrent

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO - Counsel failed to
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) Counsel failed preserve issues for Appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See attached Exhibit - A
For Details of Grounds
to support Ineffective
assistance of counsel
claims; Violating Constitutional Rights
and holding in custody unlawfully

- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): *see attached Exhibit-B*
- (a) _____ *For Details of Facts supporting*
- (b) _____ *Ineffective assistance of counsel*
- (c) _____ *claims and Constitutional violations*
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
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?
- _____
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) _____ This PC-R application is the first time
- (b) _____ any of these Constitutional violations have
- (c) _____ been raised
- And counsel failed to file Direct appeal on any
17. Were you represented by an attorney at any time during the course of: on my behalf,

- (a) your arraignment and plea? Plea
- (b) your trial, if any? _____
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Caroline Lawson
- ii. County - Complex
- iii. 180 N. Irby St, Room # 703
Florence, S.C. 29501
- (b) the proceedings at which each such attorney represented you:
- i. Guilty Plea
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Vacated
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

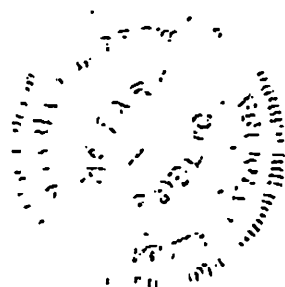
I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James C. Hutchinson

SWORN to and subscribed before me this 2nd
day of October, 2019.

Shana M. O'Dell (L.S.)
Notary Public

My Commission Expires: May 17, 2020



FILED
2019 OCT -4 PM 2:46
FORIS POLICE OFFICE
CR/CP & OS
FLORENCE COUNTY, SC

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

I, _____, 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:

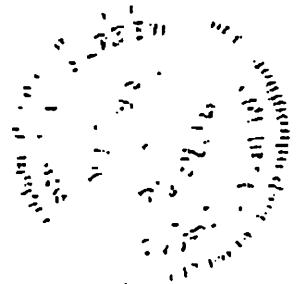
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James E. Hutchinson
Applicant

SWORN or affirmed to and subscribed before me this
2nd day of October, 2019.

Shane M. O'Neil
Notary Public

My Commission Expires: May 17, 2026



FILED
2019 OCT -4 PM 2:46
KORIS FOULOS O'HARA
CCCP & GS
FLORIDA COUNTY, SG

10- #10

1) Ineffective assistance of counsel for failure to request evidentiary hearing to challenge suppressible statement that was obtained in violation of 5th-Fifth and 6th-Sixth Amendments after invocation of Right to Counsel under Due Process also protected under 14th-fourteenth Amendment.

2) Ineffective assistance of counsel for failure to challenge the confession obtained in violation of 5th-Fifth Amendment invocation of right to remain silent that's protected under Due Process of 5th-Fifth and 14th-fourteenth Amendment, Exercised right on date of arrest also, and the next morning,

3) Ineffective assistance of counsel for failure to challenge statement obtained in violation of 5th-Fifth and 14th-fourteenth Amendments to provide Due Process to "recite (Miranda) warnings" to petitioner during process of eliciting an involuntary and unintelligent waiver and statement while in a custodial setting,

4) Ineffective assistance of counsel in failure to request an evidentiary-hearing for evidence that are suppressable for being in violation of 5th-Fifth and 14th-fourteenth Due Process Clause by interrogation that was induced by the use of Drugs administered through Jail nurse and to have an Expert Witness presented to prove effects of the medications that caused impaired judgement along with other side effects overbearing ones "free will" to choose against self-incriminating statements to law-enforcement (adversary after invocation of 5th-and 6th Amendment Rights prior to being administered and after medications were administered before taking effect

5) Ineffective assistance of Counsel for failing to inform me the nature of all Constitutional Rights being waived, or filing a Direct Appeal, not informing of this right as well, or sentence reconsideration,

6) Ineffective assistance of counsel by not allowing me to view any of the evidence, witnesses, statements, audio, or video surveillance, restricting petitioner from being able to make a knowingly and intelligent decision by giving erroneous legal advice causing an unintelligent guilty plea,

7) Ineffective assistance of counsel for failure to present any mitigating-evidence relevant and reasonably at issue pertaining to petitioner's mental health and emotional status for purposes of recommendation of mercy from a jury or court for possible lighter sentence. Also requested counsel to send me off for psychiatric-evaluation, but was refused,

A) Counsel was informed by petitioner of event at law-Enforcement center where I asked about contacting counsel. I was given a form to fill out for appointment of counsel that states Right to Counsel. also asked repeatedly of correctional officers to get pin# to call home and to have outside counsel (private counsel) contacted but was denied.

B) Counsel was informed that I (Petitioner) invoked "Right to Remain Silent" when investigator approached Holding-Cell at Jail where I stated "Lawyer" through glass and that I did not want to talk. He left, then came back and failed to scrupulously honor my Right to Remain Silent by initiating further questioning, thus violating my 5th-Fifth, 14th-fourteenth and 6th-Sixth Amendment Right to Counsel and Right to Remain Silent. I also exercised Right to Silence while being booked into Jail when arresting officer tried to question me after arrest.

C) After I was awakened by correctional officer, I was pulled out of holding cell and denied, after requesting to use phone to call lawyer and home. I was told to go talk to that man (investigator). Investigator stated "that won't help you, you're already in enough trouble, talking to me won't hurt you". This had taken place about an hour after being administered medications. He never recited my Miranda warnings.

D) Counsel was informed that I wanted her to file a pre-trial motion to challenge evidence of confession. I was approached by correctional officer and asked "If I was okay" (you look sick). I stated "that my stomach was hurting from the Jailhouse breakfast I ate earlier". I was taken to medical and administered what was purportedly suppose to be for stomach cramps which knocked me out back at Holding cell after eating a bag-lunch and then approached by investigator. that I refused to talk to and stated "Lawyer" through glass, where I then fell into a deep hard sleep. Later, after a study of these drugs, it was learned that they are for 1) Anxiety & mood-stabilizers that relieve "tension", "anxiety" which breaks down your resistance and opposition of harmful dangers (such as your adversaries) of law-Enforcement thus, impairing your judgement making easily susceptible to suggestion by use of these medications that are also classified as Sedative/Hypnotics that are effectively being used by law-Enforcement to elicit "hypnotically induced testimony" and by way of "Undue Influence" on law-enforcements part to induce incriminating, and involuntary statements in violation of 5th-Fifth and 14th-Fourteenth Amendments against Due Process Clause and Right to make a "Rational Intellect (free will choice), Unclouded decision pertaining to any waiver of Constitutional Rights,

-32- FROM OTHER SIDE - E, F, and G.

E.) Counsel failed to inform me of any and all constitutional rights being waived. Had counsel done so I would have been able to make a knowingly and intelligent decision in taking or rejecting plea agreement or proceeding to trial. nor, did counsel file any type Sentence Reconsideration or Direct appeal on my behalf.

F.) Counsel failed to let me (petitioner) view any of the Evidence in my Rule #5, witnesses, video, audio, surveillance, thus being unable to make an intelligent and knowingly decision to challenge evidence or take plea agreement. Counsel provided me with erroneous legal advice and causing to enter an unintelligent guilty plea.

G.) Counsel was informed that I wanted her to present my mental-health records which reveal several conditions that were relevant and reasonable issues as mitigating evidence enabling a recommendation of mercy from a judge or jury for possibility of a lighter sentence. I also requested to be sent off for psychiatric evaluation but was refused by counsel.

For the aforementioned facts, counsel provided deficient performance, thus causing prejudice on behalf of client.

In The Court Of Common Pleas
In And For The County Of Florence
State Of South Carolina

State Of South Carolina
County Of Florence
Plaintiff

V.

James Edgar Hutchinson
Defendant

Case No. 2019-CP-2808

NOTICE OF INTENT TO AMEND PCR
APPLICATION

Honorable. Court 12th Judicial
Circuit

Now comes the defendant James Edgar Hutchinson acting Pro Se and respectfully submits this Notice Of Intent To Amend PCR Application to include additional issues pertaining to the above mentioned Case No. 2019-CP-2808

Pursuant to S.C. Rules of Civil Procedure, Rule 15, Amended and supplemental proceedings,
cc: Clerk of Court,
Attorney General,
file.

Respectfully Submitted

on this 13th day of April, 2020.

James E. Hutchinson

James E. Hutchinson #258003

Lee Correctional Institution F6-A-1125

990 Wisacky Highway

Bishopville, South Carolina 29010

Page 1 of 4

2020 APR 22 AM 9:13
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

**In The Court Of Common Pleas
In And For The County Of Florence
State Of South Carolina**

State Of South Carolina
County Of Florence
Plaintiff

V.

James Edgar Hutchinson
Defendant

Case No. 2019-CP-2808

**MOTION TO AMEND PCR APPLICATION TO
INCLUDE ADDITIONAL ISSUES TO CONFORM
TO THE EVIDENCE**

Honorable: Court 12th Judicial
Circuit

APR 22 AM 9:13A
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

May it please the Court, comes now the defendant James Edgar Hutchinson
acting Pro Se and respectfully request to amend PCR Application to contain additional issues to conform
to the evidence pursuant to South Carolina Rules of Civil Procedure Rule 15 (a) amendments and Rule 15
(b) to conform to the evidence, (c) Relation Back of Amendments, and
(d) Supplemental Pleadings, SCRAP-Rule 15,
The basis for this request is as follows:

1. limited access to Law Library from being on Modified Lockdown due to the 2018 riot, and
2. now the Coronavirus Pandemic.

Petitioner now requests to add additional Amendments of new issues since the submitting of the original
PCR Application on the 2nd day of October (2019), (See attached exhibit [A])

CC Clerk of Court
Attorney General
File

Respectfully Submitted

on this 13th day of April, 2020

James E. Hutchinson

James E. Hutchinson #258003

Lec Correctional Institution F6-A-1125

990 Wisacky Highway

Bishopville, South Carolina 29010

Page
2074

PROOF OF SERVICE

SERVED 4-17-2020 Here, Correctional, Bishopville
 SERVED ON (PRINT NAME) (Glenhof Court) MANNER OF SERVICE
Florence, S.C. Court of Common Pleas U.S. Postal serv.
 SERVED BY (PRINT NAME) James Edgar Hutchinson TITLE
#258003 Petitioner
 DECLARATION OF SERVER

I certify that the following information contained in the Proof of Service is true and correct.

Executed on 4-17-2020

James E. Hutchinson
 SIGNATURE OF SERVER

Here, C.I. #6-A-1125
 ADDRESS OF SERVER
990, Wisacky Hwy,
Bishopville, S.C.

SCCA 253 (102011)

Case No: 2019-CP-2806

See Attached Sheets; 1-4
containing:

- 1) Notice of Intent (to Amend PCR Application)
- 2) Motion to Amend PCR-Application
To Include additional issues
conform to the evidence
Pursuant to -SCRCP Rule 15,
- 3) Additional Issues & Facts
to be amended to PCR-Application
Exhibit-A (1)
- 4) Continued-Additional Issue & Facts
to be Amended to PCR-Application
Exhibit-A (2)

2020 APR 22 AM 9:13
 DORIS POUSSO O'HARA
 - CCPT 68
 FLORENCE COUNTY, SC

FILED

Exhibit A (Facts And Issues)
In Case No. 2019-CP-2808

cc: Clerk of Court
 Attorney General
 File

**In The Court Of Common Pleas
 In And For The County Of Florence
 State Of South Carolina
 Pursuant To SCRPC Rule 15 (a) (b)**

Issues added to amend original PCR Application:

Issue (1) - Counsel was ineffective for failure to request a bifurcated trial, to stop the prejudicial impact of alleged evidence the State planned to present, to control the mode and order of when and how the evidence was presented.

Facts -- Had counsel informed client of this trial strategy, he could have made an informed decision and would have demanded on going to trial.

Issue (2) - Counsel was ineffective for failure to file a motion in ^{limine} to have a balancing test, to let a Judge decide whether prior convictions were too remote to offer as evidence, and States failure to get permission from the Court to introduce such evidence.

Facts -- Had counsel informed client that the State was offering evidence without Courts approval by not giving the Court a written notice for intent to use prior convictions over ten years old, client would have insisted on going to trial.

Issue (3) - Counsel was ineffective for failure to inform client of the State's failure to present sufficient evidence to convict under 16-11-311 (a) (2), instead let client enter a plea agreement that was unintelligent and unknowingly.

Facts -- Had counsel informed client of this failure of sufficient evidence to convict beyond a reasonable doubt, he would have insisted on going to trial.

Issue (4) - Counsel was ineffective for having a "conflict of interest" where she allowed client to enter a plea agreement to actions alleged by the State, causing client to enter an unknowing and unintelligent waiver of rights by entering such plea

Facts -- Had counsel informed client of this trial strategy, client could have made an informed decision and would have insisted of going to trial. Counsel could have then requested the Court for a direct verdict for automatic acquittal or on a lesser charge because the State would have failed to meet its burden of proof beyond reasonable doubt.

Page
 3 of 4

Exhibit A (Facts And Issues) continued

Issue (5) – Counsel was ineffective for failure to enforce the original plea agreement offer from the State. Had counsel enforced original plea offer, client would have ended up with a less severe sentence as opposed to the 26 years received.

Facts – Counsel failed to enforce original plea offer after client relied on detriment.

Issue (6) – Novel issue of unconstitutional enhancement of a charge from non-violent offense to a violent offense before Grand Jury. *The statute also contravenes with the well established rule that an accused prior crimes are not admissible in the prosecution of the crime charged.*

Facts – Indictment should have charges offense of 16-11-312 (a). Instead the Prosecution perjured themselves in front of the Grand Jury by enhancing the charge. The Prosecution used an unconstitutional statute of 16-11-311 (a) (2) to convert the actual offense from non-violent to violent. Under the United States Constitution and the South Carolina Constitution, persons accused of a crime are to be charged with the actual offense committed, not what the state wants the charge to be. It is unconstitutional to charge someone for something they did not do.

Addition to Issue (5) of original PCR Application – Counsel's failure to file direct appeal.

Facts – Petitioner requested counsel to file a direct appeal just as his counsel Steven Hill did on his 2002 conviction.

Respectfully Submitted

on this 13th day of April, 2020.

/s/ James E. Hutchinson

James E. Hutchinson #258003

Lee Correctional Institution F6-A-1125

990 Wisacky Highway

Bishopville, South Carolina 29010

Cc: Clerk of Court
Attorney General
File

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

FILED
2020 JUN - 1 AM 9:14
DORIS POULOS CHARRA
CCCP & GS
FLORENCE COUNTY, SC

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence

Plaintiff.

CASE NO:

2019-LP-2808

**NOTICE OF INTENT TO
AMEND PCR APPLICATION**

Honorable Twelfth Judicial Circuit

Now comes Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully submits this Notice of Intent to Amend PCR Application to include additional issues pertaining to the above mentioned case, pursuant to South Carolina Rules of Civil Procedures. Rule 15 Amended and supplemental proceedings.

Executed on this 25th day of May, 2020.

Respectfully Submitted,

James E. Hutchinson

James E. Hutchinson, #258003

Lee Correctional Institution F6A- 1125

990 Wisacky Highway

Bishopville, South Carolina 29010

Cc: Clerk of Court
Attorney

Attorney General
File

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

39 FILED
2020 JUN -1 AM 9:14
DORIS POULOS OHARA
CLERK CCJP & GS
FLORENCE COUNTY, SC

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence

Plaintiff.

CASE NO:

2019-CP-2808

**MOTION TO AMEND PCR
APPLICATION TO INCLUDE
ADDITIONAL ISSUES TO
CONFIRM TO THE EVIDENCE**

Honorable Twelfth Judicial Circuit

May it please the court, now comes the Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully requests to amend PCR Application to contain additional issues to conform to the evidence pursuant to South Carolina Rules of Civil Procedure Rule 15(a) amendments and Rule 15(b) to conform to the evidence, (c) Relation back of Amendments, and (d) supplemental pleadings. SCRCR Rule 15.

Petitioner now requests and now adds additional Amendment of new issues since submitting of the original PCR Application on the 2nd day of October 2019, and the first amended issues on the 13th day of April 2020.

Issues to be amended as follows:

1. Counsel was ineffective for failure to provide reasonable trial strategy in failing to challenge the State's insufficient evidence to prove beyond a reasonable doubt to obtain a conviction under habitual "recidivist status."

Facts: Counsel should have informed client of the State's failure to provide sufficient evidence to support *recidivist status* and proof beyond a reasonable doubt. Client would have insisted on going to trial and the outcome would have been different. Counsel could

have requested a direct acquittal and/or instruction to a lesser offense and the outcome would have been a less severe sentence.

2. The State failed to provide sufficient evidence to prove beyond a reasonable doubt to convict Petitioner under "recidivist" Statute 16-11-311(a) (2).

Facts: The State failed to prove the chronology of the commission of prior felonies, an essential element of enhanced sentencing statutes. Petitioner's sentence is not supported by sufficient evidence.

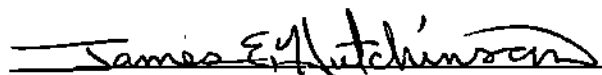
3. The State failed to provide *due process* and the fundamental fairness in failing to have the Court "duly caution" Petitioner during *recidivist* sentence enhancement hearing resulting in a jurisdictional error. *by not securing jurisdiction.*

Facts: The Court failed to caution Petitioner to secure jurisdiction to advise him that when it came to the issue of identity and the proof of prior sequence of prior convictions, that he had a right to deny or have issue submitted to a jury, resulting in an insufficient basis for Petitioner's adjudication as habitual felon status for sentencing purposes of Recidivist Statute 16-11-311(a) **2**

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of May, 2020.

Respectfully Submitted,



James E. Hutchinson, #258003
Lee Correctional Institution F6B- 1125
990 Wisacky Highway
Bishopville, South Carolina 29010

Cc: Clerk of Court
Attorney

Attorney General
File

PROOF OF SERVICE

DATE 5-25-2020 PLACE Lee, Corr. Institution
 SERVED ON (PRINT NAME) Clerk of Court MANNER OF SERVICE U.S. Postal
Court of Common Pleas Florence, SC
 SERVED BY (PRINT NAME) James Edgar Hutchinson TITLE Petitioner
 DECLARATION OF SERVER

I certify that the following information contained in the Proof of Service is true and correct.

Executed on 5-25-2020 James Edgar Hutchinson
 SIGNATURE OF SERVER
Lee, Corr. Inst. FGA-1125
990 Wisacky Hwy, Bishopville, SC,
 ADDRESS OF SERVER 29010

SCCA 253 (102011)

FILED
 2020 JUN -1 AM 9:14
 DORIS POULOS O'HARA
 CCCP & GS
 FLORENCE COUNTY, SC

Date: May 23rd, 2020

2020 JUN -1 AM 9:14
 DORIS POULOS O'HARA
 CCCP & GS
 FLORENCE COUNTY, SC

FILED

TO: Doris Poulos O'Hara
 "Clerk of Court"
 Judicial Center
 141 N. Irby Street
 Suite - 1100
 Florence, S.C. 29501

RE: See attached letter requesting materials for preparation of PCR hearing
 Case No. 2019-CP-2808

Dear Clerk of Court, These are copies of letters that were mailed to the following agencies in try to obtain evidence in support of my near future PCR hearing on case # P.C.R. #2019-CP-2808, see attached 3 letters address

Comes now James E. Hutchinson, Petitioner acting Pro Se, requesting that your agency produce below, these documents for preparation of my near future PCR hearing Case No. 2019-CP-2808. These letters are being sent to your agency through the U.S. Postal Service certified mail from my mother Reta A Finch, which is my legal Power Of Attorney.

Inmates are allowed to view DVD recordings from DVR devices. The DVDs are kept in the inmate's Warden's Jacket and can be viewed upon request to the Warden.

I look forward to hearing from you in the near future. Thank you for your help in this matter.

cc: Florence Public Defenders' Office, (Caroline Lawson Bond)
 c/o: Caroline Lawson Bond,
 300 Russell St, Suite 113
 Darlington, S.C.
 29532

Florence County Sheriff's
 Department
 (Sheriff Billy Barnes)
 Effingham, S.C.

Respectfully Submitted
 on the 23rd day of May, 2020.

James E. Hutchinson

James E. Hutchinson #258003
 Lee Correctional Institution F6-A-1125
 990 Wisacky Highway
 Bishopville, South Carolina 29010

Florence County
 Solicitors' Office
 Judicial Center

Will you please include this to the record for me?

Cc: File

Thank you very much,
James E. Hutchinson

James Edgar Hutchinson #258003
Lee Correctional Institution F6-A-1125
990 Wisacky Highway
Bishopville, South Carolina 29010

Acting Pro Se pertaining
to PCR 2019-CP-2808
Warrant #2018A2110100-306
Warrant #2018A2110100-307
Warrant #2018A2110200-338
Warrant #2018A2110200-343

May 13th 2020

Lawson, Caroline Bond
Public Defenders Office Room #703
Florence County Complex
180 N. Irby Street
Florence, South Carolina 28501

Indictment Numbers:
2018-65-21-1520
2018-65-21-1523

RE: Case File Discovery Rule 5, Rule 26(a) (b) (1)
Governing Discovery Rules of Civil Procedure
Rule 34, Production of Documents

Dear Ms. Lawson,

At this time, I would like a complete case file copy of my file as maintained by your office. I ask that you include but not limited to the following:

All Evidence the State planned to present on the above indictment numbers, and guilty plea transcripts
Police reports, statements, confession (audio and video), dash-cam video of my arrest on April 19 2018, body-cam video from the arresting officers on April 19 2018, booking video DVR footage at Florence County Detention Center on April 19 2018 (between 1800 and 2300 hours approx.), booking video DVR footage and detox holding cell footage on April 20 2018 (between 0600 and 1400 hours approx.) at Florence County Detention Center, Medical area DVR footage at Florence County Detention Center on April 20 2018 (between 0900 and 1200 hours approx.), Rule 5 discovery, written notices by Prosecution, case notes, motions and any notes or copies that I sent you as well as the Court. Pursuant to Rule 26(a) (b) (1) Rules of Civil Procedure and Rule 34 Production of Documents.

Rule 36 Request for Admission (a) Request for Admission – that on January 8 2018 you, Caroline Lawson, brought a DVD to Florence County Detention Center and told me the State had a confession.

Should you feel you do not have to furnish a copy of the requested documents to me, I feel it necessary to point out Matter of Haddock 321 SE2nd 601 (1984) in which the Supreme Court has ruled that a "client's file belongs to the client and should be given to the client at the client's request."

I expect that you comply with the court's ruling in this case and my request. See Matter of Haddock Supra (failure to follow Rule 407 SCACR.)

Thank you for your cooperation on this matter. I look forward to hearing from you within the next twenty (20) days.

Sincerely,

James E. Hutchinson

James Edgar Hutchinson #258003
Lee Correctional Institution F6-A-1125
990 Wisacky Highway
Bishopville, South Carolina 29010

Cc: Public Defenders Office
Solicitor's Office

Clerk of Court
Sheriff's Department

Attorney General
File

James Edgar Hutchinson #258003
 Lee Correctional Institution F6-A-1125
 990 Wisacky Highway
 Bishopville, South Carolina 29010

Acting Pro Se pertaining to PCR 2019-CP-2808
 Warrant #2018A2110100-306
 Warrant #2018A2110100-307
 Warrant #2018A2110200-338
 Warrant #2018A2110200-343
 Indictment number:
 2018-GS-21-1520
 2018-GS-21-1523

Date: May 13th, 2020
 TO: Lawson Caroline Bond
300 Russell St Suite -113
Darlington, S.C. 29532
 RE: Case File Discovery Rule 5, Rule 26(a) (b) (1)
 Governing Discovery Rules of Civil Procedure
 Rule 34. Production of Documents

Dear Caroline Lawson,

At this time, I would like a complete case file copy of my file as maintained by your office. I ask that you include but not limited to the following:

Courtly Plea Transcript Bands
 All evidence the State planned to present to obtain a conviction on the above indictment numbers. Police reports, statements, confession (audio and video), dash-cam video of my arrest on April 19 2018, body-cam video from the arresting officers on April 19 2018, booking video DVR footage at Florence County Detention Center on April 19 2018 (between 1800 and 2300 hours approx.), booking video DVR footage and detox holding cell footage on April 20 2018 (between 0600 and 1400 hours approx.) at Florence County Detention Center, Medical area DVR footage at Florence County Detention Center on April 20 2018 (between 0900 and 1200 hours approx.), Rule 5 discovery, written notices by Prosecution, case notes, motions and any notes or copies that I sent you as well as the Court. Pursuant to Rule 26(a) (b) (1) Rules of Civil Procedure and Rule 34 Production of Documents.

Rule 36 Request for Admission (a) Request for Admission -- that on January 8 2018 you, Caroline Lawson, brought a DVD to Florence County Detention Center and told me the State had a confession.

Should you feel you do not have to furnish a copy of the requested documents to me, I feel it necessary to point out Matter of Haddock 321 SE2nd 601 (1984) in which the Supreme Court has ruled that a "client's file belongs to the client and should be given to the client at the client's request."

I expect that you comply with the court's ruling in this case and my request. See Matter of Haddock Supra (failure to follow Rule 407 SCACR.)

Thank you for your cooperation on this matter. I look forward to hearing from you within the next twenty (20) days.

Sincerely,

James Edgar Hutchinson #258003
 Lee Correctional Institution F6-A-1125
 990 Wisacky Highway
 Bishopville, South Carolina 29010

Cc: Public Defenders Office
 Solicitor's Office

Clerk of Court
 Sheriff's Department

Attorney General
 File

James Edgar Hutchinson #258003
Lee Correctional Institution F6-A-1125
990 Wisacky Highway
Bishopville, South Carolina 29010

Acting Pro Se pertaining
to PCR 2019-CP-2808
Warrant #2018A2110100-306
Warrant #2018A2110100-307
Warrant #2018A2110200-338
Warrant #2018A2110200-343

Florence Judicial Center
TO: *Florence, S.C. Solicitors Office*
141 North Irby Street
Suite 1100
Florence, S.C. 29501
RE: Case File Discovery Rule 5, Rule 26(a) (b) (1)
Governing Discovery Rules of Civil Procedure
Rule 34. Production of Documents

Dear *Solicitors Office,*

At this time, I would like a complete case file copy of my file as maintained by your office. I ask that you include but not limited to the following:

All evidence the State planned to present to obtain a conviction on the following indictment numbers:
2018-65-21-1520 and 2018-65-21-1523 and
Guilty Plea Transcripts
Police reports, statements, confession (audio and video), dash-cam video of my arrest on April 19 2018, body-cam video from the arresting officers on April 19 2018, booking video DVR footage at Florence County Detention Center on April 19 2018 (between 1800 and 2300 hours approx.), booking video DVR footage and detox holding cell footage on April 20 2018 (between 0600 and 1400 hours approx.) at Florence County Detention Center, Medical area DVR footage at Florence County Detention Center on April 20 2018 (between 0900 and 1200 hours approx.), Rule 5 discovery, written notices by Prosecution, case notes, motions and any notes or copies that I sent you as well as the Court. Pursuant to Rule 26(a) (b) (1) Rules of Civil Procedure and Rule 34 Production of Documents.

Rule 36 Request for Admission (a) Request for Admission that on January 8 2018 you, Caroline Lawson, brought a DVD to Florence County Detention Center and told me the State had a confession.

Should you feel you do not have to furnish a copy of the requested documents to me, I feel it necessary to point out Matter of Haddock 321 SE2d 601 (1984) in which the Supreme Court has ruled that a "client's file belongs to the client and should be given to the client at the client's request."

I expect that you comply with the court's ruling in this case and my request. See Matter of Haddock Supra (failure to follow Rule 407 SCACR.)

Thank you for your cooperation on this matter. I look forward to hearing from you within the next twenty (20) days.

Sincerely,

James E. Hutchinson

James Edgar Hutchinson #258003
Lee Correctional Institution F6-A-1125
990 Wisacky Highway
Bishopville, South Carolina 29010

Cc: Public Defenders Office
Solicitor's Office

Clerk of Court
Sheriff's Department

Attorney General
File

James Edgar Hutchinson #258003
 Lee Correctional Institution F6-A-1125
 990 Wisacky Highway
 Bishopville, South Carolina 29010

Acting Pro Se pertaining
 to PCR 2019-CP-2808
 Warrant #2018A2110100-306
 Warrant #2018A2110100-307
 Warrant #2018A2110100-338
 Warrant #2018A2110100-343

Date: *May 13th 2020.*

Sheriff *Billy Barnes*
 Florence County Sheriff's Department
 6719 Friendfield Road
 Eilingham, South Carolina 29511

RE: Case File Discovery Rule 5, Rule 26(a) (b) (1)
 Governing Discovery Rules of Civil Procedure
 Case No. 2019-CP-

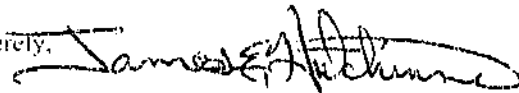
Dear, Sheriff,

At this time, I would like a complete case file copy of my file as maintained by your office. I ask that you include but not limited to the following:

All evidence the State planned to present to obtain a conviction on the following indictment numbers:
~~2018-GS-21-1520~~ and ~~2018-GS-21-1523~~

Police reports, statements, confession (audio and video), dash-cam video of my arrest on April 19 2018, body-cam video from the arresting officers on April 19 2018, booking video DVR footage at Florence County Detention Center on April 19 2018 (between 1800 and 0300 hours approx.), booking video DVR footage and detox holding cell footage on April 20 2018 (between 0600 and 1400 hours approx.) at Florence County Detention Center, Medical area DVR footage at Florence County Detention Center on April 20 2018 (between 0900 and 1200 hours approx.). Pursuant to Rule 26(a) (b) (1) Rules of Civil Procedure

Sincerely,



James Edgar Hutchinson #258003
 Lee Correctional Institution F6-A-1125
 990 Wisacky Highway
 Bishopville, South Carolina 29010

Cc: Public Defenders Office
 Solicitor's Office

Clerk of Court
 Sheriff's Department

Attorney General
 File

PROOF OF SERVICE

SERVED DATE PLACE
 May 23rd 2020, Lee, CT.

SERVED ON (PRINT NAME) "Clerk of Court" MANNER OF SERVICE
 Doris Poulos O'Hara
 Judicial Center 151 N. Tryon St. Suite 1100 U.S. Postal

SERVED BY (PRINT NAME) Florence, S.C., TITLE
 James E. Hutchinson #258023 Petitioner PCR-20A-CP-2802

DECLARATION OF SERVER

I certify that the following information contained in the Proof of Service is true and correct.

Executed on May 23rd, 2020 James E. Hutchinson
 SIGNATURE OF SERVER
 Lee, CT, FBA-1125

ADDRESS OF SERVER
 990 W. Sackety Hwy,
 Bishopville, S.C. 29010

**In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina**

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence**Plaintiff.****CASE NO:**2019-CP-21-2808

**NOTICE OF INTENT TO
AMEND PCR APPLICATION**

Honorable Twelfth Judicial Circuit

Now comes Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully submits this Notice of Intent to Amend PCR Application to include additional issues pertaining to the above mentioned case, pursuant to South Carolina Rules of Civil Procedures. Rule 15 Amended and supplemental proceedings.

Executed on this 5th day of **July, 2020**.

Respectfully Submitted,

James E. Hutchinson

James E. Hutchinson, #258003

Lee Correctional Institution F6A- 1125

990 Wisacky Highway

Bishopville, South Carolina 29610

2020 JUL 13 AM 9:37
 DOUGLAS O'HARA
 CLERK OF COURT
 FLORENCE COUNTY, SC

FILED

Cc: Clerk of Court
Attorney

Attorney General
File

**In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina**

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence**Plaintiff.****CASE NO:**2019-CP-21-2806

**MOTION TO AMEND PCR
APPLICATION TO INCLUDE
ADDITIONAL ISSUES TO
CONFIRM TO THE EVIDENCE**

Honorable Twelfth Judicial Circuit

May it please the court, now comes the Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully requests to amend PCR Application to contain additional issues to conform to the evidence pursuant to South Carolina Rules of Civil Procedure Rule 15(a) amendments and Rule 15(b) to conform to the evidence, (c) Relation back of Amendments, and (d) supplemental pleadings. SCRCF Rule 15.

Petitioner now requests and now adds additional Amendment of new issues since submitting of the original PCR Application on the 2nd day of October 2019, and the first amended issues on the 13th day of April 2020 and the second amended issues on the 25th day of May 2020.

Issues are enclosed in the following Amendments. (See Amendment A pp 2-3 and Amendment B pp 4-7.)

2020 JUL 13 AM 9:37
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

AMENDMENT A

ISSUE

Facts

COUNSEL WAS INEFFECTIVE, PROVIDED DEFICIENT PERFORMANCE THAT RESULTED IN PREJUDICE TO CLIENTS' CASE IN VIOLATION OF HIS S.C. CONSTITUTIONAL RIGHTS PROTECTED UNDER ARTICLE 1* SECTION*14 OF THIS STATES CONSTITUTION AND IN VIOLATION OF CLIENTS' CONSTITUTIONAL RIGHTS PROTECTED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION. BY FAILING TO INVESTIGATE AND BRING IT TO THE COURTS ATTENTION THAT CLIENTS' PRIOR CONVICTIONS WERE INVALID AND OBTAINED IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS. FURTHERMORE, COUNSEL STILL PERSISTS' ON BEING INEFFECTIVE BY NOT SENDING PETITIONER A COPY OF HIS CASES FILE AS REQUESTED BY LETTER AND ALSO CERTIFIED MAIL, BY EVADING CLIENTS' ATTEMPTS TO GAIN THOSE FILES PERTAINING TO HIS JANUARY 8TH 2019 CONVICTION. *counsel ineffective in failing to file motion to suppress prior convictions evidence pursuant to S.C.R.C.P. to quash indictment pursuant to S.C. Code A*

SINCE THE PRIOR CONVICTION WAS OBTAINED IN VIOLATION OF CLIENTS' CONSTITUTIONAL RIGHTS, THAT CONVICTION SHOULD NOT HAVE QUALIFIED AS A 1ST STRIKE MOST SERIOUS OFFENSE THAT THE STATE USED IN ORDER TO COERCE PETITIONER INTO A PLEA CONTRACT BY THREATENING HIM WITH A MOTION TO SEEK LIFE WITHOUT PAROLE IF CONVICTED FOR THE CURRENT OFFENSE IN ORDER TO DETER PETITIONER FROM TAKING THE CASE TO TRIAL. HAD THIS PRIOR INVALID CONVICTION BEEN STRICKEN THE PETITIONER WOULD HAVE PROCEEDED TO TRIAL WITHOUT FEAR OF A MANDATORY LIFE- SENTENCE. THOUGH, A BURGLARY FIRST DEGREE CARRIES A POSSIBLE LIFE SENTENCE, IT IS NOT MANDATORY. SEE S.C. SENATE BILL NO. 96 123RD SESSION WHERE ON DECEMBER 12TH AND JANUARY 8TH 2019 BURGLARY FIRST DEGREE STATUTE WAS AMENDED TO INCLUDE: "IF THE BURGLARY FIRST DEGREE INVOLVES AN ELEMENT OF SUBSECTION (A)(2) HAVING PRIOR RECORD OF TWO OR MORE PRIOR CONVICTIONS IN THE PAST..... BUT DOES NOT INVOLVE AN ELEMENT OF SUBSECTION (A)(1). THE COURT STILL HAS DISCRETION AND MAY SENTENCE THE DEFENDANT TO A TERM OF NOT LESS THAN 15-YEARS. THE JUDGE STILL HAS

1749-92
(2003)

DISCRETION TO SENTENCE TO SENTENCE A DEFENDANT ANYWHERE IN BETWEEN 15-YEARS TO LIFE. IT'S NOT MANDATORY FOR A LIFE SENTENCE TO BE IMPOSED. DEFENSE COUNSEL HAS A DUTY TO CONDUCT AN INVESTIGATION TO DISCOVER ALL REASONABLY AVAILABLE MITIGATING EVIDENCE AND ALL REASONABLE AVAILABLE EVIDENCE TO REBUT ANY AGGRAVATING EVIDENCE INTRODUCED BY THE STATE. THE JUDGE IS NOT BOUND BY ANY NEGOTIATIONS OR RECOMMENDATIONS BY THE STATE. THE COURT MAY STILL CONSIDER THE FACTS SURROUNDING THE CASE AND ANY MITIGATING FACTOR IN FAVOR OF THE DEFENDANT BEFORE IMPOSING A SENTENCE. BEFORE MAKING A DETERMINATION OF WHAT SENTENCE TO IMPOSE, JUDGE MAY APPROPRIATELY CONDUCT AN INQUIRY BROAD IN SCOPE, LARGELY UNLIMITED EITHER AS TO THE KIND OF INFORMATION HE MAY CONSIDER, OR FROM THE SOURCE FROM WHICH IT MAY COME, TO INCLUDE PREVIOUS INVALID CONVICTIONS OBTAINED IN VIOLATION OF DEFENDANTS' CONSTITUTIONAL RIGHTS. COUNSELS' EVIDENT UNAWARENESS OF POSSIBLE APPLICABILITY OF U.S. SUPREME COURT CASES TO CLIENTS' PRIOR CONVICTIONS IS INDICATIVE OF INCOMPETENT REPRESENTATION. EVEN THOUGH COUNSEL MAY NOT, CONTINUE TO REPRESENT DEFENDANT FOLLOWING A CONVICTION, COUNSEL MUST NEVER THE LESS COOPERATE WITH DEFENDANTS' ATTEMPTS TO CHALLENGE HIS CONVICTION OR SENTENCE.

AMENDMENT B

ISSUE

AT THIS TIME AMENDING POST-CONVICTION APPLICATION BY ADDING AS STATED BELOW THAT: "I AM SUFFERING AND PREJUDICED BY THE LINGERING PERSISTENT EFFECTS AND CONTINUED CONSEQUENCES AS A RESULT OF AN UNCONSTITUTIONAL INVALID PRIOR CONVICTION IN VIOLATION OF MY RIGHTS TO DUE PROCESS".

THE PRIOR CONVICTION WAS OBTAINED IN VIOLATION OF MY RIGHTS TO DUE PROCESS AND EQUAL PROTECTION PROTECTED UNDER THE S.C. STATE CONSTITUTION ARTICLE *1 SECTION*3 AND ALSO IN VIOLATION OF MY DUE PROCESS RIGHTS PROTECTED UNDER THE FIFTH AND FOURTEENTH AMENDMENTS PROTECTED UNDER THE UNITED STATES CONSTITUTION.

PURSUANT TO S.C. CODE ANN. 17-27-20(A) ANY PERSON WHO HAS BEEN CONVICTED OF OR SENTENCED FOR, A CRIME AND WHO CLAIMS: (1) THAT THE CONVICTION OR THE SENTENCE WAS IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES CONSTITUTION OR THE CONSTITUTION OF THE LAWS OF THIS STATE, MAY INSTITUTE... A PROCEEDING UNDER THIS CHAPTER TO SECURE RELIEF.

FACTS

THE STATE USED AN UNCONSTITUTIONAL PRIOR CONVICTION OBTAINED ON DECEMBER 5TH 2002 CASE NO. ²⁰⁰²⁻⁶⁵⁻²¹ ~~1670~~, AS A FIRST-STRIKE MOST SERIOUS OFFENSE PURSUANT TO S.C. CODE ANN. 17-25-45 TO COERCE PETITIONER INTO A PLEA CONTRACT OUT OF FEAR OF BEING SENTENCED TO LIFE WITHOUT PAROLE FOR A SECOND-STRIKE MOST SERIOUS OFFENSE IF HE WAS CONVICTED ON THE PRINCIPLE OFFENSE IN CASE NO.^s 2018-65-21-1520 and 2018-65-21-1523

THAT PRIOR CONVICTION THAT WAS GAINED IN VIOLATION OF PETITIONERS' CONSTITUTIONAL RIGHTS AND SHOULD NOT HAVE QUALIFIED AS A FIRST-

STRIKE MOST SERIOUS. THEREFORE, HAD PETITIONER PROCEEDED TO TRIAL ON THE CURRENT OFFENSE AND ONLY "IF" CONVICTED SHOULD HAVE ONLY QUALIFIED AS AN INITIAL FIRST-STRIKE MOST SERIOUS OFFENSE, EVEN IF CONVICTED FOR THE CURRENT BURGLARY. THOUGH PETITIONER MAY HAVE STILL FACED A POTENTIAL LIFE SENTENCE, IT WAS NOT MANDATORY BECAUSE IF CONVICTED OF A BURGLARY FIRST DEGREE OFFENSE ALONE, THE JUDGE STILL HAS DISCRETION TO SENTENCE A DEFENDANT TO WHATEVER HE FEELS APPROPRIATE ACCORDING TO THE CIRCUMSTANCES AND CONSIDERATION OF ANY MITIGATING FACTORS BEFORE IMPOSING A SENTENCE ANYWHERE BETWEEN 15 YEARS TO LIFE. THE CONVICTION IN 2002 RESULTED FROM THE STATE CHARGING PETITIONER WITH BURGLARY IN THE FIRST DEGREE BY ALLEGING THE ELEMENT OF "ENTERED OR REMAINED DURING THE NIGHTTIME". THE FACTUAL BASIS IS NOT SUFFICIENT TO SUPPORT THAT PLEA IN 2002. THERE WAS NO FACTS OR EVIDENCE PRESENTED TO SUPPORT THAT ALLEGATION OF A NIGHTTIME BURGLARY.

BOOKING REPORTS AT COUNTY JAIL, THE EXTRACTION OF AN E.S.U. TEAM WITH BLOODHOUND-UNIT ALONG WITH SHERIFF DEPUTIES ON THAT DATE, AFFIDAVITS, INCIDENT REPORTS, ALL SHOW THAT THE INCIDENT ALLEGED WAS IN FACT DURING THE DAYTIME HOURS. THE 911-CALLS CAN ALSO SHOW THIS ALONG WITH THE FACT THAT THE PETITIONER WAS DETAINED THE SAME DAY, SO THERE'S NO WAY HE COULD HAVE COMMITTED THIS ALLEGED OFFENSE OF A BURGLARY IN THE NIGHTTIME HOURS IF HE WAS DETAINED.

THE PURPOSE FOR THE RULE-11 FACTUAL BASIS IS TO PROTECT A DEFENDANT WHO MAY PLEAD GUILTY WITH AN UNDERSTANDING OF THE NATURE OF THE CHARGE, BUT WITHOUT REALIZING THAT HIS CONDUCT DOES NOT ACTUALLY FALL WITHIN THE DEFINITION OF THE CRIME CHARGED.

"WHEN A CONVICTION RESULTS FROM AN INDICTMENT THAT FACIALLY CHARGES A COMPLETE OFFENSE, BUT THE STATE PRESENTS EVIDENCE WHICH CONVICTS UNDER A COMPLETE DIFFERENT THEORY THAN THAT ALLEGED, SUCH CONVICTION VIOLATES THE PRINCIPLES OF DUE PROCESS".

COURTS MUST NOT CONSIDER WHETHER THERE WAS ANY EVIDENCE TO SUPPORT A STATE CONVICTION, BUT WHETHER THERE WAS SUFFICIENT EVIDENCE TO JUSTIFY A RATIONAL TRIER OF FACT TO FIND GUILT BEYOND A REASONABLE DOUBT. THE STATE WAS INTENDING TO CONVICT UNDER THE ELEMENT OF "ENTERED OR REMAINED IN THE NIGHTTIME HOURS" EVEN AFTER PETITIONERS' PRIOR RECORD WAS READ OUT TO THE COURT. AS THE RECORD REFLECTS, THE JUDGE NEVER MADE A RULING ON ANY AMENDMENTS OR ATTEMPTED AMENDMENTS TO THE PROPOSED INDICTMENT AS THE ATTORNEY GENERAL STATED IN THEIR RESPONSE BRIEF TO MY DIRECT APPEAL ON THAT CASE FROM THE 2002 CONVICTION. IF THE STATE INTENDED TO SEEK A CONVICTION AS A RECIDIVIST, OTHER FACTORS WOULD HAVE COME INTO ACCOUNT THAT THE STATE ALSO FAILED TO APPLY WHEN THOSE DETERMINATIONS ARE BEING CONSIDERED THAT ALSO DENIED PETITIONER HIS DUE PROCESS RIGHTS AS WELL. THE FACTUAL BASIS IS NOT SUFFICIENT AS TO EITHER COUNT IN THE 16-11-311 BURGLARY FIRST DEGREE COUNTS IN 2002. THE COURT CANNOT ACCEPT A GUILTY PLEA UNLESS IT IS SATISFIED THAT THERE IS SUFFICIENT EVIDENCE TO SUPPORT THAT GUILTY PLEA. AS REQUIRED BY THE ABA STANDARDS: NOT ONLY MUST THERE BE A FACTUAL BASIS FOR THE PLEA, BUT THE DEFENDANT MUST ALSO ADMIT FACTS CONSISTENT WITH GUILT OF THE OFFENSE TO WHICH HE PLEADS.

THE STATE STILL INSISTED ON CONVICTING PETITIONER OF A NIGHTTIME BURGLARY KNOWING THAT THERE WAS NO WAY TO PROVE THAT TO ANY RATIONAL TRIER OF FACT BEYOND A REASONABLE DOUBT. NIGHTTIME ONLY AGGRAVATES THE OFFENSE OF BURGLARY, THE STATE IS STILL REQUIRED TO ALLEGE THE TIME AND PROVE THE TIME OF DAY WHEN IT SEEKS A CONVICTION UNDER BURGLARY IN THE FIRST DEGREE. IF THE GOVERNMENT FAILS TO PRODUCE SUFFICIENT EVIDENCE FOR ANY ELEMENT, THEREBY, NOT BRINGING FACT INTO ISSUE AND FAILS TO SUSTAIN ITS BURDEN OF PRODUCTION THAT PARTY IS SUBJECT TO AN ADVERSE RULING BY THE COURT AND THE JUDGE MAY DIRECT A VERDICT IN THE DEFENDANTS' FAVOR. EVEN VALID WAIVERS DO NOT BAR CLAIM THAT THE FACTUAL BASIS IS INSUFFICIENT TO SUPPORT

THE GUILTY PLEA. THE COURT HAS POWER TO REVIEW THE FACTUAL BASIS, FOR THE PLEA FAILS TO ESTABLISH AN ELEMENT OF THE OFFENSE WHICH THE DEFENDANT PLEADED GUILTY TO. ALTHOUGH TIME HAS BEEN SERVED, LINGERING EFFECTS STILL PERSIST FROM THAT INVALID CONVICTION, MAKING PETITIONER INELIGIBLE TO GAIN ACCESS TO CERTAIN PRIVILEGES, EDUCATIONAL, AND REHABILITATIVE PROGRAMS OFFERED THROUGHOUT SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AT MINIMUM-CUSTODY CAMPS. SENTENCE MAY HAVE BEEN LESS SEVERE HAD THE JUDGE KNOWN THAT PETITIONER'S PREVIOUS CONVICTIONS WERE IN FACT UNCONSTITUTIONALLY OBTAINED.

AS THE POWER TO REMEDY STILL EXISTS, PETITIONER RESPECTFULLY REQUESTS THE COURT FOR AN OPPORTUNITY TO SHOW THAT HIS PRIOR CONVICTIONS FROM 2002 WERE IN FACT GAINED UNCONSTITUTIONALLY, ARE INVALID AND, THAT THE CASE IS NOT CONSIDERED MOOT MERELY BECAUSE SENTENCE HAS BEEN SERVED ON THAT CONVICTION, WHERE THE COURT HAS POWER TO VACATE OR SET ASIDE AN ILLEGAL CONVICTION AND SENTENCE, FOR PETITIONER IS STILL BEING PREJUDICED DUE TO THAT INVALID CONVICTION ON DECEMBER 5TH , 2002 IN FLORENCE COUNTY SOUTH CAROLINA IN THE TWELFTH JUDICIAL CIRCUIT COURT OF GENERAL SESSIONS.

IN FURTHERANCE, APPELLANT COUNSEL WAS INEFFECTIVE IN ONLY FILLING AN ANDERS BRIEF ON DIRECT APPEAL WHEN THERE WERE OTHER MERITORIOUS ISSUES AND ON CERTIORARI APPEALING POST CONVICTION CONCLUSIONS ONLY PRESENTED HALF OF THE GUILTY PLEA TRANSCRIPT TO THE APPEALS COURT BARRING THEM FROM VIEWING THE ENTIRE TRANSCRIPT. APPELLATE COURTS ARE TO REVIEW THE FULL GUILTY PLEA TRANSCRIPTS AND POST CONVICTION TRANSCRIPTS TO RECEIVE A FULL AND FAIR REVIEW OF THE FACTS.

CONCLUSION

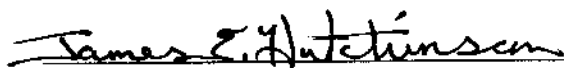
Due to those invalid prior convictions being the basis for the current conviction, Petitioner respectfully requests that the Court vacate his habitual Felon status and unconstitutionally invalid prior convictions from 2002. Also, vacate his habitual offender status on the current conviction on January 8th 2019.

Petitioner also requests that each issue be addressed and a published opinion on each issue in the original Post Conviction Application along with the additional issues presented in the three (3) amendments to that application.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of May, 2020.

Respectfully Submitted,



James E. Hutchinson, #258003

Lee Correctional Institution F6B- 1125

990 Wisacky Highway

Bishopville, South Carolina 29010

Cc: Clerk of Court
Attorney

Attorney General
File

PROOF OF SERVICE

SERVED 7- -2020 Lee, Corr. Inst.
 DATE PLACE
 SERVED ON (PRINT NAME) "Clerk of Court" MANNER OF SERVICE
Florence, S.C. Court of Common Pleas - Case NO.
2019-CP-21-2808
 SERVED BY (PRINT NAME) #258003 TITLE
James Edgar Hutchinson Petitioner

DECLARATION OF SERVER

I certify that the following information contained in the Proof of Service is true and correct.

Executed on 7- -2020

James E. Hutchinson
 SIGNATURE OF SERVER
Lee, Corr. Inst. F6A1125

ADDRESS OF SERVER
990. Wisacky Hwy,
Bishopville, SC 29010

SC CA 253 (10/2011)

FILED

2020 JUL 13 AM 9:37

DORIS FOUTOS O'HARA
 CCLP & GS
 FLORENCE COUNTY, SC

FILED

2020 JUL 13 AM 9:37
 Dear "Clerk of Court"

7-8-2020

DORIS FOULKE OHARA
 Ms. Doris Foulke Ohara

Judicial Center
 FLORENCE COUNTY, SC

140 N. Irby St. Suite - 1100
 Florence, S.C. 29501

Re: Amendment to Post-Conviction
 Application - 2019-CP-21-2808

Ms. Ohara,

Will you please enter this Notice
 of Intent and Motion to Amend PCR-
 application into record to include along
 with my original application and other
 two amendments as well?

Our copier is out of ink. Thank you very much
 Contents: Sincerely,

1.) Notice of Intent

2.) Motion to Amend

3.) on pages 1-8 (issues/facts) James Edgar Hutchins

4.) and Proof of
 Service

5.) Letter to Clerk

cc: Clerk of Court
 File

Attorney General

James E. Hutchins

#254003

James Edgar Hutchins

here, Corr. Inst.

FLA-1125

990. Wisacky Hwy,
 Bishopville, S.C.

29010

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

FILED
2020 SEP 14 PM 3:55
DORIS ROJAS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence

Plaintiff.

CASE NO:

2019-CP-21-2806

MOTION TO AMEND PCR
APPLICATION TO INCLUDE
ADDITIONAL ISSUES TO
CONFIRM TO THE EVIDENCE

Honorable Twelfth Judicial Circuit

May it please the court, now comes the Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully requests to amend PCR Application to contain additional issues to conform to the evidence pursuant to South Carolina Rules of Civil Procedure Rule 15(a) amendments and Rule 15(b) to conform to the evidence, (c) Relation back of Amendments, and (d) supplemental pleadings. SC RCP Rule 15.

Respect Fully
Submitted:
Sept, 3rd, 2020

James E. Hutchinson

cc: Clerk of Court
Attorney
Attorney General
File

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

FILED
2020 SEP 14 PM 3:53
DORIS FOYLD O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence

Plaintiff.

CASE NO:
2019-CP-2808

**NOTICE OF INTENT TO
AMEND PCR APPLICATION**

Honorable Twelfth Judicial Circuit

Now comes Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully submits this Notice of Intent to Amend PCR Application to include additional issues pertaining to the above mentioned case, pursuant to South Carolina Rules of Civil Procedures, Rule 15 Amended and supplemental proceedings.

Prepared and placed on this 3rd day of September 2020 in the U.S. Postal Mailbox Service at Lee Correctional Institution by Petitioner James E. Hutchinson.

Respectfully Submitted, *Sept. 3rd 2020*

James E. Hutchinson

James E. Hutchinson, #258003
Lee Correctional Institution F6A- 1125
990 Wisacky Highway
Bishopville, South Carolina 29010

Cc: Clerk of Court
Attorney

Attorney General
File

30th

Hutchinson's

and the best way to protect his autonomy rights, Petitioner had a right to make an informed choice

Issues

Due Process violated

Case No, 2019-CP-2908

Indictment No, 2018-GS-21-1520 and 1523

An Invalid Guilty Plea

The Conviction and sentence
not valid,

The Court Errored by not informing Petitioner Hutchinson that the State was still required to prove beyond a reasonable doubt the essential element of prior-convictions sentence which it did not do to support enhancement under the Statute of Burglary first-degree 16-11-311(a)(2) rendering the plea, conviction and sentence invalid. Because the State did not prove beyond a reasonable doubt its case-in-chief

Even though Petitioner was entering a plea, The Court errored by not informing Petitioner Hutchinson that the State was required to prove a confession is valid before it can be use at trial beyond a reasonable doubt and the burden is on the State to prove it is voluntary

The 2002 case no, 2002-GS-21-1670 is also invalid for the factual basis does not support the plea. Violation of my due process and a "Miscarriage of Justice", also that I James E. Hutchinson am also being prejudiced by that invalid conviction along with "1989" and "1995" conviction both unconstitutionally gain

PROOF OF SERVICE

DATE: 9-3-2020 PLACE: Lee, Corr, Inst.
 SERVED ON (PRINT NAME): Clerk of Court MANNER OF SERVICE:
Florence, S.C. Court of Common Pleas - Case No.
2019-LP-21-2608
 SERVED BY (PRINT NAME): #258003 TITLE:
James Edgar Hutchinson Petitioner

DECLARATION OF SERVER

I certify that the following information contained in the Proof of Service is true and correct.

I executed on 9-3-2020.

James E. Hutchinson
 SIGNATURE OF SERVER

Lee, Corr, Inst. F6A1135

ADDRESS OF SERVER

990. Wisacky Hwy,
Bishopville, SC 29010

SCCA 253 (10/2011)

2020 SEP 14 PM 3:55
 DORIS POULOS O'HARA
 CCOP & GS
 FLORENCE COUNTY, SC

FILED

Profile Plea see
9-26-2020

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

FILED
2020 SEP 14 PM 3:55

DORIS POWERS OHARA
CLERK OF COURT
FLORENCE COUNTY, SC

63
CERTIFIED A TRUE
AND CORRECT COPY
OF THE ORIGINAL
FILED
CLERK OF COURT
FLORENCE COUNTY, SC

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence

Plaintiff.

CASE NO:

2019-CP-21-2808

Fundamental Error
MOTION TO AMEND PCR
APPLICATION TO INCLUDE
ADDITIONAL ISSUES TO
CONFIRM TO THE EVIDENCE

Conviction and Sentence Invalid,
Honorable Twelfth Judicial Circuit

I am being unlawfully confined and sentenced as a "Recidivist"
offender, in violation of the U.S. and S.C. Constitution, and the laws of this
state.

May it please the court, now comes the Petitioner, James Edgar Hutchinson acting Pro-Se, state,
respectfully requests to amend PCR Application to contain additional issues to conform to the
evidence pursuant to South Carolina Rules of Civil Procedure Rule 15(a) amendments and Rule
15(b) to conform to the evidence, (c) Relation back of Amendments, and (d) supplemental
pleadings. SCRPC Rule 15.

to include 2018-65-21-1520 and
2018-65-21-1523 invalid plea, conviction, and
sentence, Enhanced with 2002-65-21-1670 invalid
conviction that I am still suffering prejudice and
persistent lingering effects from, as well as a "1995"
and "1989" convictions that

were unconstitutionally
gained. (By not informing me)

Respect Fully
Submitted;

The Court erred and

Sept, 3rd, 2020
Resubmitted: 9-26-2020

Counsel was ineffective
for not challenging the validity of those
invalid convictions, facts; Fundamental Error
The state failed to prove beyond a
reasonable doubt that Petitioner was
Guilty of Burglary 1st Degree 16-11-31

CC: Clerk of Court
Attorney
Attorney General
File

Refile Please
9-26-2020

In The Court of Common Pleas
 In and For the County Of Florence
 State Of South Carolina

FILED
 2020 SEP 14 PM 3:55
 00018 POWELL'S CHAIR
 C.C.C.P. & G.S.
 FLORENCE COUNTY, S.C.

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
 County of Florence

Plaintiff.

CASE NO:

2019-CP-2808

2019-CP-21-2808

NOTICE OF INTENT TO
 AMEND PCR APPLICATION

*Conviction and Sentence Invalid,
 Fundamental Error*

Honorable Twelfth Judicial Circuit

I am being unlawfully confined and convicted as a "Recidivist" offender, in violation of the U.S. and S.C. constitutions and laws of this state
 Now comes Petitioner, James Edgar Hutchinson acting Pro-Se. respectfully submits this Notice of Intent to Amend PCR Application to include additional issues pertaining to the above mentioned case, pursuant to South Carolina Rules of Civil Procedures. Rule 15 Amended and supplemental proceedings.

Prepared and placed on this 3rd day of September 2020 in the U.S. Postal Mailbox Service at Lee Correctional Institution by Petitioner James E. Hutchinson.

2018-GS-21-1520

and
2018-GS-21-1523

invalid plea, conviction, and sentence.

Enhanced with invalid

2002-GS-21-1670

conviction, that I am still

prejudiced by the lingering effects

of that wrongful conviction.

The court erred and counsel was ineffective

Cc: Clerk of Court
 Attorney

Attorney General
 File

for not challenging the validity of these said convictions.

See Rule 71.1(e) SCRCP,

Jeter v. State 417 S.E.2d 594 (1992)

State v. Payne SE2d,

Burden Shifting Rule

②

Parke v. Bailey (1998) 113 S.Ct. 517 (1992)
State v. Smith 276 S.C. 494 (1981)

page
3 of 4

The Court errored depriving of his liberty⁶⁵
and the best way to protect his autonomy rights,
Petitioner had a right to make an informed choice,
Hutchinson's Issues Due Process violated.

Case No. 2019-CP-21-2808

Indictment No. 2018-GS-21-1526 and 1523

(Fundamental) An Invalid Guilty Plea

(Error) The Conviction and sentence

2019-CP-21-2808 not valid, 2019-CP-21-2808

Refile
please
9-26-2020

The Court Errored by not informing
Petitioner Hutchinson that the State was
still required to prove beyond a reasonable
doubt the essential element of prior-
convictions sentence which it did not
do to support enhancement under the
statute of Burglary first-degree 16-11-311(a)(2)
rendering the plea, conviction and sentence
invalid. Because the State did not prove
beyond a reasonable doubt its case-in-chief,
Even though Petitioner was entering a plea.

The Court errored by not informing Petitioner
Hutchinson that the State was required to
prove a confession is valid before it can be
use at trial beyond a reasonable doubt and that
burden is on the State to prove it is voluntary.

The 2002 case no. 2002-GS-21-1670

is also invalid for the factual basis does not
support the plea violation of my due process
and a "Miscarriage of Justice",

also that I James E. Hutchinson am also being
prejudiced by that invalid conviction along with a
"1989" and "1995" conviction both unconstitutionally gained.

Refile Please 4
 9-26-2020

PROOF OF SERVICE

PROVIDING A TRUE COPY
 P & G S.
 SC

SERVED DATE 9-3-2020 PLACE here, Corr. Inst.
 SERVED ON (PRINT NAME) Clerk of Court MANNER OF SERVICE
Florence, S.C. Court of Common Pleas - Case No.
2019-CP-21-2808
 SERVED BY (PRINT NAME) #254003 TITLE
James Edgar Hutchinson Petitioner

DECLARATION OF SERVER

I certify that the following information contained in the Proof of Service is true and correct.

Executed on 9-3-2020

James E. Hutchinson
 SIGNATURE OF SERVER
here, Corr. Inst. F6A1125

Mailed out through U.S.
 Postal services at here
Corr. Inst on 9-30-2020

ADDRESS OF SERVER
990. Wisacky Hwy,
Bishopville, SC 29010

SC CA 254 (10/20/11)

Case No. 2019-CP-21-2808

Please resubmit
 and file these 27 pages
 again for me, thanks
 Mrs. O'Harra

2020 SEP 14 PM 3:55
 DORIS POLYSS O'HARRA
 CLERK P & G S
 FLORENCE COUNTY, SC

FILED

Respectfully
 resubmitted on this 26th
 day of September 2020

Conviction and Sentence
 Invalid Case No.
2014-GS-21-1520
 and
2014-GS-21-1523

James E. Hutchinson

FILED

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

2020 SEP 18 PM 1:24

DORIS PONTOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

CASE NO:

2019-CP-21-2808

James Edgar Hutchinson

Petitioner,

NOTICE OF INTENT TO
AMEND PCR APPLICATION

State of South Carolina
County of Florence

Plaintiff,

Honorable Twelfth Judicial Circuit

Now comes Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully submits this Notice of Intent to Amend PCR Application to include additional issues pertaining to the above mentioned case, pursuant to South Carolina Rules of Civil Procedures, Rule 15 Amended and supplemental proceedings.

Executed on this 5th day of July, 2020.

Respectfully Submitted,

James E. Hutchinson

James E. Hutchinson, #258003

Lee Correctional Institution 16A-1125

990 W. Socky Highway

Bishopville, South Carolina 29010

Cc: Clerk of Court
Attorney

Attorney General
File

Case No. 2019-CP-2809

To: "Clerk of Court") **FILED** From: James Edgar Hutchinson
 Doris Poulas OH) Lee, C.F. F6A-1125
 Judicial Center) 29 pages 990, Wiskay Hwy
 Suite - 110C) 29010 Bishopville, S.C.
 181 N. Irby St.)
 Florence, S.C.) Respectfully submitted; 9-8-2020
 29501) S./James E. Hutchinson

Re: (Case No. 2019-CP-2809) in the attack of prior-conviction that is invalid (2002-GS-21-1670) the "factual basis" does not support the plea. There was no burglary in the nighttime and I James E. Hutchinson am still suffering prejudice and lingering effects due to that wrongful conviction, that was used as an additional aggravating factor for cases No. (2014-GS-21-1520) and (2014-GS-21-1523), which is invalid as well by fraud. I have proof and witness' the be summoned as well, will you please file each one of the 9 pages in the July 25th amended per-application that also included this issue for proof at PCR-hearing. Will you please file each one of the 17 pages that include: Affidavit of Merits, 4-pages of testimony from transcripts pertaining to that conviction, 3-pages of authorities, 1-Page of Definitions (Black's Law Dictionary), 4-Pages of a Brief for the merits, 1-Page of conclusion, 1-Page of certificate of service, 1-Page requesting information on "1989" and "1995" arrests and convictions, and 1-copy of this letter. All of this I need filed for future use at PCR-hearing and to forward to my counsel so he knows to argue this issue.

To: "Clerk of Court")
 Doris Paulas Ottara)
 Judicial Center)
 181 N. Kirby St.)
 Suite - 1100)
 Florence, S.C.)
 29501)

From: James E. Hutchinson
 Lee, C.I. #6A-1125
 990 W. Sackville Hwy.
 Bishopville S.C.
 (Case No. 2019-CP-2408) 29010

Respectfully submitted 9-4-2020
 (2020)
 S/- James E. Hutchinson

Re: (Case no. 2019-CP-2408) attack on prior-conviction that is invalid (case no. 2002-GS-21-1670) that also used invalid and unconstitutionally gained convictions that are also causing prejudice and lingering effects as a result of those violations of Due Process in order to obtain the convictions listed below:

"Jurisdictional issues"

- 1) "1995" case no. 95-GS-21-110 that was unconstitutionally gained and is invalid.
- 2) "1989" V.O.A. sentence was also unconstitutionally gained as well used against me in case (2002-GS-21-1670). Both have been used as aggravating factors against me to obtain additional convictions which is a continuing Due Process violation through the states invited error. Will you please send me the information on:
 - 1) "1989" V.O.A. conviction-sentence sheets and the arrest warrants.
 - 2) "1995" conviction-sentence sheets and arrest-warrants to be used as evidence at PCR-hearing involving residences: R. Bar-M. Ranch Rd. Florence, S.C.

Exhibit
#1

Case No. 2019-CP-2408 Re: Invalid convictions from past,

State of South Carolina) In the Court of
County of Florence) Common Pleas

James E. Hutchinson #258003) Case No.
Applicant,) 2019-CP-2408

v.)
State of South Carolina) Affidavit of
County of Florence) Merits
Respondent) Facts & Declaration
Brie For the Merits

"Plain (Indictment No. 2002-65-21-1670) Error"

Re: 2002 conviction and sentence. Invalid
Guilty plea invalid, Prosecutorial misconduct,
misuse of Justice, Defamation
Guilty Plea not in accordance with U.S. v.
Thompson 680 F.2d 1145 (7th Cir. 1982) Cert. denied
103 S.Ct. 573 (1983), U.S. v. McCoy 695 F.2d 356 (4th Cir. 2015)
See Anderson v. State 535 S.E.2d 649 (2000),
U.S. v. Johnson 194 F.2d 657 (5th Cir. 1999) Vacated &
Remanded 120 S.Ct. 2193 (2000), "McCarthy" 89 S.Ct. 1111
Kiddie v. Ezmin 631 S.2d 70 (2006),
Brady v. Maryland 53 S.Ct. 1194 (1963),
Simpson v. Moore 627 S.E.2d 701 (S.C. 2006),

Ex 13

J. James E. Hutchinson did not enter a home in the
nighttime, was wrongfully convicted, Nothing in
the record indicates I agreed or said my record
was rants & absence of merit. I remained silent on that.

Case No.
2019-CP-2808

A Killer Amendment attempt.

Counsel abandoned client to help bolster States case.

Re: 2002-65-21-1670-indictment

Exhibit #2

Brief of Appellant February 14th 2005

Page 5.

BOA, p. 36. During the course of his guilty plea hearing, the "solicitor and defense counsel" conferred privately.

BOA, p. 20, 11-13 lines. After saying "yes", we can do that, to defense counsel, the solicitor moved to Amend count one and count two of the indictment to include "additional element" that the burglary was committed by an individual with two prior convictions for burglary.

Nothing in the arrest warrants or recitation of the facts indicates that the burglary occurred in the nighttime.

State v. Hutchinson Sept. 20, 2005 S Ct. App.
Brief of Respondant March 25 (2005)
Op. No. 2005-UP-532

While Appellant's counsel thought the two prior conviction's element should be added.

(B. p. 20, line 20 pg. 21 line 11) Neither the indictment nor the sentencing sheet shows any amendment or addition of an aggravating circumstance

"The Judge never ruled on the Amendment."

Case No.
2019-CP-2408

Indictment no 2002--GS-21-1670

Exhibit #3

Record on Appeal December 5th 2002.

The Court: Do you dispute that record he just gave me of your criminal past, your history?

Defendant: No Sir.

The Court: Looks like Judge Brogdon. Was that who it was?

Defendant: Yes Sir.

As you can see, nothing in the record indicates Hutchinson admitted to, or said his record warrants enhancement. I never said I was guilty of two priors (guilty Plea invalid). Counsel took that upon himself, without even advising Hutchinson of what he was doing. He agreed to amendment, not Hutchinson. I didn't know any amendment (~~attempt~~) until after it happened (see transcript). Just because no offer of rebuttal from Hutchinson (does not constitute as a "yes"). He remained silent on that issue. State v. Lambert 225 SE2d, 340 (1976), Hutchinson, neither "stated" to the Court that he broke into a home at nighttime. See, Santibello v. New York 92 S.Ct. 495 (1971) By having accused descriptive conduct.

Exhibit #4

Post-Conviction Relief Hearing Transcript

Rather it is why, the solicitor, who knew the allegations to be false, failed to correct it. Failure to correct false allegations is as reprehensible as it's representation.

Riddle V. Ozmint 631 SE 2nd 70 (S.C., 2006)

state: Do you think he understood, regarding the aggravating circumstances?

Hill: Apparently not. I can't tell you that.

Q And was it fully explained to Mr. Hutchinson?

Hill: I can't tell you that, because it happened during the plea.

rate! looking at the indictment, did you see anything to cause you any concern?

(Hill) Apparently so, if I stepped over there to Mr. Teperling's, and pointed out for the plea to be correct and for this not to come back as it has today or even on appeal, that we needed to make sure the correct circumstances were there,

state! what aggravating circumstances was
pled in the burglary indictment?

Still: That it occurred in the nighttime.

State: Okay.

2. H111: And that was not correct...

Case No.
2019-CP-2806

"Defense Counsel Abandonment" 7.5
Case No. 2002-65-21-1670
October 2, 2006

Exhibit #5

Post-Conviction Relief Hearing Transcript

S. Hill: which is why Mr. Hutchinson stated that he recalls that I stepped over to Mr. Tjepertinger, I realized the proper aggravating circumstances wasn't alleged, or had been put into evidence to support the plea on this indictment.

"And I'm certain I told Mr. Tjepertinger... 'I'm sure I told Mr. Tjepertinger' that: for the plea to be proper the correct circumstances had to exist.

Since we were doing a waiver, I didn't want it to come back

stated

Okay

S. Hill:

I wanted to do it properly; "I thought" we did.

Post-Conviction Counsel was ineffective also for failing to Raise Rule-11 violations.

you saw Mr. Tjepertinger; not only did Steven Hill sell out his client to put up a defense at PCR-hearing in 2006, He also sold you out as well. Now that's what you call competent counsel,

Case No. 2019-CP-2808 Authorities

Case No. 2002-65-21-1670

Exhibit #6

State v. James 543 SE2d, 745 (2003)

None of the relevant authorities nullify the trial judges traditional role in weighing evidence or suggest that Rule 403 or 6B(a) Rules of Evid. is displaced by Burglary 1st Degree 16-11-311, So as to make the presentation effective for the ascertainment of truth.

I depart from those statements used against me in 2002 to convict me and now presents reasons why, Edmond v. Lewis 546 ~~F.2d~~, 566, 568 (4th Cir. 1976),

By clear and convincing evidence to the contrary.

Blackledge v. Allison 99 S.Ct. 1621 (1977),

Key v. U.S. Fed. 133 (11th 1936). Defendant should not be forever bound by his responses to a courts Rule 11 questions.

Park v. Bailey 113 S.Ct. 517 (1992). Defects in habitual offender proof as "fundamental error" such that they may be raised, despite failure to do so on direct appeal. Citing Burgett v. Tex. 88 S.Ct. 258 (1967), eleven months after Spencer v. Texas 87 S.Ct. 648 (1967). Burgett stating, that indictment should not be read or proof offered in support thereof, unless it is first determined by the court that prior convictions are in fact valid and admissible in evidence. Also that a defendant must be able to attack his priors validity.

Authorities Continued

Exhibit #7

4th Cir. United States v. McCloy 895 F.3d 359 (2018)
 Even valid waivers do not bar claim that factual basis is insufficient to support a guilty plea,
 Anderson v. State 535 S.E.2d 649 (2000), in accord
 with U.S. v. Thompson 640 F.2d 1145 (11th Cir. 1982) cert.
 den. 103 S.Ct. 573 (1983). Purpose for requiring
 factual basis for guilty plea is to assure the court
 that the conduct which a defendant admits by
 his plea of guilt, constitutes offense charged in
 the indictment or lesser included offense therein.
 Even valid waivers do not bar a claim that the factual
 basis is insufficient to support the plea.
 U.S. v. Mitchell 514 F.3d 230 (4th Cir. 2008). Prosecution's
 failure to prove beyond a reasonable doubt that the
 defendant used another person's identification
 required reversal of conviction for aggravated
 identity theft in guilty plea.
 McCarthy v. U.S. 89 S.Ct. 1166 (1969). The purpose
 behind Rule-11 requirement is to protect a
 defendant who may plead guilty with an understanding
 of the nature of the charge, but without
 realizing that his conduct does not actually fall
 within the definition of the crime charged,
 U.S. v. Hildenbrand 527 F.3d 466 (5th Cir. 2008), U.S. v.
 Sylvester 543 F.3d 245, 246 (5th Cir. 2009).
 See also, U.S. v. Johnson 194 F.3d 657 (5th Cir. 1999),
 Vacated and Remanded 120 S.Ct. 2193 (2000). For
 the plea fails to establish element of offense,

92XXVII

Due ProcessAuthorities Continued Const. law 92

case no. 1 Prosecutors can't rely on attachment of
 Exhibit # regularity when he knows prior conviction is violation,
 2019-CP-2808 Bailey v. State 709 SE2d, 671 (2011), Const. law 92,
 When a conviction results from an indictment that
 facially charges a complete offense, but the state
 presents evidence which convicts under a different
 theory than that alleged, such a conviction violates
 due process See Riddle v. Ortiz 631 SE2d at 70 (2006)
 Gibson v. State 514 SE2d 320 (1999), Washington v. State
 419 SE2d 933 (1996), Simpson v. Moore 627 SE2d 701 (2006),
 Rules of Professional Conduct Rule 407,
 Special responsibilities of prosecutors Rule 3.8
 The prosecutor in a criminal case shall not,
 (D) Engage in conduct involving dishonesty,
 (E) Engage in conduct that is prejudicial to the
 administration of Justice,
 (F) State or imply an ability to influence improperly
 a government agency or official achieve results
 by means that violate the rules of Professional Conduct.

Prosecutors are required to turn over all and alert
 the defense to all favorable evidence that
 could help prove the defendant's innocence,
 Brady v. Maryland 83 S.Ct. 1194 (1963),

"Officer of the Court" - Someone who is charged
 with the duty of upholding the law, obligated
 to obey Court rules and owes a duty to the
 integrity of judicial proceedings for public interest,

"Definitions"

Case No.

 # 2019-CP-2808 Black's Law Dictionary
 Case No. 2002-65-21-1670

Exhibit 9

- 1) Miscarriage of Justice - Unfair outcome in a judicial proceeding, as when a defendant is wrongfully convicted, despite lack of evidence on an essential element,
- 2) Fraudulent misrepresentation - A false statement that is known to be false or is made recklessly whether true or false intended to induce a party to rely on it,
- 3) Defamation - A false or written statement that causes damage and subjects that person to ridicule, dislike, general hatred or public contempt,
- 4) Prosecutorial misconduct - Improper acts or failure to act, attempt to avoid disclosure, or to wrongfully convict; a breach of moral duty,
- 5) Remedy - The means of enforcing a right
- 6) Fair Privilege Report - The common law protection extended to Media Reports of Judicial and Government proceedings,
- 7) Amends - Act of making amends for a wrong; such as compliance Due Process standards of fairness and Justice.

"Due Process"

S.C. Constitution Article *1. Sections 3, 12, and 14,
 U.S. Constitution 4th, 5th, 6th, and 14th Amendments,

Case 1:10-cr-00110
 2019-LP-2508
 Florence, S.C.
 #1

"Affidavit of Merits"
 Brief in Support of
 Brief on the Merits

2002-GS-241670
 Respectfully
 Submitted 9-12-2020
 James E. Hutchinson

Accordingly, the integrity of our judicial process demands that each defendant who pleads guilty receive the process to which he is due.

The impact of a guilty plea upon a defendant's fundamental rights cannot be overstated. The error of wrongfully convicting Petitioner Hutchinson on a Burglary in the first degree 16-11-311(a)(3) entering or remaining in the nighttime when there is no evidence to support that plea, the factual basis does not support the plea, and by clear and convincing evidence by transcripts and many a witness, all show that this, in fact, did not occur. The incident was a daytime event, rendering the plea constitutionally invalid affecting his substantial rights, as a per se matter and supports conclusion that a defendant need not make a case-specific showing of prejudice, even in the face of overwhelming evidence, that he would have pled guilty. Supreme Court has recognized that a conviction based on a constitutionally invalid guilty plea cannot stand, even by overwhelming evidence that the defendant would have pled guilty, regardless, *Dominguez-Benitez* 124 S.Ct. 2333 (2004). The waiver of Fifth and Sixth Amendment Rights

Case NO.

2019-C.P.-2904 on the invalid conviction

Case NO.

2002-65-21-1671

#2

based on a constitutionally invalid plea undermines the credibility and public reputation of judicial proceedings and fails to foster confidence that they will result in a fair and reliable determination of guilt, rather than a conviction obtained contrary to constitutional principles. Even where there is evidence in the record that the defendant's actions would have tended to prove a defendant's guilt, his rights to due process must remain paramount, *U.S. v. Cedeille* 89 F.3d, 131 (4th Cir, 1996) Recognizing circumstances may exist where proceedings contained an error that seriously affect the fairness, integrity, and public reputation of the judiciary even though the record indicates that the defendant is guilty, an error is clear or obvious when the... "Settled law" of the Supreme Court, or this Circuit establishes that an error has occurred.

Convicting Petitioner Hutchinson on a burglary in the first degree, S.C. Code of Ann. 16-11-311(a)(3) of entering or remaining in the nighttime houses when there is evidence to show otherwise, and it was made known to the prosecutor during that plea, that it was not the correct circumstance, but failed to correct it anyway, deprived him of his due process and was error.

Case No. 2019-CP-2809 on the invalid conviction,
Florence, S.C.
Case no,
2002-GS-21-1670

#3

Prejudice need not be demonstrated resulting from the error because harm is irrelevant to the principles underlying his autonomy right and liberty interest, *McKaskle v. Wiggins* 104 S.Ct. 944 (1994). Such errors affect substantial rights that satisfy the third prong of "Olano", that recognizes a special category of unpreserved errors that can be noticed and corrected, regardless of their effect on the outcome. Such errors are referred to as "structural" because they are fundamental flaws that undermine the structural integrity of a criminal tribunal *Vasquez v. Hillery* 106 S.Ct. 617 (1996), as "Olano" makes clear, a reviewing court should exercise its discretion to grant plain error review in those circumstances in which a miscarriage of justice would otherwise result, *U.S. v. Olano* 113 S.Ct. 1770 (1993) Rule-11 error is not harmless when it affects a defendant's substantial rights, *Fulminante v. Arizona* 111 S.Ct. 1246 (1991) citing *Chapman v. California* 47 S.Ct. 824 (1967). See Federal Rules of Criminal Procedure Rule-11.

Indeed, structural errors affect the entire conduct of the trial from beginning to end, and therefore cannot be deemed harmless, and affect a defendant's fundamental rights,

Case No. 2019-C.P.-28046 on the invalid conviction.
 Florence, S.C.
 Case No.
2002-65-21-1670

The error is an undisputed constitutional violation, Chapman v. California 87 S.Ct. 824 (1967).
 Thus, the error is a fundamental flaw, regardless of the strength of the prosecution's evidence or whether the error would have affected the ultimate outcome of the proceedings. Further, the error is structural because of the deprivation of Hutchinson's autonomy interests under the 5th Amendment of the United States and the South Carolina Constitution Article *1. Section 3 clause has consequences that are necessarily unquantifiable and indeterminate, see Gonzalez-Lopez 212 S.Ct. 2257 (2006) Rendering the impact of the error simply too difficult to measure quoting Vasquez 106 S.Ct. 617 (1996), finding that structural error "the precise effect cannot be ascertained".
 Any conviction resulting from a constitutionally invalid guilty plea cannot reliably serve its function as a vehicle for a determination of guilt or innocence and no criminal punishment based on such a plea may not be regarded as fundamentally fair, Rose v. Clark 106 S.Ct. 301 (1991) Neder v. U.S. 119 S.Ct. 1527 (1999). Such an error necessarily affect substantial rights, thus satisfying "Clane's" third prong.

Case No. 2019-C.P.-2969 on the invalid conviction

Florence, S.C.,

Case No.

2002-GS-21-1670"James"
James E. Hutchinson"Conclusion" Respectfully submitted, 9-12-2020

Based on the aforesaid facts pertaining to the invalid guilty plea, invalid conviction, and invalid sentence in Florence County South Carolina on December 5th 2002, and that invalid conviction that was used as an aggravating circumstance to seek a life without parole sentence, unless I accepted a negotiated plea to have that motion removed, and was yet still used as an aggravating factor to obtain a conviction on the current burglary charges on the indictment numbers no # 2018-GS-21-1520 and 2018-GS-21-1523 when the prosecutor John C. Superfinger knew and was made aware that those factors were false allegations but failed to correct in the case no. 2002-GS-21-1670 and still used it (the unconstitutionally gained conviction because the insufficient evidence used and the factual basis did not support the plea) to seek this conviction while committing a Brady v. Maryland 335 U.S. 1194 (1963) violation twice, I, Petitioner James E. Hutchinson, request the court to respectfully vacate his prior convictions, this conviction and habitual offender status.

2020 SEP 18 PM 1: 25

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

2019-CP-21-2806

**MOTION TO AMEND PCR
APPLICATION TO INCLUDE
ADDITIONAL ISSUES TO
CONFIRM TO THE EVIDENCE**

Honorable Twelfth Judicial Circuit

The 2nd sentence from case no. 2002-05-21-161 is invalid, guilty plea invalid, and sentence is invalid. It is not in accordance with U.S. v Thompson as stated in Andrus v. State 535 S.2d 619 (2000). It is a misstatement of the law.

AMENDMENT A

Case No. 2019-CP 2406

ISSUE

Re: 2002-65-21-1670

COUNSEL WAS INEFFECTIVE, PROVIDED DEFICIENT PERFORMANCE THAT RESULTED IN PREJUDICE TO CLIENTS' CASE, IN VIOLATION OF HIS S.C. CONSTITUTIONAL RIGHTS PROTECTED UNDER ARTICLE I* SECTION 14 OF THIS STATES CONSTITUTION AND IN VIOLATION OF CLIENTS' CONSTITUTIONAL RIGHTS PROTECTED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION. BY FAILING TO INVESTIGATE AND BRING IT TO THE COURTS ATTENTION THAT CLIENTS' PRIOR CONVICTIONS WERE INVALID AND OBTAINED IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS. FURTHERMORE, COUNSEL STILL PERSISTS ON BEING INEFFECTIVE BY NOT SENDING PETITIONER A COPY OF HIS CASES FILE AS REQUESTED BY LETTER AND ALSO CERTIFIED MAIL, BY EVADING CLIENTS' ATTEMPTS TO GAIN THOSE FILES PERTAINING TO HIS JANUARY 8TH 2019 CONVICTION.

Counsel ineffective in failing to file motion to suppress prior convictions evidence pursuant to S.C.R.C.P. to quash indictment Pursuant to S.C. Code Ann 17-19-92 (2003)

SINCE THE PRIOR CONVICTION WAS OBTAINED IN VIOLATION OF CLIENTS' CONSTITUTIONAL RIGHTS, THAT CONVICTION SHOULD NOT HAVE QUALIFIED AS A 1ST STRIKE MOST SERIOUS OFFENSE THAT THE STATE USED IN ORDER TO COERCE PETITIONER INTO A PLEA CONTRACT BY THREATENING HIM WITH A MOTION TO SEEK LIFE WITHOUT PAROLE IF CONVICTED FOR THE CURRENT OFFENSE IN ORDER TO DETERR PETITIONER FROM TAKING THE CASE TO TRIAL. HAD THIS PRIOR INVALID CONVICTION BEEN STRICKEN THE PETITIONER WOULD HAVE PROCEEDED TO TRIAL WITHOUT FEAR OF A MANDATORY LIFE SENTENCE. THOUGH A BURGLARY FIRST DEGREE CARRIES A POSSIBLE LIFE SENTENCE, IT IS NOT MANDATORY. SEE S.C. SENATE BILL NO. 96 123RD SESSION WHERE ON DECEMBER 12TH AND JANUARY 8TH 2019 BURGLARY FIRST DEGREE STATUTE WAS AMENDED TO INCLUDE "IF THE BURGLARY FIRST DEGREE INVOLVES AN ELEMENT OF SUBSECTION (A)(2) HAVING PRIOR RECORD OF TWO OR MORE PRIOR CONVICTIONS IN THE PAST.... BUT DOES NOT INVOLVE AN ELEMENT OF SUBSECTION (A)(1). THE COURT STILL HAS DISCRETION AND MAY SENTENCE THE DEFENDANT TO A TERM OF NOT LESS THAN 15 YEARS THE JUDGE STILL HAS

Case No. 2019-CP-2808 Re: 2002-65-21-1670

DISCRETION TO SENTENCE TO SENTENCE A DEFENDANT ANYWHERE IN BETWEEN 15-YEARS TO LIFE. IT'S NOT MANDATORY FOR A LIFE SENTENCE TO BE IMPOSED. DEFENSE COUNSEL HAS A DUTY TO CONDUCT AN INVESTIGATION TO DISCOVER ALL REASONABLY AVAILABLE MITIGATING EVIDENCE AND ALL REASONABLE AVAILABLE EVIDENCE TO REBUT ANY AGGRAVATING EVIDENCE INTRODUCED BY THE STATE. THE JUDGE IS NOT BOUND BY ANY NEGOTIATIONS OR RECOMMENDATIONS BY THE STATE. THE COURT MAY STILL CONSIDER THE FACTS SURROUNDING THE CASE AND ANY MITIGATING FACTOR IN FAVOR OF THE DEFENDANT BEFORE IMPOSING A SENTENCE. BEFORE MAKING A DETERMINATION OF WHAT SENTENCE TO IMPOSE, JUDGE MAY APPROPRIATELY CONDUCT AN INQUIRY BROAD IN SCOPE, LARGELY UNLIMITED EITHER AS TO THE KIND OF INFORMATION HE MAY CONSIDER, OR FROM THE SOURCE FROM WHICH IT MAY COME, TO INCLUDE PREVIOUS INVALID CONVICTIONS OBTAINED IN VIOLATION OF DEFENDANTS' CONSTITUTIONAL RIGHTS. COUNSELS' EVIDENT UNAWARENESS OF POSSIBLE APPLICABILITY OF U.S. SUPREME COURT CASES TO CLIENTS' PRIOR CONVICTIONS IS INDICATIVE OF INCOMPETENT REPRESENTATION. EVEN THOUGH COUNSEL MAY NOT, CONTINUE TO REPRESENT DEFENDANT FOLLOWING A CONVICTION, COUNSEL MUST NEVER THE LESS COOPERATE WITH DEFENDANTS' ATTEMPTS TO CHALLENGE HIS CONVICTION OR SENTENCE.

AMENDMENT B

Case No. 2019-CP-2404 ISSUE Re: 2002-65-21-1670

AT THIS TIME AMENDING POST-CONVICTION APPLICATION BY ADDING AS STATED BELOW THAT: "I AM SUFFERING AND PREJUDICED BY THE LINGERING PERSISTENT EFFECTS AND CONTINUED CONSEQUENCES AS A RESULT OF AN UNCONSTITUTIONAL INVALID PRIOR CONVICTION IN VIOLATION OF MY RIGHTS TO DUE PROCESS".

THE PRIOR CONVICTION WAS OBTAINED IN VIOLATION OF MY RIGHTS TO DUE PROCESS AND EQUAL PROTECTION PROTECTED UNDER THE S.C. STATE CONSTITUTION ARTICLE *1 SECTION*3 AND ALSO IN VIOLATION OF MY DUE PROCESS RIGHTS PROTECTED UNDER THE FIFTH AND FOURTEENTH AMENDMENTS PROTECTED UNDER THE UNITED STATES CONSTITUTION.

PURSUANT TO S.C. CODE ANN. 17-27-20(A) ANY PERSON WHO HAS BEEN CONVICTED OF OR SENTENCED FOR A CRIME AND WHO CLAIMS: (1) THAT THE CONVICTION OR THE SENTENCE WAS IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES OR THE CONSTITUTION OF THE LAWS OF THIS STATE, MAY INSTITUTE A PROCEEDING UNDER THIS CHAPTER TO SECURE RELIEF.

FACTS

THE STATE USED AN UNCONSTITUTIONAL PRIOR CONVICTION OBTAINED ON DECEMBER 5TH 2002 CASE NO. ²⁰⁰²⁻⁶⁵⁻²¹ ~~1670~~ AS A FIRST-STRIKE MOST SERIOUS OFFENSE PURSUANT TO S.C. CODE ANN. 17-25-45 TO COERCE PETITIONER INTO A PLEA CONTRACT OUT OF FEAR OF BEING SENTENCED TO LIFE WITHOUT PAROLE FOR A SECOND-STRIKE MOST SERIOUS OFFENSE IF HE WAS CONVICTED ON THE PRINCIPLE OFFENSE IN CASE NO. ~~2018-65-21-1520~~ and 2018-65-21-1523

THAT PRIOR CONVICTION THAT WAS GAINED IN VIOLATION OF PETITIONERS' CONSTITUTIONAL RIGHTS AND SHOULD NOT HAVE QUALIFIED AS A FIRST-

Case No. 2019-CP-2404 Re: 2002-65-21-1670

STRIKE MOST SERIOUS. THEREFORE, HAD PETITIONER PROCEEDED TO TRIAL ON THE CURRENT OFFENSE AND ONLY "IF" CONVICTED SHOULD HAVE ONLY QUALIFIED AS AN INITIAL FIRST-STRIKE MOST SERIOUS OFFENSE, EVEN IF CONVICTED FOR THE CURRENT BURGLARY. THOUGH PETITIONER MAY HAVE STILL FACED A POTENTIAL LIFE SENTENCE, IT WAS NOT MANDATORY BECAUSE IF CONVICTED OF A BURGLARY FIRST DEGREE OFFENSE ALONE, THE JUDGE STILL HAS DISCRETION TO SENTENCE A DEFENDANT TO WHATEVER HE FEELS APPROPRIATE ACCORDING TO THE CIRCUMSTANCES AND CONSIDERATION OF ANY MITIGATING FACTORS BEFORE IMPOSING A SENTENCE ANYWHERE BETWEEN 15 YEARS TO LIFE. THE CONVICTION IN 2002 RESULTED FROM THE STATE CHARGING PETITIONER WITH BURGLARY IN THE FIRST DEGREE BY ALLEGING THE ELEMENT OF "ENTERED OR REMAINED DURING THE NIGHTTIME". THE FACTUAL BASIS IS NOT SUFFICIENT TO SUPPORT THAT PLEA IN 2002. THERE WAS NO FACTS OR EVIDENCE PRESENTED TO SUPPORT THAT ALLEGATION OF A NIGHTTIME BURGLARY.

BOOKING REPORTS AT COUNTY JAIL, THE EXTRACTION OF AN E.S.U. TEAM WITH BLOODHOUND-UNIT ALONG WITH SHERIFF DEPUTIES ON THAT DATE, AFFIDAVITS, INCIDENT REPORTS, ALL SHOW THAT THE INCIDENT ALLEGED WAS IN FACT DURING THE DAYTIME HOURS. THE 911-CALLS CAN ALSO SHOW THIS ALONG WITH THE FACT THAT THE PETITIONER WAS DETAINED THE SAME DAY. SO THERE'S NO WAY HE COULD HAVE COMMITTED THIS ALLEGED OFFENSE OF A BURGLARY IN THE NIGHTTIME HOURS IF HE WAS DETAINED.

THE PURPOSE FOR THE RULING FACTUAL BASIS IS TO PROTECT A DEFENDANT WHO MAY PLEAD GUILTY WITH AN UNDERSTANDING OF THE NATURE OF THE CHARGE BUT WITHOUT REALIZING THAT HIS CONDUCT DOES NOT ACTUALLY FALL WITHIN THE DEFINITION OF THE CRIME CHARGED.

"WHEN A CONVICTION RESULTS FROM AN INDICTMENT THAT FACIALLY CHARGES A COMPLETE OFFENSE, BUT THE STATE PRESENTS EVIDENCE WHICH CONVICTS UNDER A COMPLETE DIFFERENT THEORY THAN THAT ALLEGED, SUCH CONVICTION VIOLATES THE PRINCIPLES OF DUE PROCESS".

Case No. 2019-CP-2804 Re: 2002-65-246670

COURTS MUST NOT CONSIDER WHETHER THERE WAS ANY EVIDENCE TO SUPPORT A STATE CONVICTION, BUT WHETHER THERE WAS SUFFICIENT EVIDENCE TO JUSTIFY A RATIONAL TRIER OF FACT TO FIND GUILT BEYOND A REASONABLE DOUBT. THE STATE WAS INTENDING TO CONVICT UNDER THE ELEMENT OF "ENTERED OR REMAINED IN THE NIGHTTIME HOURS" EVEN AFTER PETITIONERS' PRIOR RECORD WAS READ OUT TO THE COURT. AS THE RECORD REFLECTS, THE JUDGE NEVER MADE A RULING ON ANY AMENDMENTS OR ATTEMPTED AMENDMENTS TO THE PROPOSED INDICTMENT AS THE ATTORNEY GENERAL STATED IN THEIR RESPONSE BRIEF TO MY DIRECT APPEAL ON THAT CASE FROM THE 2002 CONVICTION. IF THE STATE INTENDED TO SEEK A CONVICTION AS A RECIDIVIST, OTHER FACTORS WOULD HAVE COME INTO ACCOUNT THAT THE STATE ALSO FAILED TO APPLY WHEN THOSE DETERMINATIONS ARE BEING CONSIDERED THAT ALSO DENIED PETITIONER HIS DUE PROCESS RIGHTS AS WELL. THE FACTUAL BASIS IS NOT SUFFICIENT AS TO EITHER COUNT IN THE 16-11-311 BURGLARY FIRST DEGREE COUNTS IN 2002. THE COURT CANNOT ACCEPT A GUILTY PLEA UNLESS IT IS SATISFIED THAT THERE IS SUFFICIENT EVIDENCE TO SUPPORT THAT GUILTY PLEA, AS REQUIRED BY THE ABA STANDARDS: NOT ONLY MUST THERE BE A FACTUAL BASIS FOR THE PLEA, BUT THE DEFENDANT MUST ALSO ADMIT FACTS CONSISTENT WITH GUILT OF THE OFFENSE TO WHICH HE PLEADS.

THE STATE STILL INSISTED ON CONVICTING PETITIONER OF A NIGHTTIME BURGLARY KNOWING THAT THERE WAS NO WAY TO PROVE THAT TO ANY RATIONAL TRIER OF FACT BEYOND A REASONABLE DOUBT. NIGHT TIME ONLY AGGRAVATES THE OFFENSE OF BURGLARY. THE STATE IS STILL REQUIRED TO ALLEGE THE TIME AND PROVE THE TIME OF DAY WHEN IT SEEKS A CONVICTION UNDER BURGLARY IN THE FIRST DEGREE. IF THE GOVERNMENT FAILS TO PRODUCE SUFFICIENT EVIDENCE FOR ANY ELEMENT, THEREBY NOT BRINGING FACT INTO ISSUE AND FAILS TO SUSTAIN ITS BURDEN OF PRODUCTION THAT PARTY IS SUBJECT TO AN ADVERSE RULING BY THE COURT AND THE JUDGE MAY DIRECT A VERDICT IN THE DEFENDANTS' FAVOR. EVEN VALID WAIVERS DO NOT BAR CLAIM THAT THE FACTUAL BASIS IS INSUFFICIENT TO SUPPORT

Case No. 2019-KP 2908 Re: 2002-65-21-1670

THE GUILTY PLEA. THE COURT HAS POWER TO REVIEW THE FACTUAL BASIS, FOR THE PLEA FAILS TO ESTABLISH AN ELEMENT OF THE OFFENSE WHICH THE DEFENDANT PLEADED GUILTY TO. ALTHOUGH TIME HAS BEEN SERVED, LINGERING EFFECTS STILL PERSIST FROM THAT INVALID CONVICTION, MAKING PETITIONER INELIGIBLE TO GAIN ACCESS TO CERTAIN PRIVILEGES, EDUCATIONAL, AND REHABILITATIVE PROGRAMS OFFERED THROUGHOUT SOUTH CAROLINA DEPARTMENT OF CORRECTIONS AT MINIMUM-CUSTODY CAMPS. SENTENCE MAY HAVE BEEN LESS SEVERE HAD THE JUDGE KNOWN THAT PETITIONER'S PREVIOUS CONVICTIONS WERE IN FACT UNCONSTITUTIONALLY OBTAINED.

AS THE POWER TO REMEDY STILL EXISTS, PETITIONER RESPECTFULLY REQUESTS THE COURT FOR AN OPPORTUNITY TO SHOW THAT HIS PRIOR CONVICTIONS FROM 2002 WERE IN FACT GAINED UNCONSTITUTIONALLY, ARE INVALID AND, THAT THE CASE IS NOT CONSIDERED MOOT MERELY BECAUSE SENTENCE HAS BEEN SERVED ON THAT CONVICTION, WHERE THE COURT HAS POWER TO VACATE OR SET ASIDE AN ILLEGAL CONVICTION AND SENTENCE, FOR PETITIONER IS STILL BEING PREJUDGED DUE TO THAT INVALID CONVICTION ON DECEMBER 5TH, 2002 IN FLORENCE COUNTY SOUTH CAROLINA IN THE TWELFTH JUDICIAL CIRCUIT COURT OF GENERAL SESSIONS.

IN FURTHERANCE, APPELLANT COUNSEL WAS INEFFECTIVE IN ONLY FILING AN ANDERS BRIEF ON DIRECT APPEAL WHEN THERE WERE OTHER MERITORIOUS ISSUES AND ON CERTIORARI APPEALING POST CONVICTION CONCLUSIONS ONLY PRESENTED HALF OF THE GUILTY PLEA TRANSCRIPT TO THE APPEALS COURT BARRING THEM FROM VIEWING THE ENTIRE TRANSCRIPT. APPELLATE COURTS ARE TO REVIEW THE FULL GUILTY PLEA TRANSCRIPTS AND POST CONVICTION TRANSCRIPTS TO RECEIVE A FULL AND FAIR REVIEW OF THE FACTS.

Case No. 2019-CP-2408 CONCLUSION Re: 2002-65-21-1670

Due to those invalid prior convictions being the basis for the current conviction, Petitioner respectfully requests that the Court vacate his habitual felon status and unconstitutionally invalid prior convictions from 2002. Also, vacate his habitual offender status on the current conviction on January 8th 2019.

Petitioner also requests that each issue be addressed and a published opinion on each issue in the original Post Conviction Application along with the additional issues presented in the three (3) amendments to that application.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 5th day of May, 2020.

If I am not able to be present during PCR hearing, I want appointed counsel to specifically argue this issue on the invalid 2002 guilty plea on the indictment No. 2002-65-21-1670.

Respectfully Submitted,

James E. Hutchinson

James E. Hutchinson, #258005

Lee Correctional Institution F613-1125

990 Wisacky Highway

Bishopville, South Carolina 29010

Cc: Clerk of Court
Attorney

Attorney General
File

I still have all of my original trial transcripts, appeal transcripts, and appeal transcripts to present as evidence at Post conviction hearing.

Thank you very much to
Mrs. C. Hanna

Please copy the pages and file a copy of this PCR application amendment as part of the record in the case No. 2019-CP-2408.

Respectfully Submitted
on this 12th day of September
2020.

Case No: 2019-CP-25008 PROOF OF SERVICE Re: 2002-GS-21-1670
 invalid prior convictions
 DATE Bishopville, SC, PLACE 29010
 SERVED 9/12/2020 here Cor. Ints, 990 Wilsack Hwy,
 SERVED ON (PRINT NAME) Doris Poulas Chara MANNER OF SERVICE US Postal
 Clerk of Court Judicial Center
 Suite - 1100 181 N. Tryon St. Florence, SC, 29501
 SERVED BY (PRINT NAME) #254003 TITLE
 James Edgar Hutchinson Petitioner 2019-CP-25008
 DECLARATION OF SERVER

I certify that the following information contained in the Proof of Service is true and correct. #254003

I executed on September 12th 2020 James Edgar Hutchinson
 SIGNATURE OF SERVER
 here, Cor. Ints, F6A-1125
 990 Wilsack Hwy.
 ADDRESS OF SERVER
 Bishopville, SC, 29010

SCCA 283 (10/2011)

28-pages total for use at PCR-hearing,
 CC: Kristine Hamann - Dept of Justice
 Law Graduate Tiffany Trump
 Fair Privilege report
 Counsel
 Clerk of Court
 File
 ABA

1 of 7
 copies
 H

2020 SEP 18 PM 1:25
 DORIS POULAS CHARA
 CCOP & GS
 FLORENCE COUNTY, SC

FILED

FILED

2020 SEP 28 PM 2:12

DOUGLAS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence

Plaintiff.

CASE NO:

2019-CP-21-2808

NOTICE OF INTENT TO
AMEND PCR APPLICATION

*Issue - Invalid
Plea, Conviction and Sentences*

Honorable Twelfth Judicial Circuit

Now comes Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully submits this Notice of Intent to Amend PCR Application to include additional issues pertaining to the above mentioned case, pursuant to South Carolina Rules of Civil Procedures, Rule 15 Amended and supplemental proceedings.

Prepared and placed on this 21st day of September 2020 in the US Postal Mailbox Service at Lee Correctional Institution by Petitioner James E. Hutchinson.

For use on the issue raised
in July 5th Amendment to
PCR application for attack
on wrongful conviction
Case No. 2002-GS-21-1670
and two other priors that are
causing prejudice and persistent
lingering effects from said wrongful convictions,
McPuffie v. State 277 S.E.2d 595 (1981)

Respectfully Submitted, 9-21-2020James E. Hutchinson

James E. Hutchinson, #258003

Lee Correctional Institution F6A-1125

990 Wisacky Highway

Bishopville, South Carolina 29010

Cc: Clerk of Court

Attorney

Attorney General

File

1 of 5 copies

In The Court of Common Pleas

10 FS copies

In and For the County Of Florence
State Of South Carolina

FILED
2020 SEP 28 PM 2:15
DORIS FLORES CHAMBERS
COCOP & GS
FLORENCE COUNTY

James Edgar Hutchinson

Petitioner,

CASE NO. 2019-CP-21-2898

v.

State of South Carolina
County of Florence

Plaintiff.

MOTION TO AMEND PCR
APPLICATION TO INCLUDE
ADDITIONAL ISSUES TO
CONFIRM TO THE EVIDENCE

Honorable Twelfth Judicial Circuit

~~Issue - Invalid~~

Plea, Conviction and Sentences

May it please the court, now comes the Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully requests to amend PCR Application to contain additional issues to conform to the evidence pursuant to South Carolina Rules of Civil Procedure, Rule 15(a) amendments and Rule 15(b) to conform to the evidence, (c) Relation back on Amendments, and (d) supplemental pleadings, SCRPC Rule 15

9-21-2020 McDuffie v. State
277 S.E.2d 595 (1981)

To include evidence in support of my July 5th, 2020, motion to Amend on the issue that I, James E. Hutchinson am being prejudiced and suffering persistent lingering effects from the conviction that was unconstitutionally gained in Case No. 2002-GS-21-1670, a "1995" conviction and a "1989" conviction, and that the 2002 conviction that was engineered and executed as a device to present fraud upon the Court, the Petitioner and Public Interest, was used a second time to file a motion to seek life without parole because client attempted to challenge his 2002 wrongful conviction. Whereupon his wife was not allowed to confer with him, and being his legal power attorney was ran home by counsel, and told her presence was not needed. Petitioner was then marched into the court and served with notice for trying to protect his liberty. Respectfully submitted: James Edgar Hutchinson
James E. Hutchinson #256003 here, C.I. F-6-A 1125
990. W. Sacku Hou. Bishopville S.C. 29010 9-21-2020

STATE OF SOUTH CAROLINA

COUNTY OF Florence, S.C.

IN THE COURT OF COMMON PLEAS

James E. Hutchinson

Plaintiff(s)

CIVIL ACTION COVER SHEET

? - CP - ? - ?Ed Clements
John C. Seperfinger
S.C. Bar # 9926

Defendant(s)

Case No. 2019-CP-21-2808

(Please Print)

Submitted By: _____

Address: _____

SC Bar #: _____

Telephone #: _____

Fax #: _____

Other: _____

E-mail: _____

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|--|--|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Previous Notice of Intent Case # <u>20</u> - CP - <u>?</u>
☐ Notice of Med Mal (230)
☐ Other (299) | ☒ Torts - Personal Injury
☐ Assault/Slander/Defamation (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violations (460)
☐ Other (499) |
| ☐ Unlabeled Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstatement License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transferred Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Seized Settlement
☐ Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
☐ Compensation Settlement
☐ Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDC (950)
☐ Workers' Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (980)
☐ Employment Security Commission (991)
☐ Other (999) |
| ☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699)
☐ Small Business (610) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions
☐ Motion to Quash Subpoena
☐ Out-of-County Action (660) | | |

Special/Complex/Other

Submitting Party Signature: James E. HutchinsonDate: 9-21-2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

SCCA / 234 (04/2012)

Page 1 of 2

for future use

use

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9-21-2020

Case No. 2019-CP-21-2808

Counsel abandoned client to help bolster States case.

Rel 2002-65-21-1670 - indictment

Exhibit #2

Brief of Appellant February 14th 2005

Page 5, 2006-CP-21-375

BOA, p. 38. During the course of his guilty plea hearing, the "solicitor and defense counsel" conferred privately.

BOA, p. 20, 11-13 lines. After saying "yes, we can do that, to defense counsel, the solicitor moved to Amend count one and count two of the indictment to include" additional element that the burglary was committed by an individual with two prior convictions for burglary.

Nothing in the arrest warrants or recitation of the facts indicates that the burglary occurred in the nighttime.

Brief of Respondant March 25th 2005

While Appellant's counsel thought the two prior conviction's element should be added.

(R. p. 20, line 20 pg. 21 line 11) Neither the indictment nor the sentencing sheet shows any amendment or

addition of an aggravating circumstance

"The Judge never ruled on the Amendment."

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9-21-2020

Case No. 2019-CP-21-2408

Indictment no. 2002-GS-21-1670

2006-CP-21-375

Exhibit #3

Record on Appeal December 5th 2002.

The Court: Do you dispute that record he just gave me of your criminal past, your history?

Defendant: No Sir.

The Court: Looks like Judge Brogdon. Was that who it was?

Defendant: Yes Sir.

As you can see, nothing in the record indicates Hutchinson admitted to, or said his record warrants enhancement. I never said I was guilty of two priors (guilty Plea invalid). Counsel took that upon himself, without even advising Hutchinson of what he was doing. He agreed to amendment, not Hutchinson. I didn't know of any amendment (~~attempt~~) until after it happened (see transcript). Just because no offer of rebuttal from Hutchinson, does not constitute as a "yes". He remained silent on that issue. State v. Lambert 225 SE2d, 340 (1976), Hutchinson, neither "stated" to the Court that he broke into a home at nighttime. See, Santibello v. New York 92 S.Ct. 495 (1971)

By having accused describe conduct.

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9-21-2020

2019-CP-21-2808 attachment 2002-GS-21-1670
October 2, 2006

Exhibit #4 " Post-Conviction Relief Hearing Transcript "

Rather it is why, the solicitor, who knew the allegations to be false, failed to correct it. Failure to correct false allegations is as reprehensible as it's representation.

2006-CP-21-375

state: Do you think he understood, regarding the aggravating circumstances?

S. Hill: Apparently not. I can't tell you that.

state: And was it fully explained to Mr. Hutchinson?

S. Hill: I can't tell you that, because it happened during the plea.

state: Looking at the indictment, did you see anything to cause you any concern?

S. Hill: Apparently so, if I stepped over there to Mr. Teperdinges, and pointed out for the plea to be correct and for this not to come back as it has today or even on appeal, that we needed to make sure the correct circumstances were there.

state: What aggravating circumstances was pled in the burglary indictment?

S. Hill: That it occurred in the nighttime.

state: Okay.

S. Hill: And that was not correct...

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9-21-2020

Case No. "Defense Counsel Abandonment" 7,599
2019-CP-21-2808 Case No. 2002-65-21-1670
October 2, 2006

Exhibit #5 "Post-Conviction Relief Hearing Transcript"
2006-CP-21-375

S. Hill: which is why Mr. Hutchinson stated that he recalls, that I stepped over to Mr. Teperfinger, I realized the proper aggravating circumstances wasn't alleged, or had been put into evidence to support the plea on this indictment.

"And I'm certain I told Mr. Teperfinger"
..."I'm sure I told Mr. Teperfinger" that:
for the plea to be proper the correct circumstances had to exist,

Since we were doing a waiver, I didn't want it to come back

State: Okay,

S. Hill: I wanted to do it properly; "I thought" we did. Plea to charges was still invalid. Even if the Judge would have ruled on attempted amendment to "include" element of prior-convictions. Post-Conviction Counsel was ineffective also for failing to Raise Rule 11 violations.

you see Mr. Teperfinger; not only did Steven Hill sell out his client to put up a defense at PCR-hearing in 2006, He also sold you out as well.

Now that's what you call competent counsel,
lof Scopies 9-21-2020

Case No. 2019-CP-21-2808 *attack on*

Case No. 2002-GS-21-1670

INDICTMENT FOR

STATE OF SOUTH CAROLINA)

BURGLARY-FIRST DEGREE (TWO COUNTS) AND

COUNTY OF FLORENCE)

BURGLARY-SECOND DEGREE

*Exhibit #6**used to decieve Public's Interest.*

At a Court of General Sessions, convened on DECEMBER 4, 2002, the Grand Jurors of FLORENCE

County present upon their oath:

*→ This is false, Steven Hill and Judge Nettles said so in 2006 PCR-hearing.*COUNT ONE - BURGLARY (FIRST DEGREE)

That JAMES EDGAR HUTCHINSON did in FLORENCE County on or about June 10, 2002, violate Section 16-11-0311 of the Code of Laws of South Carolina (1976), as amended, in that he did enter the dwelling of Judy Jackson without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime.

COUNT TWO - BURGLARY (FIRST DEGREE)

That JAMES EDGAR HUTCHINSON did in FLORENCE County on or about June 10, 2002, violate Section 16-11-0311 of the Code of Laws of South Carolina (1976), as amended, in that he did enter the dwelling of Matthew Harvey without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime.

COUNT THREE - BURGLARY (SECOND DEGREE)

That JAMES EDGAR HUTCHINSON did in FLORENCE County on or about June 4, 2002, violate Section 16-11-0312(A) of the Code of Laws of South Carolina (1976), as amended, in that he did enter the dwelling of Phillip Carr without consent and with the intent to commit a crime therein.

Defamation, Slander, Injustice, Misconduct, Invited ErrorsFraudulent misrepresentation, Miscarriage of Justice,

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

Rule-11 is designed to protect defendants from these errors.Even valid waivers don't bar factual basis claim.US v. McCoy 895 F.3d 1354 (4th Cir. 2018).*to waive presentment of this indictment to the Grand Jury*

E. L. Clement III
SOLICITOR

McCarthy 81 S.Ct. 1166 (1988)Baymen 312 Fed. 725 (5th Cir. 2002)

see Anderson v. State 535 S.E.2d 649 (2000) } this is not in accord with U.S. v. Thompson 1690 F.2d 1145 (7th Cir. 1992) cert den. 103 S.Ct. 573 (1993)

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9-21-2020

Case No. 2019-CP-21-2808 attack on
Case No. 2002-GS-21-1670

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE) 2018-GS-21-1523 -1523

STATE)

Exhibit #7

v.)

INTENT TO SEEK LIFE WITHOUT PAROLE

vindictive Prosecution

JAMES EDGAR HUTCHINSON,)

Used for the intent of,

Defendant

Compulsion...

Now comes the State, by and through the undersigned and hereby provides this written notice to both the defendant and his counsel, Caroline Lawson, in open court, that pursuant to Section 17-25-45 of the Code of Laws of South Carolina (1976, as amended), that the State will seek to have a sentence of life imposed upon this defendant should he be convicted of this Burglary First Degree charge, now pending.

wrongfully

Burglary First Degree is a most serious offense. The defendant was previously convicted of Burglary First Degree (Two Counts) on December 5, 2002. Should he be convicted of this charge, the State will seek imposition of a life sentence without the possibility of parole for this most serious offense

Device engineered and executed to
defraud the Court, Petitioner, and Public for a 2nd time,
on December 3rd 2018,
fabricated for compulsion
to plea. And for trying to fight
2002 wrongful conviction.

Respectfully submitted,

John C. Japertinger

Deputy Solicitor, Twelfth Judicial Circuit

December 3, 2018

Prosecutorial Misconduct, moral turpitude, Malfeasance.

1 of 5 copies

9-21-2020

Due Process - Authorities Continued Const. law 92

Exhibit # 8

Prosecutor can't rely on attachment of regularity when he knows prior conviction is violation, Bailey v. State 709 S.E.2d, 671 (2011), Const. law 92, when a conviction results from an indictment that facially charges a complete offense, but the state presents evidence which convicts under a different theory than that alleged, such a conviction violates due process

Case No. 2019-CP-21-2808 attack on

Rules of Professional Conduct Rule 407, Special responsibilities of prosecutors Rule 3.8 The prosecutor in a criminal case shall: **Not!**
 (D) Engage in conduct involving dishonesty,
 (E) Engage in conduct that is prejudicial to the administration of Justice,
 (F) State or imply an ability to influence improperly a government agency or official achieve results by means that violate the rules of Professional Conduct

Case No. 2002-65-21-1670

Prosecutors are required to turn over all and alert the defense to all favorable evidence that could help prove defendant's innocence,

Brady v. Maryland 83 S.Ct. 1194 (1963),

S.C. Bar #9626

"Officer of the Court" - Some one who is charged with the duty of upholding the law, obligated to obey Court rules and owes a duty to the integrity of judicial proceedings for public interest,

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9-21-2020

"Definitions"

Exhibit #

Case No. 2019-CP-21-2808 attack on
Case No. 2002-GS-21-1670

- 1) Miscarriage of Justice - Unfair outcome in a judicial proceeding, as when a defendant is wrongfully convicted, despite lack of evidence on an essential element,
- 2) fraudulent misrepresentation - A false statement that is known to be false or is made recklessly whether true or false intended to induce a party to rely on it,
- 3) Defamation - A false or written statement that causes damage and subjects that person to ridicule, dislike, general hatred or public contempt,
- 4) Prosecutorial misconduct - Improper acts or failure to act, attempt to avoid disclosure, or to wrongfully convict; a breach of moral duty,
- 5) Remedy - The means of enforcing a right
- 6) Fair Privilege Report - The Common law protection extended to Media Reports of Judicial and Government proceedings,
- 7) Amends - Act of making amends for a wrong; such as compliance Due Process standards of fairness and Justice.

"Due Process"

S.C. Constitution Article*1. Sections 3, 12, and 14,
U.S. Constitution 5th, 6th, and 14th Amendments,

10FS copies

9-21-2020

2019-CP-21-2808 Miscarriage of Justice
 Attack on
 2002-65-21-1670 Brady Violation "Suspect Evidence"
 2002-GS-21-1670 "Misconduct Fraud, Slander & Defamation"
 Exhibit #10

Fraud, is a generic term. Bagland v. Shattuck Natl. Bank 36 F.3d 943, 990 LCA 10 1994). It encompasses a broad range of ways by which another is cheated. There are actually two types of fraud Intentional and Constructive. Intentional is when a party intends to deceive the other party, Constructive, though, is broader and covers even unintentional deception. (See: Burden of Allegation - Black's Law Dict.) These allegations by the State have caused the petitioner to purchase research materials, deprived me of my rights to due process, time, sleep, peace of mind, separation from wife, ridicule from family, friends and the general hatred from the public, and has suffered irreparable damages and harm. Petitioner's sentence and conviction is deemed unconstitutional and the behavior of the State is indicative of misconduct. Petitioner is considered "factually Innocent" of "Burglary in the First" degree of entering or remaining in the night-time hours on June 10th 2002. In the case No. 2002 - 65-21-1670, I have evidence, friends, witnesses, trial attorneys' testimony, alibi witnesses that are indicative of proof against the false allegations. Constructive fraud is when the State knowingly remains silent on an issue,

1055 copies

9-21-2020

Case No. 2019-CP-21-2808 attack on Case No.
 2002-65-21-1670 December 5th 2002,
 Exhibit #11

Fraud occurs when a party in an agreement has a duty to speak, but "fails to disclose the whole truth". Any fraud in a contract, voids the contract as if it never existed. It is also an "Ethical Breach". It is well established that Plea Agreements are Contracts. Santibello V. N.Y. 404 U.S. 257 (1971).

In Federal law concerning contracts, the petitioner's rights are best set out in 42 U.S.C. § 1981. Under the fundamental policies of doctrine, a Court should not refrain from applying the designated law 42 U.S.C. § 1981, merely because application of that law would lead to a result different than it would be obtained under the local law of the State or Country, whose law would otherwise govern (Fed R. Crim. Proc. Rule 11), when the difference between the two concerns a requirement, such as statute of frauds, that relates formalities and general rules of contract law, such as this fraud which is in need for consideration.

Petitioner shows that his plea agreement and/or contract is voidable because it was engineered and executed as a "misleading device" to "defraud" the Court, Petitioner and the Public's Interests.

If a Party commits "fraud", while negotiating a contract, the Contract is Void as if it never existed. Godly V. United States 5 Fed. 1473, 1476 (Fed. Cir. 1995).
 10F Scopies 9-21-2020

Exhibit #12 "Affidavit of Merits & Claims"

To: Mr. Ed Clements Florence County 9/21/2020
 Solicitor's Office - in General Sessions
 of 12th Judicial Circuit
 Suite 1100 Judicial Center
 141 N. Tryby St. Florence, S.C. 29501
 Case No. 2019-CP-21-2804 and 2002-GS-21-1670
 From: James E. Hutchinson #253003; James E. Hutchinson
 here, C.I. F6A-1125 Respectfully submitted on
 990. Wisacky Hwy, this 21st day of Sept, 2020
 Bishopville, S.C. 29010. (Notice Pleading)
 Def. Invited Error, Remedy, Intrinsic fraud, void ab initio...
 Re: 2002-GS-21-1670 wrongful conviction, fraudulent
 misconduct, continued violation, suspect evidence
 factual basis does not support the plea Rule - 11, Fed.
 Rule Crim. Procedure violation, Brady v. Maryland 83
 S.Ct. 1194 (1963) and Miscarriage of Justice.
 Facts: False allegations and Defamation device used again
 as aggravating circumstances, to trump the current
 charges, in order to negotiate and compel a plea again.
 Law: Riddle v. Ozment 631 S.E2d 70 (S.C. 2006), Gibson v. State
 514 S.E2d 320 (S.C. 1999), Simpson v. Moore 627 S.E2d 701
 (S.C. 2006), U.S. v. Clano 113 S.Ct. 1770 (1993), Anderson v. State
 535 S.E2d 649 (2000), McCarthy v. U.S. 89 S.Ct. 1166 (1969)
 U.S. v. Johnson 120 S.Ct. 2193 (2000), Rose v. Clark 106
 S.Ct. 310 (1996), "Cedele" 89 F.3d 161 (1996) Vasquez v. Hillary
 106 S.Ct. 617 (1986) and Godly v. U.S. 5 F.3d 1473 (Fed. Cir. 1995),
 Bailey v. State 709 S.E2d 671 (2011). Due Process 52XXII Constitution 92
 10 of 5 copies

"Brief on the Merits"

107

Exhibit
#13

McKaskle v. Wiggins 104 S.Ct. 944 (1984) Case No. 2019-CP-21-2808
Rae v. Clark 106 S.Ct. 310 (1986). attachment
U.S. v. Blane 113 S.Ct. 1770 (1993). 2002 GS-21-1670
(2003)-17-27-20(a)
Parks v. Bailey 113 S.Ct. 1065 (1992) Nance v. Ozmint 611 S.E2d 600

The Court has discretion to correct such an error, for it seriously affects the fairness, integrity and public reputation of the judicial tribunal proceedings in the 12th Judicial Circuit of Florence, S.C. These errors are fraud, misleading devices, and fundamental flaws that deprived Hutchinson of his autonomy rights and liberty interest. Petitioner, need not demonstrate prejudice, because harm is irrelevant to the principle's underlying his substantive rights, regardless of the strength of the prosecution's evidence, or whether the outcome would have affected the ultimate outcome of the proceeding. The impact of a guilty plea upon a defendant's rights cannot be overstated. A conviction based upon such a constitutionally invalid guilty plea undermines the credibility and public reputation of judicial proceedings and fails to foster confidence that they will result in a fair and reliable determination of guilt, rather than a conviction obtain contrary to constitutional principles. Conviction resulting from such errors of an invalid guilty plea cannot reliably serve its function as a reliable determination of guilt or innocence, and no punishment based on such a plea may be regarded as fundamentally fair. Defects in habitual offender proof as "fundamental error" and may be raised, despite failure to do so on direct appeal, PCR-applicant may raise any constitutional violations.

10FS copies

9-21-2020

Exhibit # 15 Case No. 2019-CP-21-2804
 attachment Case No. 2002-65-21-1670
 PROOF OF SERVICE

SERVED DATE PLACE Bishopville SC.
 9-21-2020 Lee Cr. Inst, 990 Wilsack Hwy, 29010
 SERVED ON (PRINT NAME) "Clerk of Court" MANNER OF SERVICE
 Doris Poulas Ohara Judicial Center U.S. Postal
 Suite 1100 144 N. Tryon St. Florence, SC 29501
 SERVED BY (PRINT NAME) TITLE
 James Edgar Hutchinson # 256003 Petitioner,
 DECLARATION OF SERVER

I certify that the following information contained in the Proof of Service is true and correct

Executed on 9-21-2020 James Edgar Hutchinson
 SIGNATURE OF SERVER
 Lee, Cr. Inst. # 64-1125
 990 Wilsack Hwy,
 ADDRESS OF SERVER
 Bishopville, SC 29010

SCCA 253 (10/2011)

10 of 5 copies

CC: Clerk of Court

File

Fair Privilege Report

Dept. of Justice

Court TV.

110 CC: ~~transmission~~ report

10F5
copies
Dept. of Justice
Court TV

Case No. 2019-CP-21-2808

attack on Case No. 2002-65-21-1670

To: Clerk of Court Mrs. Doris Poulas Ohara
Judicial Center Suite - 1100
141 N. Irby Street
Florence S.C. 29501

Exhibit #
16

From: James Edgar Hutchinson #258003

Lee Ct. FBA-1125

990. Wisacky Hwy,

Bishopville, S.C. 29010

~~James Hutchinson~~

9-21-2020

FILED
20 SEP 28 PM 2:11
DORIS POULAS OHARA
CLERK OF COURT
FLORENCE COUNTY, SC

Re: Mrs. Ohara, will you please file each one
of these pages that include 1-notice of intent
2-motion to Amend PCR-app. Exhibit #1 civ. action,
cover sheet, Exhibits #2, 3, 4, and 5 trial transcripts testin
from 2002, 2005, and 2006, Exhibit #6 2002 Burglary
indictment with misrepresentation, Exhibit #7
LWOP motion used for compulsion from misrepresentation
a 2nd time, Exhibit #8 case law and Authorities, Exhibit
#9 Definitions, Exhibits #10 and 11, Case law on issues,
Exhibit #12 Affidavit of Merits Exhibit #13 Brief on the
Merits, Exhibit #14 Example Subpoena, Exhibit #15
Proof of Service, and Exhibit #16 letter to Clerk
of Court. Total 16-pages for case no. 2019-CP-21-2808
Will you please file each page and send back to
me please? Also will you fax the Solicitor's office
a copy, Thank you. Respectfully submitted, 9-21-2020

Refile Please

111

~~9-26-2020~~ FILED

TO: "Clerk of Court"
Doris Poulas O'Hara
Judicial Center
Suite - 1100
141 North Irby St,
Florence, S.C. 29501

2020 OCT 22 PM 1:01
~~9-26-2020~~

DORIS POULAS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

Case No,
2019-CP-21-2804

Re: Refile this amended PCR-application to
include the issues named therein.

I made a scrivener's/clerical error, where
I left -21- out of the case No, 2019-CP-21-2804
Just to make sure it's entered correctly
and there's no discrepancyes will you please
refile this for me? I have corrected it
to add 21 within the number,

Thank you very much Mrs. O'Hara,
Please refile these four pages again for me, to
be safe,

Thanks

Respectfully Submitted: ~~9-26-2020~~

S/ James E. Hutchinson
James E. Hutchinson #2580093

Conviction and Sentence here, ~~LT~~, F6A-1125
Invalid, Case No, 990, wisacky Hwy,
2018-GS-21-1520 Bishopville, S.C. 29010
and
2018-GS-21-1523 Mailed out by U.S. Postal on 9-90-2020,

Alright, Ms. O'Hara I'm finally done on
the amendments, of PCR-applications;

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

James Edgar Hutchinson, #258003,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2019-CP-21-2808

RETURN
(Counsel Appointed)

2021 JAN -6 PM 1:19
DEPT. OF CORRECTIONS
COOP 3 08
FLORENCE COUNTY

FILED

In response to James Edgar Hutchinson's (Applicant) action for post-conviction relief (PCR) commenced October 4, 2019, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the January 2019 term of the Florence County Grand Jury for two counts of first degree burglary (2018-GS-21-1520; -1523). Applicant was represented by Assistant Public Defender Caroline Lawson. Deputy Solicitor John Jepertinger prosecuted the case.

On January 8, 2019, Applicant pleaded guilty pursuant a negotiated plea agreement before the Honorable Thomas A. Russo.¹ Judge Russo sentenced Applicant as negotiated to concurrent terms of twenty-six years' imprisonment. Applicant did not appeal.

II. Facts

On April 9, 2018, Applicant busted down the front door of Rita Pattillo's home while she was at work. (Plea Tr. 15-16). Applicant went into the home stole a television and remote control; however a larger television in Ms. Pattillo's living room was not stolen. (Plea Tr. 16).

¹ In exchange for Applicant's guilty plea, the State agreed to withdraw their motion for life without parole, made in front of Judge Russo on October 3, 2018.

That evening, Ms. Patillo's ex-husband came over and "jerry-rigged" a two-by-four against the front door so the front door could not be opened. (Plea Tr. 16). Then, on April 10, 2018, while Ms. Pattillo was again at work, Applicant busted down the back door of Ms. Pattillo's home and stole the remaining larger television in the living room. (Plea Tr. 16).

Law enforcement checked the local pawn shops for the televisions and found that Applicant pawned the television that was stolen on April 9, 2018, the same day he stole it. (Plea Tr. 17). Law enforcement then found that Applicant pawned the television that was stolen on April 10, 2018, to a different pawn shop the day he stole it. (Plea Tr. 17). Upon this information, law enforcement brought Applicant to the station and Applicant gave a full confession that he committed the two crimes. (Plea Tr. 17).

III. Current Application

Applicant timely commenced this PCR action on October 4, 2019. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. [Reason]

Applicant requests relief in the form of a new trial.

Attached herewith and incorporated herein are the Florence County Clerk of Court records regarding the subject conviction, Applicant's SCDC records, the plea transcript, and the records of this PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained

prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel's alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct

is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant’s mere speculation about what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. See *Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. Any Future Amendments and Invocation of Discovery

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been

appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VI. Any and All other Allegations

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

VII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claim of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

By: s/Michael D. Davidson
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

January 4, 2021

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

James E. Hutchinson, #258003

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2019-CP-21-2808

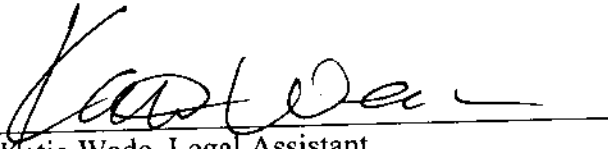
Certificate of Service by Mail

DO NOT WRITE IN THESE SPACES
2021 JAN -6 PM 1:49
FILED

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:

Steven Willard Fowler, Esquire
730 Main Street Unit # 237
North Myrtle Beach, SC 29582

DATED this 4th day of January, 2021.


Katie Wade, Legal Assistant
For Respondent

FORM 5

2019 CP 21-2808

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF

James Hutchinson, #

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

v.

State of South Carolina

APPLICATION FOR
RELIEF
FROM
PRISON
FOR
POST-CONVICTION
REVIEW
FLORENCE COUNTY, SC

2019 OCT 21 PM 2:46

FILED

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 Lee Correctional, 990 W. Sackville Hwy, Bishopville, SC
2. Name and location of Court which imposed sentence General Sessions 29010
3. Name(s) of co-defendant(s) (if any) 12th Circuit, Florence, S.C.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018-GS-21-01520 Burglary-16-11-311
 - (b) 2018-GS-21-01523 Burglary-16-11-311
 - (c) —
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1-8-2019-26 years
 - (b) 1-8-2019-26 years > concurrent

Revised 3/2003.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO - Counsel failed to
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) Counsel failed preserve issues for Appeal
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See attached Exhibit - A
for Details of Grounds
to support Ineffective
assistance of counsel
Claims Violating Constitutional Rights
and 1 - 2nd 11th Amendment, unlawful

- (a) _____
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): *see attached Exhibit-B*
 (a) _____ *for Details of Facts supporting*
 (b) _____ *Ineffective assistance of counsel*
 (c) _____ *claims and Constitutional violations*
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____
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?

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) _____ This PC-R application is the first time
 (b) _____ any of these Constitutional violations have
 been raised
 (c) _____ And counsel failed to file Direct appeal on any

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

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

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

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

i. Caroline Lawson
County - Complex
 ii. 180. N. Irby St, Room # 703
 iii. Florence, S.C. 29501

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

i. Guilty Plea
 ii. _____
 iii. _____

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

Vacated

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of

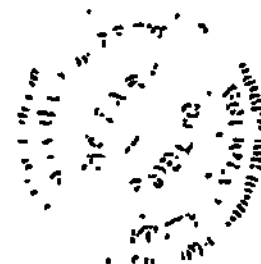
I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James C. Hutchinson

SWORN to and subscribed before me this 2nd
day of October, 2019.

[Signature] (L.S.)
Notary Public

My Commission Expires: May 17, 2021



FILED
2019 OCT -4 PM 2:46
SOUTH CAROLINA
CLERK OF COURT
FLORENCE COUNTY, SC

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

I, _____, 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.

James E. Hutchinson
Applicant

SWORN or affirmed to and subscribed before me this
2nd day of October, 2019.

Shane W. Allen
Notary Public

My Commission Expires: May 17, 2026



FILED
2019 OCT -4 PM 2:46
PO BOX 507
CLACKAMAS COUNTY, OR
CLACKAMAS COUNTY, OR

grounds 731

EXHIBIT - A Supporting Ineffective
Counsel claims

1) #10.

Ineffective assistance of counsel for failure to request evidentiary hearing to challenge suppressible statement that was obtained in violation of 5th-Fifth and 6th-Sixth Amendments after invocation of Right to Counsel under Due Process also protected under 14th-Fourteenth Amendment.

2) Ineffective assistance of counsel for failure to challenge the confession obtained in violation of 5th-Fifth Amendment invocation of right to remain silent that's protected under Due Process of 5th-Fifth and 14th-Fourteenth Amendment. Exercised right on date of arrest also, and the next morning.

3) Ineffective assistance of counsel for failure to challenge statement obtained in violation of 5th-Fifth and 14th-Fourteenth Amendments to provide Due Process to "recite (Miranda) warnings" to petitioner during process of eliciting an involuntary and unintelligent waiver and statement while in a custodial setting.

4) Ineffective assistance of counsel in failure to request an evidentiary hearing for evidence that are suppressable for being in violation of 5th-Fifth and 14th-Fourteenth Due Process Clause by interrogation that was induced by the use of Drugs administered through Jail Nurse and to have an Expert Witness presented to prove effects of the medications that caused impaired judgement along with other side effects overbearing ones "there will" to choose against self-incriminating statements to Law Enforcement (adversary) after invocation of 5th- and 6th Amendment Rights prior to being administered and after medications were administered before taking effect.

5) Ineffective assistance of Counsel for failing to inform me the nature of all Constitutional Rights being waived, or filing a Direct Appeal, not informing of this right as well.

6) Ineffective assistance of counsel by not allowing me to view any of the evidence, witnesses, statements, audio, or video surveillance, restricting petitioner from being able to make a knowingly and intelligent decision by giving erroneous legal advice causing an unintelligent guilty plea.

7) Ineffective assistance of counsel for failure to present any mitigating evidence relevant and reasonably at issue pertaining to petitioner's mental health and emotional status for purposes of recommendation of mercy from a jury or court for possible lighter sentence. Also requested counsel to send me off for psychiatric evaluation, but was refused.

Page 5 page 3

EXHIBIT - D

supplementing EXHIBIT - A - CLAIMS

A) Counsel was informed by petitioner of event at law-Enforcement center where I asked about contacting counsel. I was given a form to fill out for appointment of counsel that states Right to Counsel. also asked repeatedly of correctional officers to get place to call home and to have outside counsel (private counsel) contacted but was denied.

B) Counsel was informed that I (Petitioner) invoked "Right to Remain Silent" when investigator approached Holding-cell at Jail where I stated "Lawyer" through glass and that I did not want to talk. He left, then came back and failed to scrupulously honor my Right to Remain Silent by initiating further questioning thus violating my 5th-Fifth, 14th-fourteenth and 6th-Sixth Amendment Right to Counsel and Right to Remain Silent. I also exercised Right to Silence while being booked into Jail when arresting officer tried to question me after arrest.

C) after I was awakened by correctional officer, I was pulled out of holding cell and denied, after requesting to use phone to call lawyer and home. I was told to go talk to that man (investigator). Investigator stated "that won't help you, you're already in enough trouble, talking to me won't hurt you". This had taken place about an hour after being administered medications. He never recited any Miranda warnings.

D) Counsel was informed that I wanted her to file a pre-trial motion to challenge evidence of confession. I was approached by correctional officer and asked "If I was okay" (you look sick). I stated "that my stomach was hurting from the jailhouse breakfast I ate earlier". I was taken to medical and administered what was purportedly suppose to be for stomach cramps which knocked me out back at holding cell after eating a bag-lunch and then approached by investigator. that I refused to talk to and stated "Lawyer" through glass where I then fell into a deep hard sleep. Later, after a study of these drugs, it was learned that they are for 1) Anxiety & mood-stabilizers that relieve "tension", "anxiety" which breaks down your resistance and opposition of harmful dangers (such as your adversaries) of law-Enforcement thus, impairing your judgement making easily susceptible to suggestion by use of these medications that are also classified as sedative/Hypnotics that are effectively being used by law-Enforcement to elicit "hypnotically induced testimony" and by way of "Undue Influence" on law-enforcement's part to induce incriminating, and involuntary statements in violation of 5th-Fifth and 14th-Fourteenth Amendments against Due Process Clause and Right to make a "Rational Intellect (free will choice). Unclouded decision pertaining to any waiver of Constitutional Rights.

See — E.F. and G Issues other side →

--- FROM OTHER SIDE --- E. F. and G.

E.) Counsel failed to inform me of any and all constitutional rights being waived. Had counsel done so I would have been able to make a knowingly and intelligent decision in taking or rejecting plea agreement or proceeding to trial. nor, did counsel file any type Sentence Reconsideration or Direct appeal on my behalf.

i.) Counsel failed to let me (petitioner) view any of the Evidence in my Rule #5, witnesses, video, audio, surveillance, thus being unable to make an intelligent and knowingly decision to challenge evidence or take plea agreement. Counsel provided me with erroneous legal advice and causing to enter an unintelligent guilty plea.

ii.) Counsel was informed that I wanted her to present my mental health records which reveal several conditions that were relevant and reasonable issues as mitigating evidence enabling a recommendation of mercy from a judge or jury for possibility of a lighter sentence. I also requested to be sent off for psychiatric evaluation but was refused by counsel.

For the aforementioned facts, counsel provided deficient performance, thus causing prejudice on behalf of client.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

James E Hutchinson,
Plaintiff(s),
-vs-

South Carolina State Of,
Defendant(s).

2020 OCT 19 PM 3:37

DORIS POULOS O'HARA

IN THE COURT OF COMMON PLEAS
12th JUDICIAL CIRCUIT
CASE NO.: 2019CP2102808
APPOINTMENT OF COUNSEL

☒ ORDER

☐ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- ☒ Post-Conviction Relief (PCR) / habeas case ☐ Adoption ☐ Juvenile
☐ SVP case ☐ Custody and/or Visitation ☐ Abuse and Neglect
☐ Minor Name Change ☐ Other:

It appears James E Hutchinson, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☒ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
☐ court appointed counsel has obtained, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
☐ Other:

Therefore, it is ordered that Steve Fowler hereby is appointed as (Select one.)

☒ Counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that, Esquire, is hereby appointed as second counsel in this capital PCR case.

The Clerk of Court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED
October __, 2020

☒ Circuit Judge

☐ Clerk of Court

Plaintiff Attorney:

Steve Fowler
730 Main Street, Unit #237
North Myrtle Beach, SC 29582

Plaintiff:

James E. Hutchinson, #258003
Lee Correctional Institution
990 Wisacky Hwy
Bishopville SC 29010

Defendant Attorney:

Samuel Leonard Key
Rembert C. Dennis Building
1060 Assembly Street
Columbia, SC 29201

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

FILED

2018 AUG 23 PM 3:01

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

DOCKET NO. 2018-GS-21-01520

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

AUGUST TERM 2018

THE STATE

vs.

JAMES EDGAR HUTCHINSON

Indictment for

BURGLARY FIRST DEGREE

WITNESSES

James Allen III Florence County Sheriff

John C Jeperfinger

ARREST WARRANT NUMBER

2018A2110100307

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

8-13-18

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on AUGUST 23, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That James Edgar Hutchinson did in Florence County on or about April 9, 2018, willfully and unlawfully enter the dwelling of Rita Patillo located at [REDACTED] East Old Marion Highway, without consent and with the intent to commit a crime therein, and after having two prior convictions for burglary, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Florence
STATE VS.

James Edgar Hutchinson

AKA:

Race: White Sex: M Age: 47

DOB: SS#

Address: E Old Marion Hwy Lot

City, State, Zip: Florence, SC 29506-9080

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-21-01520

A/W#: 2018A2110100307

Date of Offense: 4/9/2018

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 26 months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (04/2018)

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐May serve W/E beginning ☐Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

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

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE) 2018-GS-21-1520
))
STATE))
)) INTENT TO SEEK LIFE WITHOUT PAROLE
v.))
JAMES EDGAR HUTCHINSON,))
Defendant))

2018 DEC -3 PM 1:28
DORIS POULOS O'HARA
Clerk of Court
FLORENCE COUNTY, SC

FILED

Now comes the State, by and through the undersigned and hereby provides this written notice to both the defendant and his counsel, Caroline Lawson, in open court, that pursuant to Section 17-25-45 of the Code of Laws of South Carolina (1976, as amended), that the State will seek to have a sentence of life imposed upon this defendant should he be convicted of this Burglary First Degree charge, now pending.

Burglary First Degree is a most serious offense. The defendant was previously convicted of Burglary First Degree (Two Counts) on December 5, 2002. Should he be convicted of this charge, the State will seek imposition of a life sentence without the possibility of parole for this most serious offense

Respectfully submitted,


John C. Jeperinger

Deputy Solicitor, Twelfth Judicial Circuit

December 3, 2018

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

STATE OF SOUTH CAROLINA)

v.)

James Hutchinson,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
OF THE TWELFTH JUDICIAL CIRCUITNOTICE OF MOTION AND
MOTION FOR BONDWarrant No.: 2018A2110100306, 2018A2110100307,
2018A2110200338, 2018A2110200343Charge: Burglary (after 1985)-1st degree, Burglary
(after 1985)-1st degree, Burglary (Non-Violent)-2nd
degree, Burglary (Non-Violent)-2nd degree

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney Defendant
herewith moves before this Court for an Order setting bond for Defendant on the following grounds:

1. Defendant is entitled to a reasonable bond to insure his appearance in Court.
2. Article I, Section 15 of the South Carolina Constitution mandates that a Defendant must be released on his own recognizance except when charged with a capital crime. Section 17-15-10, South Carolina Code of Laws, 1976, as amended, states that a Defendant shall be released unless the Court makes an explicit finding of fact that justifies a surety bond. Section 17-15-15, South Carolina Code of Laws, 1976, as amended, allows for the bond to be such that the Defendant may post ten (10%) per cent of this bond.
3. Defendant has been incarcerated without bond being set at Florence County Detention Center since April 21, 2018.

Respectfully submitted,

*Caroline B. Lawson*Caroline B. Lawson
Attorney for Defendant
180 N. Irby Street, Suite 704
Florence, SC 29501
843-616-0934DORIS POULOS O'HARA
CLERK & GS
FLORENCE COUNTY, SCJune B 2018

2018 JUN 13 PM 12:25

FILED

ARREST WARRANT

2018A2110100307

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

THE STATE

2108-04-0223

against

James Edgar Hutchinson

Address: 5308 E Old Marion Hwy Lot 1

Florence, SC 29506-9080

Phone: SSN:
 Sex: M Race: W Height: 5 9 Weight: 165DL State: SC DL #:
 DOB:
 Agency OR #: SC0210000

Prosecuting Agency: Florence County Sheriff

Prosecuting Officer: James Allen, III - S00244

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

degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant James Hutchinson

on 4/19/18

Signature of Law Enforcement Officer

RETURN WARRANT TO:

General Sessions Court
181 North Irby Street, Suite 1100
Florence, SC 29501

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

Personally appeared before me the affiant James Allen, III

being duly sworn deposes and says that defendant James Edgar Hutchinson

did within this county and state on or about 4/9/2018

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

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

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

On or about 4/9/2018 the defendant did commit the crime of Burglary 1st Degree by entering the victim's residence during the

daytime without permission. Once inside the defendant then removed a television belonging to the victim and sold it to a pawn shop

in a nearby municipality. The defendant was identified through records obtained from the pawn shop. The defendant has two prior

convictions for burglary. This incident occurred at E. Old Marion Hwy. Florence, located in Florence County. This case was

investigated by the FCSO. Case#2018-04-0223

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Florence

Affiant's Address 6719 Friendfield Road

Effingham, SC 29541-

Affiant's Telephone (843)665-2121

ARREST WARRANT

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

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

on or about 4/9/2018 defendant James Edgar Hutchinson

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

☒ County/ ☐ Municipality of Florence) as set forth below:

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

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or

her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as

soon thereafter as is practicable

Sworn to and subscribed before me

on 4/18/2018

Signature of Issuing Judge

Tommy G. Mouroumas

Judge Code: 7232

Judge's Address 180 North Irby Street (Msc-W)

Florence, SC 29501-3456

Judge's Telephone (843)665-0031

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2008
SCCA 318

BAIL set by

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, not pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS



STATE OF SOUTH CAROLINA

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF FLORENCE

) NOTICE OF DATES AND TIMES OF
) INITIAL AND DOCKET
) APPEARANCES

State of South Carolina

v.

James Edgar Hutchinson

Case Number(s): 2018A2110100306 2018A2110100307; 2018A2110200338; 2018A2110200343

You are a defendant in the above criminal case(s). You are required to appear at the City-County Complex, 11th Floor Court Room, 180 North Irby Street, Florence, South Carolina.

These dates and times CANNOT be changed for any reason.

Your INITIAL APPEARANCE is set for 7/18/2018 @ 9:00AM.
Your DOCKET APPEARANCE is set for 8/16/2018 @ 9:00AM.

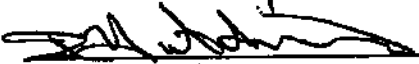
FAILURE TO APPEAR WILL RESULT IN YOUR ARREST

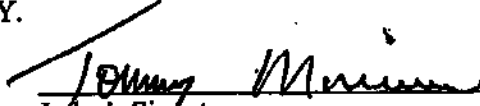
You MUST be present at BOTH THE INITIAL APPEARANCE AND THE DOCKET APPEARANCE. If you FAIL TO APPEAR for your INITIAL APPEARANCE OR DOCKET APPEARANCE, a Bench Warrant will be issued for your ARREST; you will be placed in Jail and may be held there until the trial of your case.

THE DEFENDANT WAS GIVEN A COPY OF AFFIDAVIT OF INDIGENCY AND APPLICATION FOR COUNSEL AT BONDHEARING! IF YOU ARE UNABLE TO MAKE BAIL, PLEASE CALL THE PUBLIC DEFENDER'S OFFICE AT 843-665-3055 WITHIN 5 BUSINESS DAYS OF YOUR ARREST.

FAILURE TO CONTACT YOUR ATTORNEY MAY RESULT IN YOUR BOND BEING REVOKED, BEING HELD IN CONTEMPT OF COURT, FINES AND/OR JAIL.

I HAVE READ THIS FORM OR HAVE HAD IT READ TO ME. I UNDERSTAND THESE INSTRUCTIONS AND I HAVE BEEN GIVEN A COPY.


Defendant's Signature


Judge's Signature

4-21-2016
Date

4/21/18
Date

2018 MAY - 1 AM @ 38
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

JAMES EDGAR HUTCHINSON

2018A2110100306

2018A2110100307

2018A2110200338

2018A2110200343

Name of Defendant

Warrant/Ticket No.

County/Municipality of Florence

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

Trial Court:

7/18/2018 @ 9:00am
General Sessions Court

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

Burglary / Burglary (Non-Violent) - Second degree

Burglary / Burglary (Non-Violent) - Second degree

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

Directions: Magistrates and municipal court judges must use this checklist for ALL GENERAL SESSIONS and for ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND IS SET BY A JUDGE. Magistrates and municipal judges must also use the Checklist on those offenses, for which bond cannot be set by a summary court judge ("non-bailable"), that are GENERAL SESSIONS OFFENSES IN WHICH THEY ARE CONDUCTING FIRST APPEARANCES. The judge shall attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections. Defendant must initial where indicated, sign, and be provided a completed copy of this form.

☐ BAIL PROCEEDING/☒ FIRST APPEARANCE BEFORE A MAGISTRATE OR MUNICIPAL JUDGE

(OFFENSES THAT ARE NON-BAILABLE BY A SUMMARY COURT JUDGE)

1. Form used at bail proceeding ☐ Bond Form I (personal recognizance) ☐ Bond Form II (surety, cash, percentage)

☒ None (Non-Bailable Offense) because ☐ charge carries penalty of life or death; or
☐ defendant charged with violent offense while bonded out on violent offense

2. JEH (Def. Initials) For cases in which bond was set, defendant was informed:

- ☒ a. Warrant for arrest may be issued for violation of any condition of bail bond order.
- ☒ b. His right and obligation to be present at trial and that trial may proceed in his absence if he fails to attend.
- ☒ c. Failure to appear in court as required may result in institution of additional criminal charges. S.C. Code Ann. § 17-15-90 (2014). Failure to appear in connection with a felony, or while awaiting sentence after conviction, carries an additional penalty of not more than \$5,000 or imprisonment for not more than 5 years, or both. Failure to appear in connection with a charge for which the maximum possible sentence is at least one year, carries an additional penalty of not more than \$1,000 or imprisonment for not more than one year, or both. Failure to appear in court as required by the charges specified above may result in the issuance of a warrant for defendant's arrest, as well as loss of any posted bond.

3. JEH (Def. Initials) For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:

8C:8 MW 1-100 0102

FILED

☒ Orally ☒ In writing {NOTE: Defendant must be informed of right both orally and in writing.}

☒ 4. SM (Def. Initials) Defendant was informed of the right to trial by jury.

☒ 5. SM (Def. Initials) In all general sessions cases, in all domestic violence cases, and in all magistrate or municipal cases in which the defendant is subject to a prison sentence, defendant was informed of the following:

☒ a. Charges against defendant and nature of the charges.

☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel.

☒ c. Defendant was informed orally and provided a copy of this form advising him of his right to obtain court-appointed counsel if indigent (must meet guidelines set forth in Rule 602(b), SCACR) and instructions on how to obtain court-appointed counsel. In order to apply for court-appointed counsel, defendant is required to appear before Public Defender Office Room - 703 located at Florence County Complex 180 N. Irby St. Florence, SC for indigency screening. Defendant is responsible for a statutory fee of \$40.00 for indigency screening unless that fee is waived or reduced pursuant to §17-3-30(B).

☐ 6. SM (Def. Initials) In all domestic violence cases and any case where defendant is subject to an Order of Protection or Restraining Order, defendant signed and was provided a document explaining that entering the grounds or property of a domestic violence shelter in which the person's household member resides constitutes an additional misdemeanor charge and, if in possession of a dangerous weapon, an additional felony charge.

☒ 7. If the charges that have been brought against you are discharged, dismissed, or nolle prossed or if you are found not guilty, you may have your record expunged.

☒ 8. Defendant is required to keep court notified of any change of address until final disposition of charge(s).

Appearance or
Hearing Date:

4/21/2018

Johnny M. Murren

Judge's Signature

[Signature]

Defendant's Signature

☐ Defendant refused to sign.

INFORMATION REGARDING YOUR RIGHTS

You have been charged with a criminal offense and if you are found guilty, you are facing serious consequences which may include payment of a fine, loss of your driver's license, and the possibility of a jail sentence. In addition, you may face increased penalties for later convictions, the loss of your right to possess firearms and/or ammunition, and your immigration status will be affected. You have important constitutional rights, including the right to representation by an attorney, but you may lose these rights or waive them if you do not act to protect these rights.

You have the right to hire an attorney to represent you in every case. If you cannot afford an attorney, you may be eligible for a free attorney. If you want a determination made as to whether you are qualified for a free lawyer, then it is your obligation to be screened at the location identified in Paragraph 5(c) of the Bond Checklist Form that you received after your Bond Hearing. If you do not hire an attorney or go to be screened, then you may be found to have waived your right to an attorney at your trial.

You also have the right to represent yourself. However, you should be aware that self-representation can be dangerous. For example, there may be certain factual or legal defenses to your charge that you are not aware of or legal issues related to the conduct of your trial or guilty plea that an attorney would know how to preserve for an appeal. If you exercise your right to proceed without a lawyer, then you are responsible for complying with all applicable rules of court, including rules of evidence, procedural rules, and proper behavior before the Judge and/or Jury.

If convicted on the charge(s) filed against you and ordered to pay a fine, you may request a reasonable scheduled payment plan to pay the fine.

It is your obligation to keep up with your trial date and to obtain an attorney, either by hiring one or by being screened and found eligible for a court-appointed attorney prior to your trial date. If you do not appear at your trial with your attorney, you may be deemed to have waived your right to have an attorney represent you.

You are required to keep the court notified of any change of address until the completion of the case.

FLORENCE COUNTY, SC
Circuit Court
2018 MAY 1 - 11 AM 8:30
Signature of Defendant: [Signature]
☐ Defendant Refused to Sign

SCCA 507B (11/2017)

FILED

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

FILED
2020 SEP 14 PM 3:53
DORIS POULDS CHARRA
CLERK OF COURT
FLORENCE COUNTY, SC

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence

Plaintiff.

CASE NO:

2019-CF-21-2806

**MOTION TO AMEND PCR
APPLICATION TO INCLUDE
ADDITIONAL ISSUES TO
CONFIRM TO THE EVIDENCE**

Honorable Twelfth Judicial Circuit

May it please the court, now comes the Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully requests to amend PCR Application to contain additional issues to conform to the evidence pursuant to South Carolina Rules of Civil Procedure Rule 15(a) amendments and Rule 15(b) to conform to the evidence, (c) Relation back of Amendments, and (d) supplemental pleadings, SCRPC Rule 15.

Respect Fully
Submitted:
Sept, 3rd, 2020

James E. Hutchinson

CC: Clerk of Court
Attorney
Attorney General
File

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

FILED
2020 SEP 14 PM 3:55
DORIS POULDS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence

Plaintiff.

CASE NO:

2019-CP-2808

NOTICE OF INTENT TO
AMEND PCR APPLICATION

Honorable Twelfth Judicial Circuit

Now comes Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully submits this Notice of Intent to Amend PCR Application to include additional issues pertaining to the above mentioned case, pursuant to South Carolina Rules of Civil Procedures. Rule 15 Amended and supplemental proceedings.

Prepared and placed on this 3rd day of September 2020 in the U.S. Postal Mailbox Service at Lee Correctional Institution by Petitioner James E. Hutchinson.

Respectfully Submitted, Sept. 3rd 2020

James E. Hutchinson

James E. Hutchinson, #258003
Lee Correctional Institution F6A- 1125
990 Wisacky Highway
Bishopville, South Carolina 29010

Cc: Clerk of Court
Attorney

Attorney General
File

Hutchinson's

The Court errored depriving of his liberty
and the best way to protect his autonomy rights,
Petitioner had a right to make an informed choice,
Issues Due Process violated.

Case No, 2019-CP-2808

Indictment No, 2018-GS-21-152 and 1523

An Invalid Guilty Plea

The Conviction and sentence
not valid.

The Court Errored by not informing
Petitioner Hutchinson that the State was
still required to prove beyond a reasonable
doubt the essential element of prior-
convictions sentence which it did not
do to support enhancement under the
statute of Burglary first-degree 16-11-311(a)(2)
rendering the plea, conviction and sentence
invalid. Because the State did not prove
beyond a reasonable doubt its case-in-chief,
Even though Petitioner was entering a plea,

The Court errored by not informing Petitioner
Hutchinson that the State was required to
prove a confession is valid before it can be
use at trial beyond a reasonable doubt and that
burden is on the State to prove it is voluntary.

The 2002 case no, 2002-GS-21-1670
is also invalid for the factual basis does not
support the plea in violation of my due process
and a "Miscarriage of Justice".

also that I James E. Hutchinson am also being
prejudiced by that invalid conviction along with a
"1989" and "1995" conviction both unconstitutionally gained.

4

PROOF OF SERVICE

SERVED 9-3-2020 PLACE Lee, Corr. Inst.
 SERVED ON (PRINT NAME) Clerk of Court MANNER OF SERVICE
Florence, S.C. Court of Common Pleas - Case No.
 SERVED BY (PRINT NAME) #256003 TITLE 2019-CP-21-2608
James Edgar Hutchinson Petitioner

DECLARATION OF SERVER

I certify that the following information contained in the Proof of Service is true and correct.

Executed on 9-3-2020 James E. Hutchinson
 SIGNATURE OF SERVER
Lee, Corr. Inst. F6A-1125
 ADDRESS OF SERVER
990, Wisacky Hwy,
Bishopville, SC 29010

SC CA 253 (102011)

2020 SEP 14 PM 3:55
 DORIS POULOS O'HARA
 CCP & GS
 FLORENCE COUNTY, SC

FILED

Ms. Doris Poulas O'Hara
Clerk of Court
Judicial Center
Suite 1100
191 N. Tryon St.
Flo, S.C. 29501

Case No. 2019-CP-2808

FILED
2020 SEP 14 PM 3:55
DORIS POULAS O'HARA
CLERK OF COURT
FLORENCE COUNTY, SC

Dear Mrs. O'Hara,

Please forgive my handwriting.
I ran out of plain paper so I
had to resort to lined paper.
This will be my last time on
the amendments. Have not had
access to the law library for over
2-months.

Been locked-down 23 - and I due
to the pandemic.

I won't bother you anymore, for
right now.

Thank you for your help in
my legal matters,

Will you please enter this into the
record and send me back a copy
as well?

Thanks,

Respectfully Submitted on
this 3rd day of September 2020,

James E. Hutchinson #258023

Lee Corr. Inst. F6A-1125

990 Wisacky Hwy.

Bishopville, S.C. 29010

File
Clerk of Court
See the
following pages

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 09/16/20

C0639

HUTCHINSON, JAMES EDGAR FBI # 985720JA5 SID# SC00642709 SCDC # 00258003

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... LEE CORR INST

SECURITY/CUST.: 2 ADULT-STRAIGHT SENTENCE

CURR INCARC SENT...: 26 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES SEPREG

SOCIAL SECURITY #...

DORM.....: F6A1125B

RACE....:W SEX...:M

PROJ MAXOUT DATE: 05/19/2040

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: MATERIAL HANDLING EQ

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 2F5 EBC LEVEL:

ASSIGNMENT...: PRISON INDUSTR

CURRENT PROGRAM...: CHARACTER-BASED PROGRAMS

AGE...: 49 DATE OF BIRTH...:

PREVIOUS NUMBERS:

Y00161301

00217976

CURRENT OFFENSES	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START V/NV	CATEGORY
BURGLARY-1ST DEGREE	26 0 0	FLORENCE	4/19/2018 V	4
BURGLARY-1ST DEGREE	26 0 0	FLORENCE	4/19/2018 V	4
PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START V/NV	CATEGORY
GRAND LARCENY	5 0 0	MARION	12/ 5/20 2 N	2
BURGLARY-2ND DEG/NON-VIO	2 0 0	FLORENCE	6/10/20 2 N	3
BURGLARY-1ST DEGREE	15 0 0	FLORENCE	6/10/20 2 V	4
GRAND LARCENY	5 0 0	FLORENCE	3/19/1999 N	2
BURGLARY-2ND DEG/NON-VIO	6 0 0	FLORENCE	3/19/1999 N	3

PRIOR COMMITMENTS OVER 90 DAYS:

3/27/95 *BURGLARY-2ND DEG/NON-VIOL

6 YRS 0 MOS 0 DYS

3/14/89 *BURGLARY-2ND DEG/NON-VIOL

4 YRS 0 MOS 0 DYS

DETAINEES (HOLD, WANTED, NOTIFY):

GRAND LARC>\$2,000<10,000

WANTED

JUDGE C GRAHAM

CATEG: 2

NO DETAINEES

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

6/ 2/14 POSSESSION OF CONTRABAND CONVICTED ADMIN

3/25/11 POSSESSION OF CONTRABAND CONVICTED ADMIN

12/ 4/ 9 I/M UNDER INFLUENCE/POSS CONVICTED MAJOR

12/19/ 5 POSSESSION OF CONTRABAND CONVICTED MAJOR

12/14/ 5 POSSESSION OF CONTRABAND DROPPED MAJOR

3/18/ 4 USE, POSS NARC, MARIJ, UNAU CONVICTED MAJOR

1/28/ 3 REFUSING TO WORK OTHER

HISTORY OF MOVEMENTS:

3/11/19 LEE INCARCERATED ADMINISTRATIVE

1/10/19 KIRKLAND INCARCERATED NEW ADMISSION

2/26/17 UNK RELEASE EXPIRATION OF SENTENCE

2/27/15 FLORENCE CO COMMUNITY SUPERVISIO COMMUNITY SUPERVISION

1/25/12 WATEREE RIVER INCARCERATED ADMINISTRATIVE

5/13/11 TURBEVILLE INCARCERATED ADMINISTRATIVE

5/13/11 EVANS INCARCERATED MEDICAL

2/25/10 TURBEVILLE INCARCERATED ADMINISTRATIVE

12/ 4/ 9 KIRKLAND INCARCERATED DISCIPLINARY

7/31/ 7 DILLON CO PN DF INCARCERATED ADMINISTRATIVE

10/ 3/ 6 MACDOUGALL INCARCERATED ADMINISTRATIVE

10/ 2/ 6

KIRKLAND

INCARCERATED

RETURN FROM COURT

HUTCHINSON, JAMES EDGAR FBI # 985720JA5 SID# SC00642709 SCDC # 00258003 (CONT

9/29/ 6	FLORENCE CO	AUTH ABSENCE (AWL)	TO COURT
9/28/ 6	KIRKLAND	INCARCERATED	ADMINISTRATIVE
7/12/ 6	MACDOUGALL	INCARCERATED	ADMINISTRATIVE
12/13/ 5	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
3/24/ 5	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
2/11/ 4	EVANS	INCARCERATED	MEDICAL
2/11/ 4	FLORENCE CO	AUTH ABSENCE (AWL)	FUNERAL/DEATH BED VISIT
1/ 3/ 3	EVANS	INCARCERATED	ADMINISTRATIVE
12/ 9/ 2	KIRKLAND	INCARCERATED	NEW SENT W/O PR/CS/SF REV
2/22/ 2	FLORENCE CO	PROBATION	RELEASED TO PROBATION
5/17/ 1	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
5/ 3/ 1	KIRKLAND	INCARCERATED	ADMINISTRATIVE
9/13/99	MARION CO PN DF	INCARCERATED	ADMINISTRATIVE
6/ 9/99	TYGER RIVER UPF	INCARCERATED	ADMINISTRATIVE
5/20/99	PERRY	INCARCERATED	ADMINISTRATIVE
5/ 3/99	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
MATERIAL HANDLING BQ	09/30/19	0/ 0/ 0		2F5
GENERAL WORKER	03/15/19	9/29/19	LATERAL TRANSFER	2F5
LIVESTOCK CARETAKER	02/19/14	2/27/15	INSTIT TRANSFER	2F5
CONSTRUCTION WORKER	01/30/12	2/18/14	LATERAL TRANSFER	2F5
HORTICULTURIST (GRND	06/15/11	1/25/12	INSTIT TRANSFER	2F5
WARDKEEPER ASSISTANT	05/12/11	6/14/11	INMATE REQUEST	2F5
SANITATION WORKER PL	03/03/11	5/11/11	MEDICAL	2F5
FOOD SERVICE AIDE	01/28/11	3/ 2/11	INMATE REQUEST	2F5
MECHANIC	10/22/10	1/27/11	INMATE REQUEST	2F5
PAINTER HELPER	06/12/10	10/21/10	PROMOTION	2F5
FOOD SERVICE AIDE	06/11/10	6/11/10	INMATE REQUEST	2F5
FOOD SERVICE AIDE	02/26/10	6/10/10	MI ELIGIBLE FOR LEVEL 2	3F5
DESIGNATED FACILITY	08/01/07	12/ 4/ 9	DISCIPLINARY/LOCK-UP	2F7
MECHANIC HELPER	03/23/07	7/31/ 7	INSTIT TRANSFER	2F5
MECHANIC HELPER	10/10/06	3/22/ 7	MI ELIGIBLE FOR LEVEL 2	3F5
FOOD SERVICE AIDE	10/05/06	10/ 9/ 6	INMATE REQUEST	3F5
FOOD SERVICE AIDE	07/13/06	9/28/ 6	INSTIT TRANSFER	3F5
TEACHER ASSISTANT	04/12/06	7/10/ 6	PLACED IN ST/SP CUSTODY	3F5
FOOD SERVICE AIDE	12/14/05	3/22/ 6	PLACED IN ST/SP CUSTODY	3F5
COOK	08/04/05	12/13/ 5	INSTIT TRANSFER	3F7
FOOD SERVICE AIDE	03/29/05	8/ 3/ 5	PROMOTION	3F7
HORTICULTURE TRAINEE	03/22/05	3/24/ 5	INSTIT TRANSFER	3F5
CUSTODIAL WORKER	12/09/04	3/21/ 5	INMATE REQUEST	3F5
FOOD SERVICE AIDE	10/06/03	4/ 1/ 4	PLACED IN ST/SP CUSTODY	2F5
TEACHER ASSISTANT	07/11/03	10/ 5/ 3	LATERAL TRANSFER	2F5
FOOD SERVICE AIDE	01/06/03	7/10/ 3	LATERAL TRANSFER	2F5
DAIRY HELPER	06/01/01	2/22/ 2	RELEASED/PAROLED	2F7
DAIRY HELPER	05/31/01	5/31/ 1	LATERAL TRANSFER	2F5
DESIGNATED FACILITY	08/25/00	5/ 3/ 1	INSTIT TRANSFER	2F5
DESIGNATED FACILITY	02/01/00	8/24/ 0	PROMOTION	2F7
DESIGNATED FACILITY	09/14/99	1/31/ 0	PROMOTION	2F5
WARDKEEPER ASSISTANT	06/10/99	9/13/99	INSTIT TRANSFER	2F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	10/06/03	4/ 1/ 4	PLACED IN ST/SP CUSTODY
BONUS 4-7 HRS/WK	10/09/01	12/13/ 1	INMATE REQUEST
BONUS 4-7 HRS/WK	05/30/01	10/ 8/ 1	COMPLETED EDUC PROGRAM
BONUS 15 OR MORE	06/22/99	9/13/99	INSTIT TRANSFER

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Florence

VS.

James Edgar Hutchinson

AKA:

Race: White Sex: M Age: 47

DOB: [REDACTED] SS#: [REDACTED]

City, State, Zip: Florence, SC 29506-9080

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

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

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

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-21-01520

A/W#: 2018A2110100307

Date of Offense: 4/9/2018

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

in violation of § 16-11-0311

of the S.C. Code of Laws, bearing CDR Code # 0079

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

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

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

ATTEST:

[Signature] 9826
Solicitor[Signature]
SC Bar#[Signature]
Defendant[Signature]
Attorney for Defendant[Signature]
SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

26 years or

☐

under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

pmts. of \$

beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel.

§Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

1-8-2019

STATE OF SOUTH CAROLINA

COUNTY OF Florence
 STATE VS.
James Edgar Hutchinson

AKA:

Race: White Sex: M Age: 47DOB: [REDACTED] SS#: [REDACTED]Address: 5308 E Old Marion Hwy Lot 1City/State/Zip: Florence, SC 29506-9080DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree (15,1,1e)In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

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

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

ATTEST:

John J. [Signature] 9826 [Signature] Candice B. [Signature] 102296
 Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 26 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2018-65-21-1520
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.

Credit for 263 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.3 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$

3% to County (If paid in installments) \$ 3.25

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-21-01523A/W#: 2018A2110100306Date of Offense: 4/10/2018S.C. Code § : 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

_____ days/hours Public Service/Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge [Signature]Judge Code: 2141Sentence Date: 1-8-2019

CLERK OF COURT
 FLORENCE COUNTY, S.C.
 CERTIFIED - A TRUE COPY

ReFile ~~to~~ 9-26-20²⁰ FILED

To: "Clerk of Court"

2020 OCT 22 PM 1:01

Doris Paulas O'Hara

DORIS PAULAS O'HARA

Judicial Center

CCCP & OS

FLORENCE COUNTY, SC

Suite - 1100

Case No. 2019-CP-21-2804

141 North Tryon St.

Florence, S.C. 29501

Re: ReFile this amended PCR-application to include the issues named therein.

I made a scrivener's/clerical error, where I left -21- out of the case no. 2019-CP-21-2804

Just to make sure it's entered correctly and there's no discrepancies will you please re-file this for me? I have corrected it to add 21 within the number.

Thank you very much Mrs. O'Hara.

Please refile these four pages again for me, to be safe.

Thanks

Respectfully Submitted 9/26/2020

S. James E. Hutchinson

James E. Hutchinson #254003

Conviction and Sentence have ~~to~~ I, F6A-1125

Invalid Case No. 990. Wisacky Hwy.

2018-GS-21-1520

Bishopville, S.C. 29010

2018-GS-21-1523

Mailed out by U.S. Postal on 9-90-2020.

Alright, Ms. O'Hara I'm finally done on the amendments, of PCR-applications;

Refile Plea
9-26-2020

CERTIFIED: A TRUE COPY
Handwritten Signature
 CLERK OF COURT, C.P. & G.S.
 FLORENCE COUNTY, S.C.

PROOF OF SERVICE

SERVED DATE *9-3-2020* PLACE *Lee, Corr. Inst.*
 SERVED ON (PRINT NAME) *Clerk of Court* MANNER OF SERVICE
Florence S.C. Court of Common Pleas - Case No.
 SERVED BY (PRINT NAME) *#256003* TITLE *2019-CP-21-2808*
James Edgar Hutchinson *Petitioner*

I certify that the following information contained in the Proof of Service is true and correct.

Executed on *9-3-2020* *James E. Hutchinson*
 SIGNATURE OF SERVER
Lee, Corr. Inst. F6A1125
 ADDRESS OF SERVER
990, Wisacky Hwy,
Bishopville, SC, 29010

*Mailed out through US,
 Postal services at Lee
 Corr. Inst on 9-30-2020*

SCCA 251 (102011)

Case No. 2019-CP-21-2808

*Please resubmit
 and file these 27-pages
 again for my thanks
 Mrs. Ohara*

FILED
 2020 SEP 14 PM 3:55
 DORIS POLLOS O'HARA
 CCJP & GS
 FLORENCE COUNTY, SC

*Respectfully
 resubmitted on this 26th
 day of September 2020*

*Conviction and Sentence
 Invalid Case No,
 2018-GS-21-1520
 and
 2018-GS-21-1523*
James E. Hutchinson

Refile Plea
9-26-2020

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

FILED
200 SEP 19 PM 3:55
DORIS POULOS CHARRA
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
JAMES E. HUTCHINSON
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence

Plaintiff.

CASE NO:

2019-CP-21-2808

Fundamental Error
MOTION TO AMEND PCR
APPLICATION TO INCLUDE
ADDITIONAL ISSUES TO
CONFIRM TO THE EVIDENCE
Conviction and Sentence Invalid.
Honorable Twelfth Judicial Circuit

I am being unlawfully confined and sentenced as a "Recidivist" offender, in violation of the U.S. and S.C. Constitution, and the laws of this state. May it please the court, now comes the Petitioner, James Edgar Hutchinson acting Pro-Se, states,

respectfully requests to amend PCR Application to contain additional issues to conform to the evidence pursuant to South Carolina Rules of Civil Procedure Rule 15(a) amendments and Rule 15(b) to conform to the evidence, (c) Relation back of Amendments, and (d) supplemental pleadings. SCRPC Rule 15. to include 2014-65-21-1520 and

2014-65-21-1523 invalid plea, conviction, and sentence, Enhanced with 2002-65-21-1670 invalid conviction that I am still suffering prejudice and persistent lingering effects from, as well as a 1995 and 1989 convictions that were unconstitutionally gained. (By not informing me)

Respect Fully
Submitted;

The Court erred and

Sept. 3rd, 2020
Resubmitted: 9-26-2020

Counsel was ineffective for not challenging the validity of those invalid convictions, facts; fundamental Error
The state failed to prove beyond a reasonable doubt that Petitioner was Guilty of Burglary 1st Degree 16-11-31

CC: Clerk of Court
Attorney
Attorney General
File

Profile Please
9-26-2020

In The Court of Common Pleas
In and For the County Of Florence
State Of South Carolina

FILED
2020 SEP 14 PM 3:55
DORIS BOULOS O'HARA
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

155
CERTIFIED: A TRUE COPY
J. P. O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

James Edgar Hutchinson

Petitioner.

v.

State of South Carolina
County of Florence

Plaintiff.

CASE NO:

2019-CP-2808

2019-CP-21-2808

NOTICE OF INTENT TO
AMEND PCR APPLICATION

Conviction and Sentence Invalid
Fundamental Error

Honorable Twelfth Judicial Circuit

I am being unlawfully confined and convicted as a "Recidivist" offender, in violation of the U.S. and S.C. constitutions and laws of this state. Now comes Petitioner, James Edgar Hutchinson acting Pro-Se, respectfully submits this Notice of Intent to Amend PCR Application to include additional issues pertaining to the above mentioned case, pursuant to South Carolina Rules of Civil Procedures. Rule 15 Amended and supplemental proceedings.

Prepared and placed on this 3rd day of September 2020 in the U.S. Postal Mailbox Service at Lee Correctional Institution by Petitioner James E. Hutchinson.

2018-65-21-1520
and
2018-65-21-1523
invalid plea, conviction, and
sentence.
Enhanced with invalid
2002-65-21-1670
conviction, that I am still
prejudiced by the lingering effects
of that wrongful conviction.
The court erred and counsel was ineffective

Resubmitted: 9-26-2020

Respectfully Submitted, Sept. 3rd 2020

James E. Hutchinson

James E. Hutchinson, #258003
Lee Correctional Institution F6A-1125
990 Wisacky Highway
Bishopville, South Carolina 29010

Cc: Clerk of Court
Attorney

Attorney General
File

for not challenging the
validity of these said
convictions.

See Rule 71.1(e) SCRPC.
Teter v. State 417 S.E.2d 594 (1992)
State v. Payne SE2d
Burden shifting Rule

Parke v. Bailey
(1998) 113 S.Ct. 517 (1992)
State v. Smith 276 S.C. 494 (1981)

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Hutchinson's

and the best way to protect his autonomy rights, Petitioner had a right to make an informed choice, Issues Due Process violated,

Case No, 2019-CP-21-2508.

Indictment No, 2018-GS-21-152 and 1503

(Fundamental) An Invalid Guilty Plea

(Error) The Conviction and sentence

2019-CP-21-2508 not valid, 2019-CP-21-2508

File
please
9-26-2020

The Court Errored by not informing Petitioner Hutchinson that the State was still required to prove beyond a reasonable doubt the essential element of prior-convictions sentence which it did not do to support enhancement under the Statute of Burglary first-degree 16-11-311(a)(2) rendering the plea, conviction and sentence invalid. Because the State did not prove beyond a reasonable doubt its case-in-chief. Even though Petitioner was entering a plea, The Court errored by not informing Petitioner Hutchinson that the State was required to prove a confession is valid before it can be use at trial beyond a reasonable doubt and that burden is on the State to prove it is voluntary.

The 2002 case No, 2002-GS-21-1670

is also invalid for the factual basis does not support the plea violation of my due process and a "Miscarriage of Justice",

also that I James E. Hutchinson am also being prejudiced by that invalid conviction along with a "1989" and "1995" conviction both unconstitutionally gained.

State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2018-GS-21-01520
	)	Case No. 2018-GS-21-01523

State of South Carolina,
Plaintiff,

-vs-

James Edgar Hutchinson,
Defendant.

Transcript of Record

January 8, 2019
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

John Jepertinger, Esquire
Attorney for the Plaintiff

Caroline Lawson, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption
	or change in thought
ellipses . . .	trailing off
[ph]	phonetically written
[sic]	written as said

1 JANUARY 8, 2019

2 (WHEREUPON, the proceedings began at 10:15 a.m.)

3 THE COURT: All right. Ladies and gentlemen, if I could
4 have everyone's attention. If you're here in the courtroom
5 today and you think you might want to resolve your case by
6 way of a guilty plea, then I need to have your attention.

7 I'm going to go over with you the constitutional rights
8 that you have, and it's important that you understand those
9 rights because if you decide to go forward with a guilty
10 plea, then for purposes of your plea you waive or you give up
11 these constitutional rights as it relates to your plea. And
12 any time you give up a constitutional right, it's important
13 that you understand what it is you're giving up.

14 Now, I'm going to go over these rights with you as a
15 group because these are rights that are common to all of us.
16 We all have these same rights. It doesn't matter who you
17 are, what you're charged with or whether you're even charged
18 with anything at all or not. All of us have these same
19 constitutional rights. So rather than repeat it 30 times,
20 I'm going to go over it with you once now.

21 If you have any questions about anything that I go over,
22 I will be happy to give you whatever time you need to talk to
23 your lawyer and have those questions answered. It's just
24 it's important that you understand these rights if you decide
25 to go forward with a guilty plea.

1 Also, the fact that I'm going over these rights with you
2 as a group does not bind you or commit you to do anything.
3 In other words, if after I go over these rights the State
4 calls your case, if you've changed your mind and you don't
5 want to go forward, that's fine. That's your decision. No
6 one is going to force you to do something against your will.
7 But if you do decide that you want to enter a guilty plea,
8 then it's important that you understand these rights.

9 All of us have these rights, as I said earlier. We all
10 have the right to a jury trial. We all have the right to
11 remain silent.

12 If you decide to go forward with a guilty plea, then for
13 purposes of your plea you waive those two important
14 constitutional rights. And when you waive your right to a
15 jury trial, you waive all the rights that are connected to or
16 associated with a jury trial.

17 For example, if you were to have a jury trial, you would
18 be presumed innocent of the charge or the charges that you're
19 facing. That presumption of innocence places the burden of
20 proof on the State to prove guilt. The way they would try to
21 do that is during the course of that trial, they would call
22 witnesses to the stand, those witnesses would be placed under
23 oath, and they would testify.

24 The Constitution of the United States says that every
25 person charged with a criminal offense has the right to face

1 their accusers or to confront their accusers. What that
2 means is during that jury trial you would have the right to
3 question those witnesses, to cross-examine those State's
4 witnesses. That is your right of confrontation under the
5 Constitution.

6 You have the right to challenge any evidence the State
7 would put up against you, but when you plead guilty by
8 entering that plea of guilt, you give up that presumption of
9 innocence that I spoke about, you relieve the State of their
10 burden of proof and, since they don't have to prove your
11 guilt, they don't have to bring their witnesses into court
12 and so you waive or you give up the right to confront those
13 folks.

14 Now, the State is not the only one that can call
15 witnesses at a trial or to present evidence. You could
16 present evidence in your defense. You could call witnesses.
17 You yourself could testify. You could do either one of those
18 things or you could do both of those things, but the
19 important thing to understand is this: You don't have to do
20 anything.

21 In this country, a person charged with a criminal
22 offense is never required to prove him or herself innocent.
23 The burden of proof is on the State to prove guilt. You
24 don't have to prove anything. You could remain silent and,
25 if you chose to remain silent, I would instruct the jury that

1 that is your constitutional right and that they could not
2 consider your exercise of that right during their
3 deliberations. As a matter of fact, I would take it a step
4 further and tell them that the fact that you chose to remain
5 silent could not even be discussed in the jury room. They're
6 to give it no consideration whatsoever because you don't have
7 to prove anything. The burden of proof is on the State to
8 prove guilt.

9 Now, the State has to prove guilt to a unanimous
10 decision. In other words, they have to convince all twelve
11 members of the jury that you are guilty or they cannot
12 convict you. But if you did go forward with a jury trial and
13 if you were convicted, you could appeal that conviction to a
14 higher court, if you felt that was appropriate.

15 Now, these are the rights that we all have, but if you
16 decide to go forward with a guilty plea, then for purposes of
17 your plea you waive or you give up these rights, you will not
18 have a jury trial, and your case will be resolved pursuant to
19 your plea.

20 Like I said earlier, if you have any questions about
21 anything that I just went over, I'll give you whatever time
22 you need to talk to your lawyer and have those questions
23 answered, but it's important that you understand these rights
24 if you go forward because if you go forward with a plea, then
25 for purposes of that plea you waive or you give up these

1 rights that we just went over.

2 All right. We're going to take the cases one at a time.
3 So if y'all would step back here and, Solicitor, you may call
4 them in whatever order.

5 (WHEREUPON, there was a break in the proceedings
6 regarding this defendant from 10:24 a.m. until 11:16
7 a.m., after which the proceedings resumed as follows.).

8 MR. JEPERTINGER: James Hutchinson.

9 All right. May it please the Court, Your Honor.

10 THE COURT: Yes, sir.

11 MR. JEPERTINGER: Standing in front of you is James
12 Edgar Hutchinson on two separate and distinct indictments,
13 2018-GS-21-1520 and 2018-GS-21-1523.

14 Judge, the first order of business, I suppose, is upon
15 your acceptance of these pleas to burglary first degree, for
16 which Caroline Lawson, the defense attorney, and I have
17 negotiated a sentence of 26 years concurrent on these
18 burglary firsts, the State has previously made a motion for a
19 life without parole sentence that we had taken in front of
20 you, Judge, back on October the 3rd of this past year.

21 THE COURT: Okay.

22 MR. JEPERTINGER: Upon your acceptance of the plea, the
23 State will withdraw that motion for life without parole on
24 these two separate and distinct cases, 1520 and 1523.

25 THE COURT: All right.

1 MR. JEPERTINGER: Your Honor, in regards to this case,
2 this defendant also has two separate other indictments of
3 1644, which is a burglary second degree, and 16 -- excuse me.
4 1644 is a burglary third-degree, second offense, and a
5 burglary second-degree on 1645. So we're dismissing two
6 burglary cases on him as well.

7 THE COURT: All right.

8 MR. JEPERTINGER: It's also my understanding that there
9 may be -- I don't know if they've served it or if they're
10 holding it in Marion County -- another burglary warrant or
11 some sort of warrant there. If they do, I'm going to take
12 care of that and it won't be served and that'll be taken care
13 of over in Marion County as well. I have --

14 THE COURT: Okay. So this would resolve any matters --

15 MR. JEPERTINGER: Yes, sir.

16 THE COURT: -- in the 12th Circuit that Mr. Hutchinson
17 may have?

18 MR. JEPERTINGER: That is correct.

19 MS. LAWSON: I have searched the public index high and
20 low and made calls. I can't find anything with respect to
21 his -- he was concerned about the burglary --

22 THE COURT: Yeah.

23 MS. LAWSON: -- or any kind in charge in Marion. I
24 can't find anything.

25 MR. JEPERTINGER: I don't think they've served him, and

1 that's -- you know. So I don't think --

2 THE COURT: All right.

3 MR. JEPERTINGER: If they do, I'm going to handle it.

4 THE COURT: You're going to handle that and they're
5 going to be dismissed?

6 MR. JEPERTINGER: They're going to be dismissed. If
7 they serve him, they're going to be dismissed.

8 THE COURT: All right.

9 MR. JEPERTINGER: So that will --

10 THE COURT: All right. So this plea here today resolves
11 any matters in the 12th Circuit involving Mr. Hutchinson?

12 MR. JEPERTINGER: Absolutely.

13 THE COURT: All right. Thank you, sir.

14 MR. JEPERTINGER: Yes, sir.

15 THE CLERK: Sir, will you please raise your right hand?
16 Do you swear to tell the truth, the whole truth, and nothing
17 but the truth, so help you God?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. Sir, you are James Edgar
20 Hutchinson; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Mr. Hutchinson, Indictment
23 2018-GS-21-1520 and 2018-GS-21-1523, both of those
24 indictments are indictments for burglary in the first degree.
25 Each of those individually carries 15 -- anywhere from 15

1 years to life in prison. Do you understand that?

2 THE DEFENDANT: Yes, sir, I do.

3 THE COURT: Understanding the nature of the charges
4 against -- oh, well, let me back up a little bit.

5 Under South Carolina law, Mr. Hutchinson, these charges
6 are classified as violent and most serious. The significance
7 of the most serious designation is that if you were to
8 receive -- and I think that's what has occurred in this case.
9 That you apparently had a prior most serious offense; is that
10 correct?

11 MS. LAWSON: He had two burglaries.

12 THE COURT: All right.

13 MR. JEPERTINGER: Yeah. He had -- he had -- he had a
14 burglary first --

15 THE COURT: Oh, okay.

16 MR. JEPERTINGER: -- and we'll go through that in just
17 the second, Judge.

18 THE COURT: And so -- and that is why the State had the
19 option to notice you for life without parole. However, it's
20 my understanding pursuant to your plea to these charges, the
21 State is going to withdraw that -- that notice.

22 Understanding the nature of the charges against you and
23 the possible punishment that is associated with these
24 charges, how do you plead to these two charges, sir? Guilty
25 or not guilty?

1 THE DEFENDANT: Guilty, Your Honor.

2 THE COURT: Thank you, sir.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Ms. Lawson, you represent Mr. Hutchinson on
5 these matters?

6 MS. LAWSON: I do, Your Honor.

7 THE COURT: Have you discussed with him each of these
8 charges, as well as his constitutional rights to a trial?

9 MS. LAWSON: Yes, sir.

10 THE COURT: Mr. Hutchinson, am I correct that you are 47
11 years of age? Is that correct, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And how long have you been in jail on these
14 matters, sir?

15 MS. LAWSON: 263 days, Your Honor.

16 THE COURT: Earlier this morning when I went over the
17 constitutional rights with everyone, Mr. Hutchinson, you were
18 present for that; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did you understand those rights, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you have any question about those rights?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you understand that by entering your plea
25 here today that you waive or you give up those rights and

1 that you will not have a jury trial as it relates to these
2 two charges? Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right, sir. The State has entered into
5 negotiations and if I understand those negotiations
6 correctly, if I follow the negotiations, I would sentence you
7 on each of these charges to 26 years in the Department of
8 Corrections, run them concurrently or together, give you
9 credit for the 263 days that you have served, and that any
10 other charges that are pending here in the 12th Judicial
11 Circuit will be dismissed as a result of your plea to these
12 two charges. Is that your understanding of the negotiations?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Other than those negotiations, has anyone
15 promised you anything, held out any hope of reward or
16 threatened you in any way to get you to enter these pleas?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you satisfied with the representation
19 and the advice that Ms. Lawson has provided?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you today under the influence of any
22 substance that would affect your ability to understand what
23 you're doing here today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you entering your plea on these two

1 charges of your own free will, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And are you guilty of these two burglaries,
4 sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. I'm going to ask Mr. Jepertinger
7 to go over the facts for me briefly. If you'd listen
8 carefully, I'll get back with you in just a moment.

9 MR. JEPERTINGER: Okay.

10 THE COURT: Mr. Jepertinger?

11 FACTS

12 MR. JEPERTINGER: Your Honor, these were both daytime
13 burglaries of a residence. The enhancement provisions to
14 elevate this to a burglary first would have been his prior
15 record. He had two or more prior burglaries, and let me put
16 those on the record.

17 Back on 4/29/99, he pled guilty to a burglary, second
18 offense, nonviolent, and a grand larceny, but he had that
19 burglary second offense back in '99. And then on December
20 the 5th, 2002, he also had a burglary second, nonviolent, a
21 burglary first degree, and another burglary first degree that
22 he pled guilty to. On that date that I just mentioned, he
23 received a 15-year sentence on those burglary first degrees,
24 Your Honor, and I think he was out for about maybe two years
25 before the current offenses occurred.

1 Judge, the current offenses happened here in Florence
2 County over on East Old Marion Highway back on April the 9th,
3 2018, and April the 10th, 2018. The victim was the identical
4 victim for both crimes, a lady by the name of Rita Pattillo.

5 Now, Ms. Pattillo works over in Darlington at a
6 healthcare facility there. She goes to work. She's been
7 going to work there for 30 years. She's an x-ray technician.
8 She lives by herself. She's never met the defendant. She
9 has heard of the defendant's family, as they live down the
10 road from her. She's heard the name of the family, but had
11 no dealings with this defendant in any way, shape or form.

12 She was at work on April the 9th, and she had an alarm
13 system with ADT at her house and received a phone call from
14 them, but was busy with a patient and could not return the
15 phone call immediately. She got done working with that
16 patient. The phone rang again. At that time it was a 665
17 number and it was the Florence County Sheriff's Office. They
18 were calling her. They informed her that her house had just
19 been burglarized.

20 So she drives over to the Old Marion Highway address
21 from Darlington and she notices that her front door has been
22 busted open. When she left that morning to go to work, both
23 doors were locked and the alarm was set. The front door had
24 not been opened in years. She always goes out the back door.
25 By the way, both of these doors had deadbolts on them.

1 She walked through the house and noticed a TV in her
2 bedroom was missing. There was another TV in the living room
3 which, in fact, was a larger TV and it was still in its
4 place. And the only thing missing was this TV. The remote
5 control was also missing.

6 So at that point her ex-husband and son came over and
7 they jerry-rigged a two-by-four against the front door and on
8 the flooring so the front door could not be opened. It was
9 -- it was shut. I think she came home that evening. She
10 went back to work, came home, and got up the next day,
11 Tuesday the 10th. She goes off to work again. The same
12 deal. She gets a phone call from ADT. She can't believe it.
13 She told ADT to call Florence County Sheriff's Office.

14 She gets in her car and drives back home. They get
15 there. This time the back door has been broken off. The
16 casing is completely shot. The door is down on the ground,
17 completely knocked off. She walks through the house and the
18 only thing missing this time is the large TV that wasn't
19 stolen the first occasion that was in the living room.

20 The nephew came over and they had to get a new door at
21 Lowe's and he tries to -- and he puts it up that day. So she
22 was hit twice by the same individual.

23 Now, the police are looking for suspects. The reason
24 Marion County kind of came up in the conversation is James
25 Lee, who is an investigator over there, when he hears about

1 what's been going on on Old Marion Highway, somehow he gets a
2 hold of James Allen here with the Florence County Sheriff's
3 Office. Either James calls him or he calls James, but he
4 said we've kind of had a rash of those type things.

5 He goes, "Yeah, I'm just -- you know, the lady has had
6 her TVs stolen. What can we do?"

7 He goes, "Have you gone over to Dillon to check to see
8 the pawn shops over there?"

9 Well, it hadn't occurred to James to do that. So James
10 goes over to Dillon County and on that day, on April the 9th,
11 Ms. Pattillo's TV that was stolen on April 9th was pawned by
12 this defendant, James Edgar Hutchinson, and we have the
13 receipt and we were going to have the pawnbroker come in here
14 to testify that Hutchinson came in and he pawned that TV that
15 was taken on the 9th at Main Street Pawn and Gun over on West
16 Main Street in Dillon.

17 He checks another pawn shop. The TV that was taken on
18 April the 10th was pawned by James Edgar Hutchinson at Rick's
19 Pawn Shop #6 over on Radford Boulevard over in Dillon, and we
20 were going to bring in the pawnbroker to say that James Edgar
21 Hutchinson took -- pawned that TV that belonged to Ms.
22 Pattillo.

23 They bring in James Edgar Hutchinson to the Florence
24 County Sheriff's Office, and he gives a full confession that
25 he committed these crimes. He alleges that another

1 individual was with him. That they drove up in a vehicle in
2 the front yard and the doors were broken into, just like Ms.
3 Pattillo said, and the TVs were taken. That's it.

4 THE COURT: All right. Mr. Hutchinson, are those facts
5 that Mr. Jepertinger gave me as to -- as regarding these two
6 charges, are those facts correct, sir?

7 THE DEFENDANT: Yes, sir.

8 FINDINGS

9 THE COURT: All right. I find that the State has
10 provided a substantial factual basis to support the charges
11 that Mr. Hutchinson has pled guilty to. I find that his
12 decision to enter these pleas has been done freely,
13 voluntarily, and intelligently.

14 He's had the advice and counsel of an outstanding
15 attorney in Ms. Lawson. Mr. Hutchinson has indicated he is
16 satisfied with that representation, and I'm going to accept
17 his pleas.

18 Ms. Lawson, I'll be happy to hear from you, ma'am.

19 MS. LAWSON: Thank you, Your Honor.

20 I know that this is negotiated; so I'll keep it brief,
21 but I wouldn't be fair to Mr. Hutchinson if I didn't tell you
22 a little bit more about how we got here.

23 Mr. Hutchinson, unfortunately, after serving his older
24 sentence, just like many people had a hard time coming back
25 into society, getting back on his feet and, you know,

1 conforming to our normal rules that we need to conform to.
2 He got out in 2015. A lot of good things happened for him.
3 He tells me that year was the best year of his life. He got
4 back with this high school sweetheart, married his wife
5 Marie, and began remodeling work for a lot of people around
6 here that you and I both know. He's a very skilled laborer,
7 was making decent money.

8 However, kind of later on, probably about a year later,
9 he developed diverticulosis. He goes to the hospital, is
10 prescribed Percocets. He starts using those. That
11 prescription runs out. Not too much longer, he falls at work
12 and injured his back. What do you know? He's prescribed
13 Percocets again. A couple months later, he gets in a really
14 bad car accident here in Florence, is prescribed more pain
15 medication.

16 He just -- after each incident, his prescription would
17 run out. He is on a constant hunt for money trying to figure
18 out how to get his next amount of pills that's going to give
19 him the same high that he's gotten before.

20 He thinks that it's important for you to know and so do
21 I that none of these crimes were violent, while it was a
22 horrible violation of Ms. Pattillo's safety. I told him this
23 is the worst position to put a woman that lives by herself
24 in. I live alone. The thought of somebody coming in and
25 taking something from me just during the day and me coming

1 home is absolutely terrifying. I don't know how she could
2 sleep at night after that. That's just got to be
3 unimaginable.

4 He just wants to come here and take responsibility for
5 this. He's got an 18-year-old daughter, as well as a
6 granddaughter. He just wants to take care of his health
7 while he serves his sentence so that he can go forward when
8 he gets out and spend some time with them, and he prays that
9 his mother is still alive when his sentence is resolved. He
10 may wish to say a little bit also.

11 THE COURT: I would be happy to hear -- hear from you,
12 Mr. Hutchinson. If you have anything you want to share with
13 the Court, I'll be happy to hear from you, sir.

14 THE DEFENDANT: I just want to the victim to know that
15 I'm sorry for my actions. I take responsibility and I'd give
16 it back if I could.

17 THE COURT: Yes, sir. Well, I appreciate that, Mr.
18 Hutchinson.

19 SENTENCE

20 THE COURT: All right. On Indictment 2018-GS-21-1520
21 and 1523, as to both of those charges the sentence of the
22 Court is that you be committed to the State Department of
23 Corrections for a period of 26 years. I'm going to give you
24 credit for the 263 days that you have served on these
25 matters, and both of these charges are to run concurrent with

1 each other.

2 Good luck to you, sir.

3 MR. JEPERTINGER: Thank you, Your Honor.

4 (WHEREUPON, the proceedings ended at 11:35 a.m.)

5

6 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 21, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 8th day of January, 2019.

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

Krystal J. Smith

Court Reporter

Florence, South Carolina

October 6, 2020

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2019-CP-21-02808
	)	
James E. Hutchinson,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

October 18, 2022
 Florence, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge

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

Steven W. Fowler, Esquire
 Attorney for the Applicant

Danielle Dixon, Esquire
 Attorney for the Respondent State
 (Appearing via WebEx)

Krystal J. Smith
 Official Circuit Court Reporter III

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dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 OCTOBER 18, 2022

2 (WHEREUPON, the proceedings began at 2:58 p.m.)

3 THE COURT: All right. Are we ready to proceed?

4 MS. DIXON: Yes, Your Honor. This is Danielle Dixon for
5 the State of South Carolina. This is case James Hutchinson v.
6 State, Docket Number 2019-CP-21-2808.

7 Mr. Hutchinson was indicted in August of 2018 for two
8 counts of first-degree burglary. Those are Indictment Numbers
9 2018-GS-21-1520 and 1523. Those arose from an incident in
10 April of 2018 when he broke into a home and he allegedly stole
11 a TV. The following day, he allegedly broke into the home
12 again and stole another TV.

13 Due to his prior convictions, the State served him with
14 notice of intent to seek life without parole. That notice was
15 served December 3rd, 2018.

16 He pled guilty January 8th, 2019, before the Honorable
17 Thomas Russo. It was a negotiated 26-year sentence. That was
18 26 years for each conviction concurrent. The State agreed to
19 withdraw the LWOP motion in exchange for the plea and also
20 dismiss two other indictments for burglary third and burglary
21 second. The State also agreed to resolve a different burglary
22 warrant out of Marion County that I think had not yet been
23 served at that time.

24 Mr. Hutchinson did not file a direct appeal. He filed
25 this PCR application October 4th, 2019, and several amendments

1 thereafter prior to the time counsel was appointed in October
2 of 2020. The State filed a return requesting an evidentiary
3 hearing. That hearing has been continued twice, December 2021
4 and April of 2022.

5 As we understand it, the current claims he's going
6 forward on today is counsel was ineffective for failing to
7 move to suppress statements and his confession, failing to
8 call an expert to testify about the effects of drugs
9 administered prior to his interrogation, failing to advise him
10 regarding constitutional rights he waived, failing to advise
11 him of his right to direct appeal, failing to review evidence
12 with him, failing to present mitigating evidence about mental
13 health issues, failing to obtain a psychological evaluation
14 for him, failing to challenge prior convictions used for
15 enhancement.

16 And he's also alleging his plea was involuntary in that
17 he was not informed the State has to prove his case beyond a
18 reasonable doubt, he was not informed the State had to prove
19 his confession was voluntary, and the facts did not support
20 the plea, and that there was no enhancement in the State's
21 recitation of facts.

22 If Mr. Fowler has any additional claims, if he would just
23 put those on the record.

24 THE COURT: All right. Mr. Fowler, does that include all
25 the claims of Mr. Hutchinson?

1 MR. FOWLER: Your Honor, just to be clear on this, I have
2 discussed this with my client. We have been provided an email
3 at approximately 2:40 this afternoon that lists these.

4 The thing that he -- one of the primary things that I
5 just talked with him now --

6 THE COURT: Just a moment.

7 Ms. -- can you --

8 MS. DIXON: I'm sorry. I cannot hear. I think if you
9 talk in the microphone? I am so sorry.

10 MR. FOWLER: Your Honor, may I sit down?

11 THE COURT: Yes.

12 MR. FOWLER: So I'll be closer to the microphone?

13 Okay. Can you hear me now?

14 MS. DIXON: I can hear you now. Thank you.

15 MR. FOWLER: Okay. Very good. And I'll -- may I have
16 just a moment?

17 THE COURT: Yes.

18 (WHEREUPON, there was a pause in the proceedings, after
19 which the proceedings resumed as follows.)

20 MR. FOWLER: Your Honor?

21 Ms. Dixon, can you hear me?

22 MS. DIXON: I can, yes.

23 MR. FOWLER: Okay. In your statement of failed to
24 challenge prior convictions used for enhancement, Mr.
25 Hutchinson has -- has informed me that that should more

1 properly read failed to challenge and investigate prior
2 convictions used for enhancement.

3 MS. DIXON: Oh, failed to challenge and investigate?

4 MR. FOWLER: Yes.

5 MS. DIXON: Okay. Thank you.

6 MR. FOWLER: And one more. He has indicated to me that
7 counsel failed to tell Mr. Hutchinson that the burden of proof
8 was on him to prevent the State from using prior convictions,
9 and he's nodding his head in agreement.

10 And that would be the main -- that would be the two that
11 -- or the wordsmithing of this that we would like to add to
12 this list.

13 MS. DIXON: Will you -- will you -- I'm sorry. The last
14 one failed to --

15 MR. FOWLER: Yeah. And I just wrote it down so maybe I
16 can articulate it better.

17 Counsel failed to notify Hutchinson that the burden of
18 proof was on him to prevent the State from using prior
19 convictions. That's what he's indicated to me as -- as an
20 additional.

21 MS. DIXON: So --

22 MR. FOWLER: And that's from --

23 MS. DIXON: -- counsel did not notify him that the burden
24 of proof was on him to prevent the State from using prior
25 convictions?

1 MR. FOWLER: And he's --

2 MS. DIXON: Is that right?

3 MR. FOWLER: And he's indicated that that's in the case
4 of *State v. Payne*, P-a-y-n-e.

5 MS. DIXON: Okay. Okay.

6 MR. FOWLER: 1998. And that would be it as to the
7 summation.

8 MS. DIXON: Okay. Thank you.

9 THE COURT: Mr. Hutchinson, if you'll stand to be sworn.

10 THE CLERK: Raise your right hand as much as you can. Do
11 you swear or affirm that the testimony you give will be the
12 truth, the whole truth, and nothing but the truth, so help you
13 God?

14 THE APPLICANT: Yes, ma'am.

15 THE CLERK: Thank you.

16 THE COURT: Mr. Hutchinson, the prosecutor has --
17 attorney general has indicated that the -- your PCR claims
18 fall into these categories that she mentioned, even though you
19 -- your -- the number of pages that you have filed far exceed
20 that and your lawyer has added two -- two additional ones. So
21 for clarification, do you agree that these encompass all of
22 your PCR claims?

23 THE APPLICANT: Yes, sir.

24 THE COURT: All right. Very good. Thank you.

25 Are you ready to proceed then, Mr. Fowler?

1 MR. FOWLER: Your Honor, I -- just the only thing that I
2 would ask for clarification on and we are -- the phrasing of
3 it, these are the topics in the email and the subsequent
4 discussion with the attorney general, these are the claims
5 that we'll be going forward on today, but he has obviously
6 presented the previous amendments to the PCR application and
7 they are in the file and they are all before I came on board
8 as his attorney.

9 So I would just out of caution with the understanding
10 that we're going forward on the listing that was just provided
11 only today, unless there's something else that comes out of
12 it. I'd like the Court to take judicial notice of the PCR
13 applications that have been provided by him previously before
14 my representation.

15 THE COURT: Any comment on that, Ms. Dixon?

16 MS. DIXON: No, Your Honor. We -- the State believes
17 they were proper amendments. He filed them before he was
18 represented by counsel. So they are, you know, amendments
19 that are before the Court properly.

20 THE COURT: Is that your --

21 MS. DIXON: We're just trying to --

22 THE COURT: Thank you.

23 Is that your understanding as well, Mr. Hutchinson?

24 THE APPLICANT: Yes, sir.

25 THE COURT: All right. He has answered affirmatively.

1 Okay. Well, let's proceed.

2 MR. FOWLER: Your Honor? Your Honor, just as a
3 clarification, normally we stand up when we provide questions
4 to the witness. May I sit down as so that I can speak into
5 the microphone clearly?

6 THE COURT: Yes.

7 MR. FOWLER: So Ms. Dixon can do that. And also, I'll
8 try to get in the sightline of my client when he goes to the
9 witness stand, Your Honor.

10 If nothing else, I'd like to call Mr. Hutchinson to the
11 stand, please.

12 THE COURT: All right. Mr. Hutchinson, if you'll come
13 forward.

14 Yes, sir?

15 MR. FOWLER: If I may proceed, Your Honor?

16 THE COURT: Yes, sir.

17 MR. FOWLER: Mr. Hutchinson, can you hear me?

18 THE APPLICANT: Yes, sir.

19 MR. FOWLER: Okay. And if you have a problem seeing me
20 or -- I know there's a stand in the middle there, but if you
21 need to see me at any time or need me to repeat a question or
22 a statement, please let me know.

23 THE APPLICANT: Yes, sir.

24 MR. FOWLER: Okay. And also, please speak into the
25 microphone so that the court officials can hear -- hear you

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1 clearly, and opposing counsel.

2 THE APPLICANT: Yes, sir.

3 MR. FOWLER: Okay.

4 JAMES E. HUTCHINSON, being first
5 duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FOWLER:

8 Q: Please state your name for the record?

9 A: James Hutchinson.

10 Q: Okay. And can you spell that, please?

11 A: J-a-m-e-s, E, period, Hutchinson, H-u-t-c-h-i-n-s-o-n.

12 Q: Okay. And you filed an initial application for post-
13 conviction relief on October -- in October of 2019; is that
14 correct?

15 A: Yes, sir.

16 Q: Okay. You also filed several subsequent PCR supplemental
17 applications; is that correct?

18 A: Yes, sir. After I went to the law library and learned
19 some more facts related to my case, I went ahead and amended
20 them -- the issues to add to my PCR application.

21 Q: And they are all -- all your PCR applications have been
22 entered into the Court's record; is that correct?

23 A: Yes, sir.

24 Q: Okay. You were in the courtroom just a few moments ago
25 when Ms. Dixon read several issues that you agreed to proceed

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1 on today; is that correct?

2 A: Yes, sir.

3 Q: Okay. One of the -- the first one that we have on the
4 list is that counsel failed to move to suppress statements,
5 confession. Tell me a little bit about, in your words, what
6 that means to you and the specifics about it?

7 A: Okay. Well, the day that I went to court, I think it was
8 December 3rd, that I refused the original plea offer, she had
9 informed me that the prosecutor had made a comment to her that
10 without the confession that he only had me proof of receiving
11 stolen goods. And on her first initial visit to the jail, I
12 told her that I had got ahold to a pill guide book that the
13 officers at the jail had on the desk in the cell block. So I
14 had went through that book and studied it.

15 Q: Okay. And what -- and repeat what you're talking -- what
16 kind of book was it?

17 A: It was a nurse's guide. It's a pill book guide. It
18 tells you what every medicine is for and what the effects are
19 and what they use it for and everything.

20 And once I discovered that, I told her I wanted her to
21 challenge the confession or, you know, investigate the drugs
22 that caused me to be indifferent to my surroundings, and it
23 made me -- what you call -- easier to elicit incriminating
24 admissions out of me because the drug made me not appreciate
25 the significance of my surroundings, like I just said, and --

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1 MS. DIXON: Your Honor, I have an objection to testimony
2 that is expert testimony. He's not qualified to testify to
3 the effects of drugs.

4 THE COURT: All right. Mr. Fowler?

5 MR. FOWLER: And, Your Honor, we're not asking for the
6 effects of it. I think it's his personal opinion of how he
7 felt and what he -- his feelings at the time of the confession
8 and -- and subsequent actions.

9 THE COURT: Yes, sir. You can tell us about how you
10 personally felt at the time of the confession.

11 BY MR. FOWLER:

12 A: I felt -- I felt depressed and -- and I was feeling
13 suicidal, like the whole world was coming down on me. And
14 it's the -- my feelings is the drugs made me feel like that
15 because any time I've ever got in trouble with the law, I
16 don't never give a statement to incriminate myself.

17 And when I woke up after taking the drugs that the nurse
18 give me, it was like I was in a whole different world of state
19 of mind. It was like I was being lured in and being told to
20 come talk with him, and the cop at the jail said that I
21 couldn't use the phone. He said, go talk to this man. You
22 can use the phone when you get down the hall. And he said, I
23 just want to talk to you about the truck, you know, about the
24 truck you took. So --

25 Q: Now, let me ask you this question. Who was that asking

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1 you those questions?

2 A: The investigator, James Allen.

3 Q: Okay.

4 A: And I ran him off the first time he come around to the
5 holding cell and in the booking area because he come in there
6 and trying to get me out of the cell right after I come back
7 from the medical -- the nurses station where she give me the
8 medicine. I told her my stomach was upset from the jailhouse
9 breakfast. So just -- the lady -- the sergeant behind the
10 booking desk said, well, I'll get an officer to come carry you
11 down to booking and give you something for your stomach.

12 So I get down there, told her the breakfast had my
13 stomach hurting. So she said, well, here, just take these,
14 and then she give me the drugs and let the officer carry me
15 back up there to the holding cell, and a few minutes later
16 they brought our bag lunches.

17 So I'm sitting there eating, and he come up to me at the
18 side of the holding cell, looking through the glass, trying to
19 get my attention. And I told him -- I shook my head, no, I
20 don't want to talk to you. I want a lawyer. And he shook his
21 head okay, and then he left.

22 So after I eat my bag lunch, I laid down on the bench and
23 I fell asleep. And about time I fell asleep good, here he
24 comes back again, getting me out of the holding cell, the
25 officers opening the door and pulling me out the holding cell.

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1 I said, well, I want to use the phone. I want to call my
2 wife. I want to call my mom. Well, you go talk to this man
3 first. You can't use the phone until you get down the
4 hallway.

5 And that's -- I mean, I just felt like I was hopeless.
6 The drug just made me feel I was depressed, suicidal, and it
7 made me drop my guard from -- from the law enforcement. I
8 would hold my guard up until that drug took effect.

9 Q: So how did your trial counsel -- what was -- in your
10 opinion, what was her failure in this action related to that?

11 A: Well, the day that I rejected the plea, she said that she
12 set at the house over the weekend and looked on her phone
13 about the drugs and said it didn't have no effect on me. She
14 said that her dad took gabapentin and that it didn't bother
15 him, but I told her I hadn't never took gabapentin before or
16 hydroxyzine, and I had never been prescribed them before.

17 So that was the first time I have ever took them kind of
18 drugs. So it had that effect on me, and I have proof right
19 over there in my legal work on the desk right there where my
20 mom went to the library right here in Florence on Irby Street.
21 She got the clerk of that law library to pull it up on
22 Drugs.com, and it said Gabapentin and hydroxy --

23 MS. DIXON: Objection. Hearsay, Your Honor.

24 THE COURT: All right. I sustain the objection as to
25 what was said by his mother.

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1 BY MR. FOWLER:

2 Q: So with the Court sustaining that objection, you're
3 saying that the -- your attorney failed to properly
4 investigate? Well, to -- let me rephrase that. You're saying
5 that your trial counsel failed to move to suppress these
6 statements and confession because of the way you were feeling
7 apparently through drugs?

8 A: Not just the way I was feeling. It's because he didn't
9 read me my rights. I don't remember ever having my rights
10 read to me before he interrogated me.

11 And -- and the evidence that he used to lay on the table
12 at during that interrogation was the pawnshop receipts, which
13 he obtained illegally because he is not a Dillon County
14 Sheriff's officer and he's not in a multi-jurisdictional
15 agreement plan, and he had no business going over to Dillon
16 County searching. He could have searched as a private
17 citizen, but he couldn't seize them pawnshop receipts because
18 he was not the appropriate law enforcement officer. He had no
19 right to be over there investigating the crimes because he's
20 not on that multi-jurisdictional agreement plan. He was out
21 of his jurisdiction and that should -- the receipts should
22 have been suppressed, and those are what he used to coerce me
23 into giving him a statement.

24 And he -- he did not read me my rights. He had a piece
25 of paper in his hand. When he come back in the room, he slid

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1 a piece of paper in front of me and he said here, and I said
2 -- I picked it up and I couldn't read it because I have to
3 have reading glasses, and I slid it back to him. He never
4 read it to me. He just said, well, here, initial here, here,
5 and then sign here. And he took his finger and he guided me
6 where to sign and initial at, but he never read me what I was
7 signing and he never told me what I was saying to him was
8 going to be used against me at trial.

9 Q: Okay. So in summation, you're saying that -- well, just
10 to be clear on some of these points, you're saying that a
11 Florence County officer went into Dillon County and acted
12 within the scope of a law enforcement official's duties? Is
13 that what you're saying?

14 Q: He said -- the prosecutor said that he had talked to an
15 officer from Marion County, and the Marion County officer had
16 informed him to -- have you went to check Dillon County
17 pawnshops? He said, well, I hadn't thought about that. So he
18 -- he goes over there the next day and he goes and searched
19 these pawn shops, which he could have done that as a private
20 citizen, but he's not the appropriate law enforcement officer
21 to be seizing evidence from a pawn shop from that pawn shop
22 broker because any deals that you make with a pawn shop broker
23 is supposed to remain -- like, they're not supposed to be
24 revealed to anybody public. A public private citizen can't
25 just go in a pawnshop and say that's my TV. Who pawned you

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1 that TV? I need the receipts. No, they would have to go to
2 the sheriff's department and file an incident report and come
3 back to get their receipts.

4 Q: So -- so you --

5 A: You get them receipts --

6 Q: So you're saying --

7 A: -- without -- yes, sir.

8 Q: I apologize.

9 A: That's all right.

10 Q: So you're saying that the law enforcement officer
11 exceeded his scope in getting evidence; is that correct?

12 A: Yes, sir. He went -- under color of law, he got into a
13 Florence County Sheriff's car and drove over to Dillon out of
14 his territory of jurisdiction to obtain that evidence to use
15 against me, to coerce me into giving him a statement.

16 And he didn't read me my rights. And if he did, I do not
17 remember it because of the drugs. I was cold, shaking. My
18 stomach was hurting. But I do not -- I -- I know he never
19 read me my rights and I never got to view the DVD. She never
20 let me see the DVD.

21 MR. FOWLER: Ms. Dixon, can -- is this microphone on?

22 THE CLERK: It doesn't work.

23 MR. FOWLER: It doesn't work? Okay. I'll go back to my
24 seat.

25 BY MR. FOWLER:

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1 Q: Well -- so your trial -- your trial lawyer did not
2 object? Just to summarize, you've mentioned several things on
3 this first statement. So your attorney never objected to his
4 -- his potential exceeding his authority, did she?

5 A: No, sir.

6 Q: Okay. And you -- and your trial counsel -- your attorney
7 never objected to him not reading your Miranda rights;
8 correct?

9 A: No, sir. She told me I know he read me my rights. She
10 never said she knew he read me my rights because she viewed
11 the confession and she said that I know he read me my rights.
12 And when she visited me at the jail, she brought the
13 confession or what I thought was the confession was a DVD she
14 laid on the table and --

15 Q: Well, let me hold you up right there. You mentioned the
16 DVD previously. What -- in your understanding, what was this
17 DVD?

18 A: To my understanding, that was the statement that she said
19 she had watched and she concluded that it was voluntary
20 because I said that the world was coming down on me. The
21 drugs made me feel like that. It wasn't because I was giving
22 a voluntary statement.

23 Q: So your trial counsel didn't do anything in terms of
24 trying to suppress that DVD?

25 A: No, sir. And then she told me -- I said, I want to see

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1 that right there, the DVD, and she made the statement that,
2 well, they wouldn't let me bring my phone into the jail. It's
3 in my video on my phone too. I said, well, right there is a
4 DVD, and she leaned back in her chair and she growled at me
5 and she said that if I F with her that I would have to plead
6 guilty to a life sentence and she wouldn't talk to the
7 prosecutor or nothing, that she was going to back off of my
8 case.

9 Q: Is there -- you mentioned several topics here, the way
10 you felt under medication presumably, the lack of a Miranda
11 statement, the apparent exceeding of the legal authority of a
12 -- of a law enforcement officer, and also the DVD. Is there
13 anything else in this topic where your attorney apparently
14 failed to move to suppress statements or of the confession
15 that you'd like to mention to the Court?

16 A: Well, they held me incommunicado with my wife and my
17 family. I wanted to call a private lawyer that day. She
18 didn't get none of the videos from the booking area or nothing
19 to show that I had run that -- that officer off and, you know,
20 the nurse violated my rights because she give me the medicine
21 and failed to -- failed to provide continued care. She -- she
22 didn't put me in a place, a room, so I could sleep this effect
23 of this drug off. She just throwed me back out to the wolves,
24 to my adversaries, and let them come at me and just attack me,
25 and I was under the influence of these drugs.

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1 Q: Okay. So just in some kind of umbrella statements here
2 or a questioning here, you're basically saying that none of
3 those things that you listed -- and I just listed them a
4 moment a moment ago, along with the new ones that you just
5 mentioned, your attorney didn't take any action to suppress
6 those, did she?

7 A: Not none. She didn't even tell me that the State would
8 have to prove that it was -- the confession was voluntary
9 before they could use it, and he still used it at the guilty
10 plea and he said I gave a full confession. So that made my
11 guilty plea based in part on the involuntary confession,
12 violating my due process also.

13 Q: Okay. Wrapping up that section, anything else, Mr.
14 Hutchinson?

15 A: Not on that. It's --

16 Q: Okay. Let's move on.

17 A: One thing. I do have proof as an exhibit as proof that
18 hydroxyzine and gabapentin combined together off of Drugs.com
19 says --

20 MS. DIXON: Object to expert testimony.

21 THE COURT: I sustain the objection.

22 MR. FOWLER: Okay.

23 BY MR. FOWLER:

24 Q: But -- but you have looked into it on your own; is that
25 correct, Mr. Hutchinson?

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1 A: Yes, sir. I have proof right over there in my files that
2 it --

3 Q: Well -- well, my question is you've looked into it and
4 you feel like that should have been looked into by your
5 attorney; is that correct?

6 A: Yes, sir.

7 Q: Okay. If nothing else, moving on to the next question,
8 failed to call an expert, re: the effects of drugs
9 administered prior to the interrogation. So I think this may
10 go back to question number one a bit, but in that statement,
11 you're basically saying that there was no expert testimony
12 sought by your attorney in regards to the effect of drugs
13 prior to your interrogation; is that correct?

14 A: Yes, sir.

15 Q: Okay. Anything else on the failure to call an expert
16 regarding the effects of drugs that you'd like to mention
17 here?

18 A: Well, the expert could have testified to the same thing
19 that I got over there in my evidence that I wanted to submit
20 as an exhibit to Your Honor, as, you know, it's an affidavit
21 of merits on my behalf to back up my claims on the effects of
22 the two drugs combined together, and I have the receipts from
23 where the jailhouse took money out of my account to pay for
24 them drugs.

25 Q: But your attorney never took any steps to --

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1 A: No, sir.

2 Q: -- to do that; correct?

3 A: No, sir.

4 Q: Anything else on her failure to call an expert apparently
5 regards -- regarding the effect of drugs administered prior to
6 investigation you'd like to mention today?

7 A: Well, if she would have done that and filed a suppression
8 hearing, there's a reasonable probability that the statement
9 would have got kicked out. And like she said, the prosecutor
10 said he didn't have nothing if -- without the confession but
11 receiving stolen goods. So she prejudiced my case right there
12 because she disallowed the lower court to exercise its
13 discretion or preserve it for appeal.

14 Q: Did you discuss that, the need for an expert, with your
15 attorney?

16 A: Yes, I did. I told her I want an expert witness. And
17 it's been so long ago I can't remember some things, but I said
18 I wanted the drugs investigated because it caused me to give a
19 statement against myself that I've never done before.

20 Q: Do you remember what she said to you in response to that?

21 A: No, sir, I don't. Other than, well, they got these prior
22 convictions, and they're going to use them against you if you
23 try to challenge the confession. I mean, that was just -- she
24 coerced me with the priors to keep me from challenging the
25 confession. It was back and forth. She was using this to

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1 keep me from challenging that, challenging -- using that to
2 keep me from trying to do anything about the priors, which I
3 didn't even know I could challenge the priors.

4 Q: If nothing else on that failure to call an expert, the
5 next question is your attorney failed to advise regarding her
6 -- regarding your constitutional rights that she waived. Tell
7 me a little bit about that. What happened there?

8 A: That kind of relates to the rights, that I had a right to
9 not be convicted on untrue assumptions, invalid premises,
10 misinformation, and it relates back to the priors that -- that
11 -- because all of them are invalid, they're unconstitutionally
12 gained, and they're basing their conviction on assumptions
13 that -- that -- that's not warranted because my priors were
14 obtained illegally against me, and they don't warrant
15 enhancement.

16 Q: All right. If -- you're saying that, you know, the
17 failure to advise regarding constitutional rights waived
18 related to challenging of priors and investigating the priors;
19 is that correct?

20 A: Yes, sir.

21 Q: And a lot of these kind of overlap; is that correct?

22 A: Yeah, it's all kind of overlapping together. It's
23 basically boiling to the -- the confession was used to coerce
24 me into pleading guilty, and the priors were used to coerce me
25 into not, you know, going to trial because they said they had

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1 the confession.

2 Q: All right. Well, let's go to that. You've indicated
3 that your attorney failed to challenge the prior convictions,
4 and you said that's kind of -- that's separate than
5 investigating the prior convictions. How did she fail to
6 challenge the prior convictions?

7 A: Well, burglary first degree, the use of two or more prior
8 convictions is to contemplate valid prior convictions. Well,
9 *State v. Payne* says there's no statutes in South Carolina
10 establishing the burden of proof on a defendant when it comes
11 to collaterally attacking prior convictions. So they get to
12 use the legal presumption that the priors are just, and so a
13 conviction is a conviction.

14 Well, the whole time I sit in jail, she never informed me
15 that I could -- the burden of proof was on me to challenge the
16 prior convictions and keep the State from using them for
17 enhancement provisions. If I would have known that, I would
18 not have pled guilty. I would have -- I would have sit in
19 jail and investigated and tried to come up with a way to
20 defend myself against these priors.

21 Q: So you're saying that a -- a well-held provision of the
22 law was not revealed to you; is that correct?

23 A: That was one of my defenses that I could use and I was
24 not made aware of. I was told no matter what I did, they was
25 going to use the prior convictions against me and give me a

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1 life sentence.

2 Q: But do you feel -- and you feel that's very relevant to
3 this PCR; is that correct?

4 A: Yes, sir. Because the reason -- the day that I rejected
5 the first plea offer was right here in this courtroom. We sit
6 right there in that corner back there and we discussed that on
7 my 2002 case, well, my lawyer filed a direct appeal, Mr.
8 Steven Hill, and I informed her that I wanted her to file an
9 appeal just like he did in 2002, but it never got filed. So
10 --

11 Q: Let me -- let me hold on to you. Let's just hold up
12 there for just a second. Let's wrap up the failure to
13 challenge the prior convictions. Okay?

14 A: Okay.

15 Q: So you're saying that your -- that that was something
16 that was very relevant to your case; is that correct?

17 A: Yes, sir. She could have prevented them from using that
18 2002, and she could have prevented them from using the other
19 ones because they were all obtained illegally and against my
20 constitutional rights by ineffective assistance of counsel. I
21 explained it.

22 Q: Would you be --

23 A: Yes, sir.

24 Q: Did you discuss that with her?

25 A: Well, I didn't ever know that you could challenge the

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1 prior convictions. I just kept telling her to go talk to the
2 prosecutor because he got me for a wrongful conviction in
3 2002. I told her that that was a daytime burglary and they
4 got me to plead guilty to a nighttime burglary.

5 Q: Okay.

6 A: I mean, he was ineffective, so they lacked jurisdiction
7 to enter a valid judgment on that one, and they lacked
8 jurisdiction on this one to use that prior most serious that
9 really wasn't a most serious because it was a daytime
10 burglary. It was a non-violent.

11 And then she let -- the prosecutor kept using these, what
12 you say, illusory threats. He was using these illusory
13 threats to threaten me with that LWOP and served me that
14 motion because I didn't take the initial plea offer.

15 But if you go back and look at *State v. Phillips*, *State*
16 *v. Lindsay*, and there's a *Green*, then fellows got life
17 sentences because of their prior convictions. They said they
18 were most serious offenses where they -- their attorney filed
19 an appeal, and they got their cases overturned because they
20 went back and re-examined the elements on the priors, and they
21 come out that they weren't most serious. They were just
22 serious, and they couldn't warrant no enhancement on their
23 life sentence. So she was threatening me and letting the
24 prosecutor threaten to do what the law would not have allowed
25 them to do, if you see *Lester v. Turner* out of the Fourth

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1 Circuit.

2 Q: All right. Let's -- let's make a distinction here, if
3 possible. Earlier in court, you mentioned that, you know,
4 it's not just a failure to challenge prior convictions. You
5 stated that your attorney failed to investigate prior
6 convictions?

7 A: Yes.

8 Q: Correct?

9 A: Yes, sir. She would have discovered that it had -- all
10 she had to do was get the records from the prosecutor.
11 They're right there in his office. She could have got
12 everything pertaining to that file because they're supposed to
13 keep a compilation of case files for up to 30 years, and she
14 could have got everything related to them priors and
15 investigated it and discovered that that prior was not a most
16 serious.

17 It was a -- it was a daytime nonviolent, and they got me
18 to plead guilty to a nighttime burglary by ineffective
19 assistance of counsel because he was ineffective for not
20 informing me that I had a right to withdraw my guilty plea.
21 And he also was ineffective for not filing a motion in the
22 arrest of judgment on that guilty plea because he said at the
23 PCR hearing in 2006 on that case that he told the prosecutor,
24 Jepertinger, that it wasn't a nighttime burglary.

25 MS. DIXON: Your Honor, I'm going to object to relevance

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1 at this point. I think he's talking about a prior conviction
2 and a prior PCR action. I'm not sure how that relates to the
3 claim that the lawyer -- I thought we were on didn't file an
4 appeal in this case, but maybe I'm wrong.

5 THE COURT: Mr. Fowler?

6 MR. FOWLER: And, Your Honor, I was just trying to get
7 what the -- just trying to limit or define the scope more
8 properly, the investigation or lack thereof of his attorney's
9 work in this. And I was going to ask about, you know, if he
10 indicated that he told her about this, and we can move on from
11 there.

12 THE COURT: All right. If you'll pose the next question
13 then.

14 BY MR. FOWLER:

15 Q: Just to wrap up the investigation of prior convictions, I
16 think on the earlier question in failure to challenge, you
17 mentioned that you did not know all this at the time?

18 A: Right.

19 Q: Did you -- did you bring up a duty of -- did you bring up
20 to her a potential duty of hers to investigate the prior
21 convictions at that time, not just challenge them but
22 investigate them?

23 A: Well, our first jail visit when she come to visit me the
24 first time at the jail, the first day we met, I asked her who
25 was my prosecutor. She said they hadn't assigned you a

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1 prosecutor yet. I said, well, try and do everything you can
2 to make sure Jeperfinger don't get on my case. She said, why?
3 I said, because he got me for a wrongful conviction in 2002.
4 He got me for a nighttime burglary.

5 And then after I come on my guilty plea, she never
6 informed me to the nature of the elements of the offense, that
7 the burden of proof was on me. She said no matter what I did,
8 that he was going to use that prior to give me a life sentence
9 if I got found guilty on this burglary first. And then during
10 my guilty plea, like I said, she didn't inform me that the
11 burden of proof was on me.

12 The judge -- in my case, there's an exception, like you
13 see *Urtado, State v. Urtado*, and there's different cases where
14 the burden of proof shifts to the defendant. Four times in my
15 trial transcript, you can see that the judge told me that I
16 didn't have to prove anything, that they ain't -- they ain't
17 nothing I have to do, that the burden of proof is on the
18 State, that I didn't have to do anything, and that was a mis
19 -- I was misinformed on that regarding my case, and she failed
20 to step forward to correct that error. I was misinformed. It
21 was an erroneous instruction.

22 Q: Very good. Moving back to earlier questions -- and some
23 of these may over -- well, some of these may overlap, but you
24 indicated that your counsel failed to advise regarding direct
25 appeal; is that correct?

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1 A: Well, she didn't never mention nothing about appeal to
2 me, but I did to her right back there in that corner in this
3 courtroom. I told her I wanted her to file an appeal just
4 like Mr. Steven Hill did in 2002, but she never did.

5 And the day that they -- I rejected the plea offer, they
6 -- my wife was up here and she was here for my support, and my
7 mama had gone to see a private attorney, Mr. John Etheridge,
8 because I did some work on his house in Darlington. So I
9 wanted my mom to go talk to him, which I got a letter from him
10 and from his office telling me to have my family member to go
11 by there and talk to him. I got that letter in my evidence
12 right over there too. So my mom's gone to the lawyer to talk
13 to Mr. Etheridge that day. My wife's come up here.

14 Q: Let me -- let me kind of -- kind of focus this a little
15 bit.

16 A: Yes, sir.

17 Q: Your attorney did not -- who represented you in this
18 matter did not file an appeal for you; correct?

19 A: No, sir. After I advised her to file an appeal, and my
20 wife told her after she said you can leave, you're not long --
21 no longer needed up here today, my wife said, why?

22 Q: Well --

23 A: She said he just signed up for a life sentence.

24 MS. DIXON: Objection. Hearsay.

25 THE COURT: Yeah.

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1 MR. FOWLER: Yeah.

2 THE COURT: Objection sustained.

3 MR. FOWLER: Okay.

4 BY MR. FOWLER:

5 Q: Well -- but you're indicating that it wasn't just you,
6 but several members of your family?

7 A: My wife told her to take it to a higher court.

8 Q: Okay.

9 A: And she run her off. She said she wasn't needed here no
10 longer that day. My wife told me that on the phone that
11 night, and my wife don't lie.

12 MS. DIXON: I object to hearsay.

13 THE COURT: All right. The objection is sustained. You
14 can't tell us what your wife told you.

15 BY MR. FOWLER:

16 Q: Right. And once again, just what your understanding of
17 everything is with this, not what somebody else said.

18 A: Yes, sir.

19 Q: Okay. If nothing else on the failure to file a direct
20 appeal, the failure to review evidence with the applicant, did
21 she visit you at the jail or your home or wherever you were at
22 at that point or how did that go?

23 A: She come to visit me. I mean, maybe once, twice, maybe
24 twice I know of. I don't know. The third time was the -- the
25 time I called her on a Saturday to see if she had talked to

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1 the prosecutor to try to get him to come down on the plea
2 offer. She said, well, they never go up -- they never come
3 down, they always go up. So I said, well, I -- don't even
4 pull me for court then.

5 So Monday or Tuesday, I can't remember which day it was,
6 she popped right back up there at the jail, and that's when
7 she brought my file and then that DVD fell out on the table or
8 she slid it out the file, and that's when I said that's what I
9 want to see right there. She never let me see it. I mean,
10 they got a DVD player up there in the chapel for the inmates
11 and a DVD player for the TV.

12 Q: So -- so let me interject this. What was the
13 significance of the DVD?

14 A: So I could watch for myself to see if he read me my
15 rights and because I was -- I was saying he didn't read me my
16 rights. She's saying he did or that my confession was
17 voluntary because I said the world was coming down on me.

18 Q: So she never presented you that DVD?

19 A: I never saw that DVD. I never had made an informed
20 choice on -- on my decision not to challenge that -- that
21 confession. If I -- if I would have got to view it, then I
22 would say, hey, I don't remember him reading my rights, but
23 maybe he did. But I never got to see it. So I never knew if
24 he did or not. So --

25 Q: Well, are you saying that she didn't go over evidence at

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1 all or she didn't go over it to an appropriate standard in
2 your mind?

3 A: She didn't go over it with me at all as far as letting me
4 see the confession because I'm telling her he didn't read me
5 my rights. She's saying that the plea is -- I mean the
6 confession is voluntary. So I never really got to see it. I
7 was coerced into giving up that defense, and she never told me
8 that they would have to prove that the confession was
9 voluntary beyond a reasonable doubt and that it could go
10 before a jury.

11 Q: Right. Anything else on the failure to -- the apparent
12 failure to review evidence that you'd like to bring to the
13 Court's attention?

14 A: Well, that suppression hearing would have most likely got
15 the statement kicked out because the pawnshop receipts also
16 was obtained illegally, and I was never read me my rights.

17 Q: And those were things that we discussed earlier; correct?

18 A: And the drugs of -- the effects of the drugs.

19 Q: And those were things we discussed earlier; correct?

20 A: Yes, sir.

21 Q: Okay. Failure to present mitigating evidence regarding
22 mental health issues. Tell me about that.

23 A: I had got in several car -- I got in a car wreck. I had
24 fell off a ladder at work, and I had to go back to the doctor
25 several times to get pain medications. And I had lost my

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1 doctor because they said I was abusing the medications. So
2 that led to getting the medication from somebody else on the
3 street. So my wife -- she's also addicted to pain meds, and
4 then her doctor got fired for embezzlement, Mr. Lloyd
5 Anderson. So I'm supporting both of our pain medications to,
6 you know, alleviate pain, and then I end up getting hooked on
7 them.

8 Q: So what hooked -- what medicines were you hooked on at
9 that time?

10 A: Lorcets to start with, and then that led to using the
11 stuff that they're cutting with fentanyl and the -- the -- the
12 little Roxy Pills and the Percocets and stuff, stuff they're
13 cutting with -- they're crushing them and putting fentanyl in
14 them and re-pilling them.

15 Q: So specifically as to this issue, what mitigating
16 evidence would you have liked for her to present regarding
17 your mental health issues?

18 A: Well, I was trying to get some help through right over
19 here on Coit Street, the -- the drug rehab place. I can't
20 think of the name of it, but I had went through there and I
21 was just -- they expect you to quit at the drop of a dime. I
22 mean, I was wanting in-house treatment to go somewhere, a
23 rehab place, but they kept giving me outpatient treatment; so
24 it wasn't helping me. And that's when I got locked up. Those
25 were medical records.

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1 And if you look in my prior conviction sentencing sheets
2 on -- on the two priors that they used against me, the judge
3 ordered mandatory ATU drug treatment. That was in my prison
4 records. She could have pulled them and showed the Court,
5 hey, they ain't doing what they supposed to do to get this man
6 some type of treatment. I never got the benefit of the
7 treatment or the programs in prison, and they just spit me
8 back out on the street same shape I come out -- I mean, I went
9 in. I was worse coming out than I was when I went in.

10 Q: Did you go --

11 A: I did good for a few years until I got back -- I got on
12 them pain medications. My wife said that --

13 Q: Let's -- let's leave it at what you --

14 A: Okay.

15 Q: -- you're saying here. But is there anything other than
16 what you mentioned -- you just mentioned about her failure
17 apparently to present mitigating evidence regarding mental
18 health issues?

19 A: Well, that -- that there could have helped mitigate my
20 sentence a little bit and maybe got me into a drug treatment
21 program or something. She said I wasn't eligible for no
22 treatment programs or no -- no supervision programs or
23 anything. And now I come to find out I got to do two years
24 supervision at the end of this sentence that she didn't even
25 inform me about that, I mean.

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1 Q: Okay. Anything else on the -- on the mitigating factors
2 with mental health issues?

3 A: No, sir, other than all the proof is in my prison
4 records. They failed to give me the treatment in prison that
5 I was afforded to.

6 Q: Okay. Moving on to the next question, and this may
7 relate to your mental health issues, as you've mentioned. She
8 didn't -- she did not send you to get a psychiatric
9 evaluation, did -- psychological evaluations, did she?

10 A: No, sir. I don't know. You know, maybe that would have
11 helped because I was addicted to drugs and depressed on the
12 pain medications, but it probably could have had some kind of,
13 you know, mitigating to help mitigate my sentence some kind of
14 way.

15 Q: Did you ask her for a psychological evaluation to be done
16 on you?

17 A: I -- yes, sir, I did. I don't know which visit it was,
18 but at one point I do remember saying I want to -- I want to
19 be psychologically evaluated.

20 Q: You mentioned that it was involuntary guilty plea. Tell
21 me about that.

22 A: Well, like, that relates back to the elements of the
23 burglary. She told -- the judge asked me if she explained the
24 charges to me or something, and she said, yes, sir. She never
25 explained the charges to me. The only thing she kept saying

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1 was they got these prior convictions. They're going to use
2 these prior convictions against you. I never knew that I
3 could challenge my prior convictions or keep the State from
4 using them against me, and I was told the burden of proof was
5 on the State, that I didn't have to prove anything.

6 If I would have been informed correctly, I wouldn't have
7 sit in jail a year not doing a thing. I would have tried to
8 come up with some kind of way to keep them from using these
9 priors because they're all unconstitutionally gained. They
10 don't warrant enhancement.

11 Q: So just so that I can be clear on this, you're saying it
12 was an involuntary guilty plea?

13 A: Yes, sir. She failed --

14 Q: And it was based on?

15 A: My misunderstanding of the law.

16 Q: And she did nothing to clarify a proper understanding of
17 the law to you, did she?

18 A: No, sir. She let the judge misinform me as to the nature
19 of my crime.

20 Q: Okay.

21 A: She -- the judge pulled 30 of us in the courtroom and he
22 explained us our rights, but when it comes to recidivist
23 proceedings, the judge is supposed to address you personally,
24 and that wasn't done, not in my case. I was on a recidivist
25 proceeding, and I was misinformed as to the whole nature of

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1 the crime, the elements, and the facts of what it would take
2 to prove me guilty, and that the burden of proof was on me,
3 that there was an exception in my case.

4 Q: On another statement here, you were not informed that the
5 State has to prove the case beyond a reasonable doubt. Did
6 you -- were you notified -- let me rephrase that. Were you
7 notified that the State had to prove the case beyond a
8 reasonable doubt?

9 A: The judge had said that they would have to prove the case
10 beyond a reasonable doubt, but before they could use -- when I
11 learned the law going to the law library, they said -- I
12 learned the *Phillips v. State* case and the -- and the *Green*
13 and the *Lindsey* case. The *Phillips* case is the one that
14 directly says that the -- before the -- it says when the State
15 is implementing an LWOP that they have to prove --

16 Q: And let me interrupt you there. Just to be clear, the
17 LWOP, what does that stand for?

18 A: Life without parole under 17-25-45. That it says before
19 they can give you that life sentence, they got to prove that
20 that prior conviction is a most serious, and that's why he
21 appealed his case. They went back and reexamined that -- that
22 -- that prior arson charge he had, and it was a non -- it was
23 a -- it was a serious, but it wasn't a most serious.

24 They reexamined the elements of that case, and he got his
25 case overturned because it didn't qualify as a second strike

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1 most serious. It was only a serious and he -- and that's how
2 he got his -- that's why I wanted to appeal that 2002. That's
3 why I wanted my direct appeal filed so I could challenge, you
4 know, to keep the -- the 2002 to be reexamined, and that was
5 one of the reasons I wanted to appeal because of the 2002.

6 But like I say, I didn't know that I could challenge the
7 priors or object at any time before sentencing. *Smith v.*
8 *United States* is a Supreme Court case out of the District of
9 Columbia. It said the defendant should have been told that he
10 had a right to challenge his prior convictions before
11 sentencing, any time before sentencing, right up until the
12 judge says -- before he pronounces sentence.

13 And if I'd have knew that when I was standing beside the
14 prosecutor -- I mean, the lawyer during my guilty plea, the
15 judge asked her and me, you know, he asked -- she said she
16 wanted to make one thing -- make sure that this got on the
17 record. She thought it was very important, and she also
18 thought that -- she said that I wanted the Court to also know
19 that none of my crimes were violent. And then she went off to
20 say how it was a terrible thing that I had done, that she
21 would be terrified also if somebody broke in her house in the
22 daytime.

23 Well, I was wanting her to tell the Court that I was
24 actually innocent of a -- of a most serious offense, that --
25 that it was a non-violent. That's what I was wanting to put

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1 on the record.

2 And if the judge -- when the judge asked me if I had
3 anything to say to the Court that he'd be glad to hear from
4 me, if she would have informed me before my guilty plea that
5 that was my time to offer -- offer any mitigating evidence
6 pursuant to Rule 32, now was my time, I would have said, yes,
7 Your Honor, I have something to say.

8 Q: Did she --

9 A: I feel like I'm being railroaded by that same prosecutor
10 right there from 2002 because he wrongfully convicted me in
11 2002, and now he's using that same prior conviction to
12 threaten me with a life sentence again.

13 Q: But she didn't do that, did she?

14 A: No, sir.

15 Q: Okay. In terms of the -- the facts did not support the
16 plea, there was no enhancement in the facts, just generally
17 what do you mean by that, I guess? You've gone over several
18 issues here.

19 A: I learned that out of -- it's also out of the *State v.*
20 *Payne* case. And so if you read that case closely, it also
21 says -- and this don't say just jury trials or trials. It
22 says when the State is using prior conviction to enhance a
23 sentence, it says the State must show that the prior
24 conviction was for an offense which occurred prior to the
25 offense that he's on trial for now and that the defendant is

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1 also the person, you know, in that prior conviction.

2 Well, during his reciting of the facts, it's called a
3 structural error in the habitual offender proof, and he failed
4 to prove the -- not prove, but he failed to do what the *State*
5 *v. Payne* says. And it says that you got to show that the
6 prior -- when the prior offense occurred. The only thing he
7 put on record was the conviction dates. He never -- the '99
8 date, the conviction, and then he said the 2002 conviction,
9 but the '99 was for a second offense. Well, that '99 is
10 unconstitutional also. I can explain that.

11 Q: But let me -- but let's --

12 A: It's the chronological order of prior convictions. He
13 failed to prove the chronological order. So, therefore, he
14 didn't establish that they occurred on separate occasions, and
15 then he never linked me to them priors. He never read -- he
16 read off of some purported rap sheet.

17 MS. DIXON: Your Honor, I'm going to object to relevance
18 again. I think he's talking about a different case now.

19 THE COURT: All right. Mr. Fowler?

20 MR. FOWLER: Well, Your Honor, I think that this goes
21 back. I think my understanding is that he's trying to explain
22 the prior convictions and why they were relevant in this case
23 and as to his lawyer's apparent deficient performance. So I
24 just think he's -- he's explaining the prior convictions and
25 how they relate to this matter.

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1 THE APPLICANT: Yes, sir. He never linked me --

2 MR. FOWLER: Okay.

3 THE APPLICANT: -- to the priors is what I'm saying. He
4 never -- off that rap sheet, he never read my Social Security
5 number, my address.

6 MR. FOWLER: Okay.

7 THE APPLICANT: Or anything to link me to that prior.

8 MR. FOWLER: All right. Let -- let's do this.

9 BY MR. FOWLER:

10 Q: Let's -- let's ask this -- let me ask a final question,
11 and I think you may have addressed it earlier, but just to be
12 clear that it's specifically addressed here, and this is
13 something that you mentioned earlier before we got started.

14 You said -- and maybe I can say it better this time.
15 Your attorney apparently failed to tell you that the burden of
16 proof was on you to prevent the State from using prior
17 convictions. Now, I think you've gone over the -- maybe some
18 of the prior convictions in your testimony here.

19 A: Yes, sir.

20 Q: And I think you might even have addressed this issue
21 before. So if you don't mind, if you have, be brief on it,
22 but why -- do you feel like she had a duty to inform you that
23 the burden of proof was on you as opposed to the State on that
24 matter?

25 A: Yes. Yes, sir. That's the law. The law says the burden

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1 of proof is on me to keep the State from using them, and I was
2 never informed of that. If I'd have known that, I wouldn't
3 have pled guilty. I would have went to trial.

4 Q: So, in summation, are you saying that all these factors
5 point to your lawyer's deficient performance?

6 A: Yes, sir.

7 Q: Okay. And you're saying that if the -- if any one of
8 these factors had been properly gone into, you would have
9 changed the way you approached that case; is that correct?

10 A: Yes, sir.

11 Q: Okay.

12 A: One other thing on the -- on the chronological order of
13 the prior convictions, if you look at two Supreme Court cases
14 in the United States, you got French -- *Estelle v. French* or
15 it's *French v. Estelle* out of Texas. It went to the Supreme
16 Court in 1983. It says they failed to put the offense dates
17 on the indictments. That got the case overturned.

18 *Lindeman v. New Mexico*, the same thing. I think it's
19 1979 or '81. They failed to put the offense dates. He failed
20 to mention the offense dates or put the offense dates on the
21 indictments. Therefore, they failed to provide sufficient
22 evidence to present to show chronological order of the prior
23 convictions. Therefore, they was speculating and that they
24 should have been counted as one conviction. Even if they were
25 prior convictions, the State failed to prove the chronological

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1 order to warrant an enhancement.

2 Q: So you feel -- so do you feel like your attorney's
3 performance was deficient?

4 A: Yes, sir. Not just the chronological order of the
5 priors, but also because all the priors are unconstitutional.
6 They're all invalid.

7 Q: Okay. We've gone over -- earlier before we got started,
8 the judge mentioned to you that we had these 13 basically
9 questions and topics that we were going to discuss today, and
10 I think we've related questions to each one of them. Is there
11 anything else that you'd like the Court to know about this
12 matter and why the Court should rule in your favor?

13 A: On the -- also on the -- the direct appeal issue and my
14 offering mitigating evidence as far as the Rule 32 where the
15 judge asked you if you have anything that you would like to
16 say to the Court, that -- that it says that -- that that's my
17 time to offer mitigating evidence to let the judge know
18 anything to help mitigate my sentence.

19 And if she wasn't going to file my direct appeal like I
20 asked her to and she should have informed me or had the judge
21 inform me that I could have just stepped over to the clerk of
22 court and asked her to file my notice of appeal *in forma*
23 *pauperis*, I would have filed an appeal myself or had the clerk
24 do the notice of appeal for me. I was denied that whole
25 process altogether.

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1 MR. FOWLER: Your Honor, I think we've asked all the
2 questions that we felt like we were going to ask today, and I
3 have no further questions.

4 THE COURT: All right. We're going to take a two-minute
5 stretch and then we'll proceed with cross-examination.

6 MS. DIXON: Yes, sir.

7 MR. FOWLER: Your Honor, I'm going to walk down the hall,
8 and I'll be right back.

9 THE COURT: Okay.

10 (WHEREUPON, there was a pause in the proceedings, after
11 which the proceedings resumed as follows.)

12 THE COURT: Okay. Are we ready to proceed?

13 MR. FOWLER: Yes, sir.

14 MS. DIXON: Ready when you are, Your Honor.

15 THE COURT: Okay. You may proceed. Cross-examination.

16 MS. DIXON: Yes, sir.

17 CROSS-EXAMINATION

18 BY MS. DIXON:

19 Q: Mr. Hutchinson, how are you doing today?

20 A: Could be better, but I'm fine. Thank you.

21 Q: Well, I'm going to -- I'm not going to be too long with
22 you today. I do want to make sure before we go forward that
23 you do understand the type of relief that the judge could
24 potentially grant you today. Now, you're currently serving
25 what sentence?

JAMES E. HUTCHINSON - CROSS BY MS. DIXON

- 1 A: It's 26 years.
- 2 Q: Twenty-six years? So you got 26 years total, and how
3 many first-degree burglaries were you charged with?
- 4 A: They charged me with two.
- 5 Q: I'm sorry?
- 6 A: Two.
- 7 Q: Two? Two -- so you had two charges for first-degree
8 burglary. Do you know what the maximum sentence is for first-
9 degree burglary?
- 10 A: Yeah. It's a potential life sentence.
- 11 Q: Potentially life, correct. So potentially if you're
12 granted a new trial, these don't go away. Basically, the
13 State can come back and retry you. And if you're convicted of
14 first-degree burglary, you could potentially be facing life in
15 prison. Do you understand that?
- 16 A: Yes, ma'am.
- 17 Q: I'm sorry?
- 18 A: Yes, ma'am.
- 19 Q: Okay. And in fact, I think the State did serve you prior
20 to your guilty plea with a notice of its intent to seek life
21 without parole; correct?
- 22 A: Yes, after I refused the initial plea offer. Yes, ma'am.
- 23 Q: Okay. And so knowing that you could potentially face
24 life imprisonment if you're granted a new trial and
25 subsequently convicted, do you still want to proceed today?

JAMES E. HUTCHINSON - CROSS BY MS. DIXON

1 A: Yes, ma'am.

2 Q: Okay. Now, going to your -- you have an allegation that
3 your lawyer was ineffective for not moving to suppress a
4 statement based on a drug you had taken, and you -- you
5 testified on your direct that that was given to you because of
6 stomach issues; is that correct?

7 A: Yes, ma'am. I had eaten --

8 Q: And what was the name? I'm sorry.

9 A: I had eaten that -- that little jailhouse breakfast that
10 morning, and it had my stomach hurting. That's why the -- the
11 jail booking officer said, are you okay? I said, yeah, my
12 stomach's just hurting from that jailhouse food this morning.
13 And she -- she got an officer to come take me down to the
14 medical, and that's when she give me the medicine. There were
15 two capsules.

16 Q: Gotcha. So they gave you something for an upset stomach
17 effectively?

18 A: That's what I thought it was, but after my --

19 Q: Do you know what the name of the drug was?

20 A: One was hydroxyzine. She give me two. The receipt I got
21 in my evidence over there after I got it from the kiosk at the
22 jail, they took out \$20. One was for -- they give me double
23 doses. It was, like, extended. It was, like, double of what
24 they were supposed to give you on the regular. They give me
25 100mg of hydroxyzine, and a hundred -- no, it was 600mg of

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1 hydroxyzine and 100mg of gabapentin or it was vice versa,
2 100mg of hydroxyzine and 600mg of gabapentin.

3 Q: Okay. And just to be clear, we don't have an expert here
4 today that can testify about the effects of combining those
5 medicines?

6 A: Right. But I have there it says the combined drugs cause
7 confusion.

8 Q: Okay. Do you have an expert here today for that
9 testimony?

10 MR. FOWLER: Objection, Your Honor. That's been shown
11 that we don't have an expert here today, Your Honor.

12 THE COURT: All right. Do you have -- do you have
13 additional witnesses here today, Mr. Hutchinson?

14 THE APPLICANT: No, sir.

15 THE COURT: All right.

16 THE APPLICANT: Other than my lawyer that I -- that I
17 provided him a copy a while back of that evidence from
18 Drugs.com off the Internet.

19 THE COURT: All right. There are no expert witnesses
20 here, Ms. Dixon.

21 MS. DIXON: No other? Okay.

22 BY MS. DIXON:

23 Q: Moving along, I'm just going to address really quickly
24 you have raised an allegation that your guilty plea was
25 involuntary and that you were not advised of the

JAMES E. HUTCHINSON - CROSS BY MS. DIXON

1 constitutional rights you were waiving. Do you recall the
2 plea court advising you of that?

3 A: Well, he advised me of my rights that I was waiving, but
4 I didn't know I was waiving them rights because I didn't know
5 I had any defenses. I give up them rights involuntary.

6 Q: And what rights do you remember him advising you that you
7 were waiving?

8 MR. FOWLER: Your Honor, I apologize.

9 THE APPLICANT: What was that again?

10 MS. DIXON: I'm sorry. I'm sorry I didn't -- Mr. Fowler,
11 was there --

12 MR. FOWLER: I apologize. Please answer the question.

13 MS. DIXON: Oh, okay. I'm sorry.

14 BY MS. DIXON:

15 A: I only give up my rights to plead guilty because I was
16 told that I didn't have to prove anything. That --

17 Q: All right. According to --

18 A: -- I basically knew --

19 Q: I'm sorry.

20 A: I didn't know I had to prove anything. I thought I was
21 -- I thought it was over, that there wasn't nothing I could
22 do.

23 Q: Do you recall the Court advising you you had -- that the
24 State had the burden of proof?

25 A: They said I had -- they had the burden of proof, but I

JAMES E. HUTCHINSON - CROSS BY MS. DIXON

1 was never informed that I had any burden of proof.

2 Q: Okay. We're going to move on. You said that you asked
3 your lawyer to file a direct appeal. What issue do you think
4 she should have raised on this appeal?

5 A: The confession issue and the -- and the prior conviction
6 not being a most serious offense, that it was really a daytime
7 -- it was a daytime burglary and it shouldn't have qualified
8 as a most serious. It should have been a daytime nonviolent
9 burglary. It shouldn't have warranted a life sentence if I
10 would have went to trial.

11 Q: Okay. So your primary claim is that the 2002 conviction
12 should not have been classified as most serious?

13 A: If she would have went back and reexamined that file, she
14 could have prevented the State from using it and she could
15 have investigated my other priors and kept them from even
16 having two more priors to try to back up to say that, well, we
17 got these other two. We'll use -- we'll just use these.
18 Well, no, they wouldn't even have had two prior convictions to
19 qualify for burglary first either.

20 Q: Okay. So your primary issue, had you appealed, would
21 have been to challenge your 2002 conviction?

22 A: Challenge that, and I would have went to trial to
23 challenge the other priors. They wouldn't have had no two
24 prior convictions to support no burglary first degree.

25 Q: Gotcha. So your primary concern is that you didn't get

JAMES E. HUTCHINSON - CROSS BY MS. DIXON

1 an opportunity after this guilty plea to challenge your 2002
2 conviction and your prior conviction?

3 A: Not -- not only appeal way. That I put it in there on my
4 PCR. That's why I had to do PCR because she didn't file my
5 appeal, and then I tried to file PCRs on them two priors, but
6 one, the '89, got dismissed because it said I failed to give a
7 proper explanation, but it didn't rebut that none of my facts
8 -- that my facts were true. My allegations in that case are
9 true.

10 And the '95 that Your Honor -- he granted me a hearing on
11 the '95 case, and that's most likely going to show that that's
12 an invalid prior conviction also. So they wouldn't have had
13 two priors to use against me.

14 MS. DIXON: All right. No further questions.

15 THE COURT: Anything further, Mr. Fowler?

16 MR. FOWLER: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. FOWLER:

19 Q: On cross-examination, she mentioned, you know, the lack
20 of an expert witness or what have you, but as to the way you
21 felt that day, you felt woozy; correct?

22 A: I was sleepy, confused, and I wasn't alert. I wasn't
23 alert to what was going on. I should have been put in a room
24 and been able to sleep them drugs off so I'd have been alert
25 whenever that officer come round there to interrogate me. He

JAMES E. HUTCHINSON - REDIRECT BY MR. FOWLER

1 -- he got me to give him a statement, and I wasn't in my right
2 state of mind. I should have been clearheaded. It caused
3 drowsiness. I got case law that backs up all my allegations.
4 I mean, I shouldn't have been interrogated, and the statement
5 should have been suppressed.

6 Q: So even -- so even without knowing the exact definition
7 of how the drugs interacted, you were in no state of mind, in
8 your own opinion, to be giving any kind of confession or
9 statement to any kind of law enforcement officer; correct?

10 A: That's right.

11 Q: Okay. You mentioned that -- you've quoted a lot of case
12 law in your testimony today. You've quoted a lot of case law
13 in the supplemental applications, and I think probably even
14 your main application for post-conviction relief. You learned
15 most of that while you were incarcerated; isn't that correct?

16 A: I took every chance I could to get to the law library,
17 and then they started letting us use tablets. They issued
18 tablets out. And so every day I get that tablet, I learn
19 something new on that -- on that Westlaw.

20 Q: So a lot of these issues you didn't learn until after you
21 were incarcerated; is that correct?

22 A: No, sir. It's all newly-discovered evidence because I
23 was never informed of any of these defenses.

24 Q: Okay. And that's why you didn't bring anything up before
25 the Court; is that correct?

JAMES E. HUTCHINSON - REDIRECT BY MR. FOWLER

1 A: That's what made my guilty plea involuntary. Yes, sir.

2 Q: Okay. And a lot of these other issues you learned about

3 it while you were incarcerated subsequently?

4 A: Yes, sir.

5 Q: Correct?

6 A: Yes, sir.

7 Q: Okay. She mentions on cross-examination what's the

8 primary issue that you would have raised, and you mentioned

9 the priors, but it's my understanding from your direct

10 testimony that you perhaps would have brought up all -- some,

11 if not all, of these things that we mentioned on direct

12 examination; is that correct?

13 A: Yes, sir. I would have tried to raise everything on

14 direct appeal.

15 Q: Okay. And the reason you didn't know that was because

16 your lawyer didn't tell you any of it; is that correct?

17 A: Right. Yes, sir. I was never informed of any defenses,

18 no type defenses at all. I was just told they're going to use

19 these priors against you to give you life if you go to trial

20 and get found guilty.

21 Q: Okay. But I guess my -- the point of my question is all

22 of these 13 or so things that we mentioned on direct

23 examination play a part in your -- if you would have been able

24 to appeal it, they all would have been part of your appeal; is

25 that correct?

JAMES E. HUTCHINSON - REDIRECT BY MR. FOWLER

1 A: Yes, sir.

2 Q: Okay.

3 MR. FOWLER: No further questions, Your Honor.

4 THE COURT: Anything further?

5 MS. DIXON: No, we're good.

6 THE COURT: All right. Thank you, Mr. Hutchinson. You
7 may step down.

8 THE APPLICANT: Thank you.

9 MR. FOWLER: Your Honor, may I have a moment to speak
10 with my client when he comes down?

11 THE COURT: Yes.

12 MR. FOWLER: Thank you.

13 (WHEREUPON, there was a pause in the proceedings, after
14 which the proceedings resumed as follows.)

15 MR. FOWLER: Your Honor, after -- I apologize.

16 THE COURT: Yes, sir.

17 MR. FOWLER: Your Honor, after speaking with my client,
18 we have no further witnesses.

19 THE COURT: All right. By the -- by the State?

20 MS. DIXON: Yes, sir, Your Honor. The State calls
21 Caroline Lawson.

22 THE COURT: All right. Ms. Lawson, if you'll be sworn
23 over there? All right.

24 THE WITNESS: Where do you want me?

25 THE CLERK: You can just go ahead and be seated.

CAROLINE LAWSON - DIRECT BY MS. DIXON

1 THE WITNESS: Okay.

2 THE CLERK: Just raise your right hand.

3 THE WITNESS: Okay.

4 THE CLERK: Do you swear or affirm that the testimony you
5 give will be the truth, the whole truth, and nothing but the
6 truth, so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Thank you.

9 THE COURT: Yes, sir. Yes, ma'am.

10 MS. DIXON: Sorry.

11 THE COURT: Yes, ma'am.

12 CAROLINE LAWSON, being first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. DIXON:

16 Q: Ms. Lawson, how are you today?

17 A: I'm well. How are you?

18 Q: I'm good, thank you. Just some quick questions. How
19 long have you been practicing law?

20 A: I have been -- let's see. I finished law school and took
21 the bar in 2013 and then I clerked for a judge for a period of
22 time. And then in 2015, I'll say I really began practicing.

23 Q: Gotcha. And how much of that practice has been devoted
24 to criminal law?

25 A: All of it. All of it.

CAROLINE LAWSON - DIRECT BY MS. DIXON

1 Q: All of it? Okay. And regarding your representation of
2 Mr. Hutchinson, were you appointed or retained?
3 A: I was appointed.
4 Q: Appointed? Do you recall when you were appointed?
5 A: I was appointed on May the 1st of 2018. It looks like I
6 filed my discovery motion a couple of weeks later.
7 Q: May the 1st of 2018, you said?
8 A: Correct.
9 Q: And do you recall when this plea occurred?
10 A: It was January the 8th of 2019.
11 Q: Okay. All right. And prior to this plea, how many times
12 did you meet with Mr. Hutchinson?
13 A: My notes indicate seven in total.
14 Q: Okay. And in terms of the -- the State -- the LWOP
15 notice, do you recall when the State served that?
16 A: They served that on December the 3rd of 2018. So it was
17 the court term immediately prior to his guilty plea.
18 Q: Okay. Okay. And what evidence did the State have
19 against Mr. Hutchinson?
20 A: So he had some photos, pawn receipts, and I've got my
21 file here if you'd like for me -- but I found the strongest to
22 be the pawn receipts with his signature on them.
23 Q: Okay.
24 A: As well as some surveillance footage and other things
25 from a woman's house and a couple of different places.

CAROLINE LAWSON - DIRECT BY MS. DIXON

1 Q: You said surveillance footage from the residence?

2 A: Correct. And photos.

3 Q: Okay. And did you review those pictures or that

4 surveillance?

5 A: I -- the photos prior to this, yes. It's been years

6 since I took a look at the video.

7 Q: Okay. Okay. And did you review that evidence with Mr.

8 Hutchinson?

9 A: I did. I did. I would have shown him my entire file.

10 Q: Okay. And did you explain to him the elements of the

11 charges?

12 A: I did. We spoke about burglary first and that his was --

13 it was not nighttime, but it was due to his two or more prior

14 burglary convictions.

15 Q: Okay. And did he have any defenses?

16 A: No, not that we deemed of merit at the time.

17 Q: Okay. What about challenging the confession? Did y'all

18 discuss that?

19 A: We did speak about that.

20 Q: Okay. And what were your thoughts in terms of the

21 confession itself? Did you believe that there was a viable

22 challenge to it?

23 A: I did not, after my review of it and some research into

24 the medication that he had taken.

25 Q: Okay. And did you explain that to him?

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1 A: I did.

2 Q: Okay. And he's talked a lot about the medications. Is
3 that something you were aware of?

4 A: I was aware of the gabapentin and hydroxyzine, and I did
5 my own independent research into those medications and --

6 Q: Okay.

7 A: -- the effects that they would have on someone.

8 Q: Gotcha. So that -- was that something you had
9 investigated?

10 A: I did.

11 Q: Okay. And if you -- if he had proceeded to trial, would
12 you have moved to suppress the evidence?

13 MR. FOWLER: Your Honor, I'd like to object to this.
14 She's done her own investigation, but she's not an expert on
15 this, and we would like to strike what she's said previously
16 on these drugs, and we would like to strike any of her
17 investigation into this. She's not an expert in this issue.

18 THE COURT: Any response?

19 MS. DIXON: You know, we were just trying to see if she
20 investigated it, not necessarily -- I was asking about her
21 opinion as to the viability of a suppression motion in terms
22 of the drugs themselves. I was just wondering if it was a
23 thing she had investigated.

24 THE COURT: You may answer.

25 BY MS. DIXON:

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1 A: Then, yes. Again, I did investigate these medications.

2 Q: You investigated the medication? Okay. And just to
3 clarify for the record, in terms of the confession itself,
4 what were your -- what was your opinion as to the likelihood
5 of a motion to suppress being granted?

6 A: Slim to none. I watched the confession video at least
7 three times per my notes. Mr. Hutchinson appears lucid and,
8 you know, voluntarily speaking with law enforcement in each of
9 them.

10 MR. FOWLER: Objection, Your Honor. It's -- I don't
11 think she's -- she's qualified to determine his state of mind
12 at that point based on a video.

13 THE COURT: She -- she -- she represented him and she's
14 giving her thought processes in the -- in the manner in which
15 she represented him, and it's proper testimony.

16 BY MS. DIXON:

17 Q: Let's see. Did you engage in plea negotiations with the
18 State?

19 A: I did. As we previously spoke about, they served him
20 with an LWOP notice, and then at that point I began
21 negotiating a plea with them to see if they would take that
22 LWOP off the table, and thankfully they did.

23 Q: Okay. And did you discuss all these offers with him?

24 A: Yes, I did.

25 Q: Did the State dismiss any charges in exchange for this

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1 plea?

2 A: They did.

3 Q: And in terms of just in general during your
4 representation, did Mr. Hutchinson indicate he wanted a trial
5 or what was his kind of mental -- well, not necessarily his
6 mental thought, but in terms of what he conveyed to you, did
7 it seem like he wanted to go to trial or was he going for a
8 deal?

9 A: I do not ever recall him strongly telling me that he
10 wanted a trial. As we kind of went through discovery, I feel
11 like the likelihood of him wanting a plea sort of increased.
12 But he was also not one of those people that wanted to plead
13 from the outset, but he did not strongly indicate to me in the
14 beginning I really very much want a trial.

15 Q: Okay. Okay. So he was kind of -- I guess to sum up what
16 you said, kind of neutral as to that throughout most of the
17 representation?

18 A: Right. Correct.

19 Q: Okay. And I think you said -- I've probably already
20 asked you this. Did you see any issues with the voluntariness
21 of the confession?

22 A: I did not.

23 Q: And did you explain that to him?

24 A: I did.

25 Q: And did he -- did you explain to him that he was waiving

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1 his right to challenge that by pleading guilty?

2 A: I did. I kind of went through the procedure of how a
3 trial would sort of look and that the suppression motion would
4 come prior to a trial. The trial judge would then decide
5 whether it was admissible or not. We would go forward, you
6 know, based on that ruling. Now -- and I did tell him that,
7 you know, if you plead, you cannot come back and contest the
8 voluntariness of your confession. That's null and void.

9 Q: Okay. Okay.

10 MS. DIXON: And, Your Honor, at this time, I think Russ
11 has a document, if he can maybe approach the witness and show
12 her that document?

13 THE COURT: Yes.

14 MS. DIXON: Thank you.

15 MR. FOWLER: May I have just a moment, Your Honor?

16 THE COURT: Yes.

17 (WHEREUPON, there was a pause in the proceedings, after
18 which the proceedings resumed as follows.)

19 MR. RUSS BARLOW: And, Your Honor, one for you just for
20 reference.

21 THE COURT: Okay. You may proceed.

22 MS. DIXON: I can't see Caroline right now.

23 MR. RUSS BARLOW: Your Honor, I'm sorry. My computer has
24 gone to sleep. Let me wake it up.

25 (WHEREUPON, there was a pause in the proceedings, after

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1 which the proceedings resumed as follows.)

2 MS. DIXON: There she is.

3 THE WITNESS: Okay.

4 MR. RUSS BARLOW: There you go.

5 THE WITNESS: All right. Perfect. Thank you.

6 MS. DIXON: Okay. Your Honor, can we proceed?

7 THE COURT: Yes.

8 MS. DIXON: Okay. All right.

9 BY MS. DIXON:

10 Q: Ms. Lawson, do you recognize that document that Russ
11 handed you?

12 A: I do, the three pages.

13 Q: And what is that document?

14 A: It is an acknowledgment of rights given up by entering a
15 guilty plea or a plea affidavit, as I might call it, that I
16 went through with Mr. Hutchinson during the court term in
17 which he pled guilty.

18 MS. DIXON: And, Your Honor, at this time we'd like to
19 move that into evidence.

20 THE COURT: Any objection?

21 MR. FOWLER: Your Honor, she hasn't verified any
22 signatures on this. You know, I don't recognize it. You
23 know, it appears that her signature is on it, but there's been
24 no qualification of my client's signature on this document.
25 So I'd like to object to it coming in.

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1 MS. DIXON: May I ask an additional question?

2 THE COURT: Yes.

3 BY MS. DIXON:

4 Q: Ms. Lawson, do you recall Mr. Hutchinson signing this
5 document in your presence?

6 A: I do, out at the jail.

7 Q: Okay. And does that appear to be his signature on the
8 page that you watched him sign?

9 A: It does.

10 MR. FOWLER: Objection, Your Honor. She's not been
11 qualified as an expert witness in handwriting. There's no
12 notary on this. So I would like to object for it becoming --
13 I object to it being entered into evidence.

14 THE COURT: Okay. It's entered over objection.

15 (WHEREUPON, State's Exhibit No. 1, acknowledgement of
16 rights, was admitted into evidence.)

17 MS. DIXON: All right.

18 BY MS. DIXON:

19 Q: And, Ms. Lawson, based on this document, tell us again
20 what this document is?

21 A: It is an acknowledgment by Mr. Hutchinson basically of
22 all the rights that he was giving up by pleading guilty that
23 day.

24 Q: Okay. And do you recall what rights you advised him of?

25 A: I can walk you through this. I spoke with him about the

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1 minimum and maximum sentencing for this particular charge,
2 talked about the fact that it was a negotiated plea as opposed
3 to a recommended and the options that a judge had when it came
4 to a negotiation, talked about any threats or pressure that
5 had been put upon him, asked him if he was under the influence
6 of any drugs or alcohol.

7 Did he have any physical or mental disabilities that
8 would stop him from understanding what he was doing that day?
9 Did he understand that if he decided to plead not guilty, if
10 he had the right to have the help of a lawyer at all phases of
11 the proceedings.

12 What do you give up when you give up your rights to a
13 jury trial? Do you know that you're presumed innocent?
14 You're not required to prove that you're innocent or that you
15 are not guilty. You have a right to hear and see all
16 witnesses called against you and to confront and cross-examine
17 them. You have the right to take the stand and testify or not
18 take the stand as you choose and that you can't be required to
19 testify against yourself.

20 You have no burden of proof in a trial. The burden is on
21 the State. You can only be found guilty if all twelve jurors
22 agree.

23 MR. FOWLER: Your Honor, may I interrupt here? What
24 documentation is she talking about? Is she talking about what
25 was just discussed with my client's alleged signature or is

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1 she talking about another document? Which document are you --
2 is she referring to?

3 THE WITNESS: I'm referring to this three-page document,
4 which is the only one that I have in front of me.

5 THE COURT: Okay. Let's have this marked for -- is it --
6 has it been marked? This is the --

7 MS. DIXON: Your Honor, we --

8 THE COURT: State's Exhibit No. 1, referencing State's
9 Exhibit No. 1. Is that what you're referring to?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right. You may proceed.

12 BY MS. DIXON:

13 Q: Spoke with him if he fully understood the elements of
14 each crime that he was pleading to, which in this case
15 burglary first. If he understood that if he pled not guilty
16 and took the witness stand, the jury couldn't hold that as
17 evidence against him. The Court would tell the jury that he
18 has the right to remain silent. If he pled not guilty, he
19 understood that he had the subpoena power of the Court to
20 bring in other witnesses.

21 If you plead guilty, you will be found guilty without a
22 trial and you will have given up all the rights previously
23 mentioned, along with your right to present any defenses, your
24 right to challenge or contest any of the evidence against you,
25 including searches or seizures made by law enforcement, any

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1 statements that you may have made and any testing that was
2 done or should have been done. He acknowledged that he
3 understood that.

4 I asked him if he knew if he was on probation or parole,
5 could this result in a revocation? He was not on probation or
6 parole, so that was irrelevant. Had I gone over all rights
7 and all circumstances of the charges with him, had I done
8 everything that he asked him to do on this case? He signed
9 yes, that he was satisfied, that he understood what he was
10 doing and what he was giving up, and that he's pleading guilty
11 of his own free choice and accord.

12 And those are the 20 bullet points of that affidavit.

13 Q: Okay. And you reviewed that with him prior to the plea?

14 A: I did.

15 Q: Okay. And he has testified that he was never informed
16 that he had the burden of proving some things. In your
17 experience as a criminal lawyer, who has the burden of proof?

18 A: The State.

19 Q: Okay. And regarding his allegations about the direct
20 appeal, did he ever ask you to file a notice of appeal?

21 A: He did not. And I know that that duty is mine to do that
22 within ten days. Even if I don't believe it has any merit, I
23 have to do it. He never asked me to do that, nor did anyone
24 else.

25 Q: Okay. And if he had asked you, what would you have done?

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1 A: I would have had to have filed it, no matter what I
2 thought about it. You have to file it.

3 Q: Okay. And in terms of his -- well, did you explain to
4 him what a negotiated sentence meant?

5 A: I did. He knew the difference between a negotiation and
6 a recommendation.

7 Q: And did he seem to understand?

8 A: He did. He's a very intelligent person. He understood.

9 Q: Okay. Did you ever have any concerns with his -- with
10 his competency?

11 A: No, I did not.

12 Q: How about his ability to understand you?

13 A: I did not. Again, he's a very intelligent individual.

14 Q: Okay. And did you see any reason to present mitigating
15 evidence for a negotiated plea?

16 A: No. And he mentions mental health concerns. I knew that
17 he had had some drug issues in the past, but I was not aware
18 of any mental health issues --

19 Q: Okay. And --

20 A: -- beyond some depression.

21 Q: In terms of he's raised a lot of issues about you not
22 challenging his prior convictions that were used as
23 enhancement for this case, did you -- did you see any basis to
24 have challenged those convictions?

25 A: I did not. And he's correct. I did not go and pull the

CAROLINE LAWSON - CROSS BY MR. FOWLER

1 files on the '89 burglary, the '95 burglaries, or the 2002s.

2 Q: Okay.

3 MS. DIXON: I believe that's everything. Thank you.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. FOWLER:

7 Q: You mentioned -- Ms. Lawson, can you hear me okay?

8 A: I hear you just fine.

9 Q: Okay. If you cannot hear me, please let me know.

10 A: Okay.

11 Q: Okay. You mentioned that the most explosive evidence was
12 the pawn receipts with the signature; is that correct?

13 A: Yes.

14 Q: Where was that pawn shop located?

15 A: It was in Dillon County.

16 Q: Okay. And who was the -- who facilitated getting those
17 receipts?

18 A: Investigator James Allen, from my memory.

19 Q: And who was he with?

20 A: The Florence County Sheriff's Office.

21 Q: So there was a Florence -- was he a deputy or what was
22 his title?

23 A: He was an investigator.

24 Q: Okay. So an investigator went across the county line to
25 get evidence into Dillon County; is that correct?

CAROLINE LAWSON - CROSS BY MR. FOWLER

1 A: He did, from my memory.

2 Q: Okay. Was there any special permission that he -- I'm
3 unfamiliar with what crossing county lines means specifically.
4 Did -- but did he receive any kind of permission to go across
5 county lines to get that documentation?

6 A: Nothing that was documented that I have seen.

7 Q: Okay. But when a law enforcement officer goes across
8 county lines on -- to get information that's used in a
9 criminal case, there needs to be some kind of judicial
10 authority granting him that permission; is that correct?

11 A: It depends. That's kind of a loaded question, and that's
12 a law enforcement question.

13 Q: Yeah, but you see -- you said that that was the most, my
14 words, damning evidence against him; is that correct?

15 A: Yes. That's what I found would have come in the easiest
16 and would have linked him to the most items the quickest into
17 these homes.

18 Q: And you just said that it would come in the easiest, but
19 that you also said that there was an inter-county possible
20 conflict of the law enforcement officer getting those
21 receipts; is that correct?

22 A: No. I didn't say there was any kind of inter-county
23 conflict.

24 Q: So you don't -- so you don't remember seeing any kind of
25 jurisdictional issue, do you?

CAROLINE LAWSON - CROSS BY MR. FOWLER

- 1 A: No, I do not.
- 2 Q: Did you investigate that?
- 3 A: I did.
- 4 Q: And what did you find?
- 5 A: I believe that different agencies spoke with each other,
6 and then Investigator Allen followed up, went to that pawnshop
7 in Dillon and was able to obtain those receipts. And again,
8 this has been four years ago, so it's been a while for me, but
9 that's to the best of my memory and my review of the file.
- 10 Q: But you indicated that you had your file with you today;
11 correct?
- 12 A: I do, but it's voluminous. It's over 113 pages. So I
13 have not reviewed it line by line just sitting here today.
- 14 Q: Okay. You mentioned that you made your own determination
15 on what he was like when he allegedly confessed to the officer
16 on the DVD; is that correct?
- 17 A: I did. I watched the video myself multiple times and
18 made a judgment.
- 19 Q: Did he ever indicate to you that he was having some
20 issues with medication at that point?
- 21 A: We spoke about medication later, and he told me that he
22 had just -- he had woken up not long before he started
23 speaking with law enforcement.
- 24 Q: Did you ever hire an expert to go over the combination of
25 medications that he took at that time?

CAROLINE LAWSON - CROSS BY MR. FOWLER

- 1 A: I did not.
- 2 Q: But that would -- but his state of mind was very
3 important in terms of having a confession entered into
4 evidence or being the basis of his plea or what have you; is
5 that correct?
- 6 A: State of mind, involuntary, no, sir. Yes, very important
7 when it comes to the confession here.
- 8 Q: Okay. But you -- but once again, no expert in terms of
9 what kind of drugs he was taking?
- 10 A: No, I did not hire an expert.
- 11 Q: Okay. Now, you said you saw the DVD; is that correct?
- 12 A: Yes.
- 13 Q: Okay. What did you see on the DVD?
- 14 A: I saw probably at least 40 minutes of him speaking with
15 Investigator James Allen. I think he may have had a drink,
16 some sort of canned drink, maybe a Mountain Dew, but they
17 speak for an extended period of time. And I'll tell you, I
18 have not watched that recently. It's been years. I just have
19 my paper file here with me today.
- 20 Q: Well, that's -- but you knew you were coming to court
21 today; correct?
- 22 A: Yes.
- 23 Q: Have you reviewed this file before you came to court
24 today?
- 25 A: Yes.

CAROLINE LAWSON - CROSS BY MR. FOWLER

1 Q: Okay. Was it an audio and video or was it just video?

2 A: It's audio and video. It's out at the Sheriff's Office
3 in one of the investigation rooms.

4 Q: Okay. Was it a complete -- I mean, was it from the first
5 second of invest -- okay. Let me see how I have to phrase
6 this. Was it the complete conversation between the two?

7 A: He is -- Mr. Hutchinson is sitting in the room when it
8 switches on. So there may have been conversation out in the
9 hallway or in another room that I was not privy to.

10 Q: But the DVD was very important in terms of what activity
11 he took in terms of taking the plea; correct?

12 A: Yes, absolutely.

13 Q: Okay. Did you see in the video the officer read him his
14 Miranda rights?

15 A: I did. And I saw them go through kind of a waiver form
16 together and check those boxes.

17 Q: Do you have a copy of the waiver form?

18 A: I should, buried deep somewhere in my file.

19 Q: Okay. In terms of the document that you went over and I
20 believe entered into evidence as Exhibit 1 or A, you referred
21 to that as an affidavit; correct?

22 A: That's for lack of a better term. The top says
23 acknowledgment of rights given up by entering guilt -- guilty
24 plea, and this is something that Judge Hill drafted years ago
25 and I just work off of.

CAROLINE LAWSON - CROSS BY MR. FOWLER

- 1 Q: But it's not an affidavit, is it?
- 2 A: No, it's an acknowledgment. And that's me misspeaking.
- 3 It's an acknowledgment of rights given up by entering a guilty
- 4 plea.
- 5 Q: And there's no notary of Mr. Hutchinson's signature, is
- 6 there?
- 7 A: No. I am a notary, but it was not notarized.
- 8 Q: But you're also his attorney at the time; right?
- 9 A: Correct.
- 10 Q: Okay. And also, there's no witnesses on this; correct?
- 11 A: Correct.
- 12 Q: Okay. And it's dated, apparently, January 7th, 2019;
- 13 correct?
- 14 A: Correct.
- 15 Q: And you met with him that day?
- 16 A: Correct.
- 17 Q: Did you show him the DVD that day?
- 18 A: No. I showed him the DVD prior to that. This would have
- 19 been the day before the plea.
- 20 Q: Okay. All right. Just a few more questions. So you
- 21 never moved to suppress the statements of his confession in
- 22 this case, did you?
- 23 A: No. I did not file a suppression motion.
- 24 Q: And as -- and you never failed to advise on his
- 25 constitutional rights that he waived in this matter, did you?

CAROLINE LAWSON - CROSS BY MR. FOWLER

- 1 A: Can you ask me that one more time?
- 2 Q: Yeah. You never -- you never advised him about the
3 constitutional rights that were read to him in court, did you?
4 Beforehand?
- 5 A: Are you asking if I advised him of his jury trial rights
6 or what rights are you referring to?
- 7 Q: Well, I think the judge indicated that there was some
8 constitutional rights that he was privy to. Did you go over
9 his constitutional rights with him?
- 10 A: I did. I went over everything that he was giving up, as
11 well as his jury trial rights.
- 12 Q: Okay.
- 13 A: And we walked through what a trial would look like in
14 terms of witnesses and what pieces of evidence they would try
15 to get in through certain witnesses.
- 16 Q: Okay. Did you file an appeal for him on this matter?
- 17 A: I did not.
- 18 Q: Okay. Did you talk with him about an appeal?
- 19 A: No, I did not because it was a negotiated sentence.
20 Judge Russo would have gone over his right to an appeal.
- 21 Q: But as his lawyer, it's your responsibility to go over
22 his appellate rights; is that correct?
- 23 A: And actually, I misspoke. I believe that there is an
24 advisement of your right -- his right to appeal within this
25 acknowledgment that I did with him. I will look line by line.

CAROLINE LAWSON - CROSS BY MR. FOWLER

1 Okay. I don't see it in this acknowledgment, so I may
2 not have told him. I don't have it in my notes, but Judge
3 Russo would have.

4 Q: But you don't remember that specifically, do you?

5 A: No. Judge Russo was very thorough. I can't think of a
6 single plea I did in front of him while he was on the bench
7 that he did not advise the client of their right to appeal his
8 sentence within ten days.

9 Q: Were you familiar -- he mentioned that he had an apparent
10 history with drugs before this plea; is that correct?

11 A: Yes. I was aware of that.

12 Q: Okay. What -- what was your knowledge of his history
13 with drugs prior to this date?

14 A: Just that he had a long-standing pill problem that
15 stemmed from, I think, an accident that he got into at work.
16 He started taking pain pills, and it just kind of spiraled out
17 of his control.

18 Q: Did you ever seek to obtain a psychological evaluation on
19 that?

20 A: No. I didn't believe that his pill problem would have,
21 you know, given rise to the need for a competency evaluation.

22 Q: So -- but you admit that he had a pill problem? Is that
23 -- in your own words; correct?

24 A: Yes. He told me that he had a pain pill issue.

25 Q: In regards to the prior convictions, you mentioned -- I

CAROLINE LAWSON - CROSS BY MR. FOWLER

1 think he mentioned that and you mentioned that there were
2 several prior convictions; is that correct?

3 A: Correct.

4 Q: All right. What investigation did you do on those
5 convictions?

6 A: I did not go and pull those files. I simply -- I made
7 sure that the copy of the rap sheet I had was correct, and
8 that was the extent of it.

9 Q: Did you talk with him about the validity of -- the
10 validity of those priors?

11 A: We did speak about those briefly.

12 Q: Okay. In retrospect, do you think that there were some
13 issues with those priors that should have been brought up at
14 the time?

15 A: I do not believe so, knowing what I know now and what I
16 knew then.

17 MR. FOWLER: Just a moment, Your Honor.

18 (WHEREUPON, there was a pause in the proceedings, after
19 which the proceedings resumed as follows.)

20 BY MR. FOWLER:

21 Q: Did you go -- did you ever sit down with Mr. Hutchinson
22 and watch the DVD together?

23 A: Yes. I would have taken my laptop out to the jail. This
24 was before we had any kind of issues with actually physically
25 sitting with clients during the pandemic, and I have a drive

CAROLINE LAWSON - REDIRECT BY MS. DIXON

1 that I could use. I recall it being just one disk that the
2 interview was on.

3 MR. FOWLER: Your Honor, after consulting -- Your Honor,
4 after consulting with my client, no further questions.

5 THE COURT: Anything further, Ms. Dixon?

6 MS. DIXON: Just briefly.

7 REDIRECT EXAMINATION

8 BY MS. DIXON:

9 Q: You were asked did you file a suppression motion. If
10 this had proceeded to trial, what would you have done?

11 A: I would have filed a suppression motion to cover myself.

12 Q: Okay. And since you had a negotiated plea, was there any
13 reason to hire an expert for the purposes of the plea?

14 A: No, there was not and, quite frankly, at that point I
15 felt very lucky to have something that was not life available
16 to him.

17 Q: Okay. And of course, if it had proceeded to trial, is
18 that something you would have pursued?

19 A: The expert? Yes.

20 Q: Okay. And let's see, in terms of the -- you were
21 questioned about the law enforcement investigating a pawn shop
22 in a different county, and you said you didn't see any
23 jurisdictional issues. Had this proceeded to trial and you
24 had seen any issues, what would you have done?

25 MR. FOWLER: Objection, Your Honor. Speculation.

CAROLINE LAWSON - REDIRECT BY MS. DIXON

1 THE COURT: Any response?

2 MS. DIXON: I believe it would be her strategy as to what
3 she would do if this proceeded to trial. She would know what
4 she would do.

5 MR. FOWLER: Your Honor? If I may, Your Honor, this did
6 not proceed to trial. We're talking about a snapshot of what
7 her representation was at that time in that moment. So you
8 asked -- there's a lot of speculation that could occur here of
9 various. So I renew my objection.

10 THE COURT: I sustain the objection.

11 BY MS. DIXON:

12 Q: Whose decision was it to plead guilty?

13 A: Mr. Hutchinson, at the end of the day.

14 Q: Okay. Did you coerce or force or threaten him in any
15 way?

16 A: No, I did not. He may have felt coerced by the LWOP, but
17 I personally did not coerce him to do anything.

18 Q: Okay.

19 MS. DIXON: No further questions.

20 THE COURT: Yeah. Though I sustain the objection, I
21 really don't know whether it really matters regarding an
22 officer commissioned by the State going into another county to
23 gather evidence. I don't know. I don't know that there's
24 anything wrong with that.

25 You know, we know there are statutes regarding pursuit

1 beyond jurisdiction, but to say that an -- an investigator in
2 Florence, cannot go to Dillon to collect evidence, I -- I
3 don't know that there -- that there's an issue to be raised at
4 trial on that -- on that particular point that I'm aware of.
5 Now, you know, maybe someone has some authority that might
6 mean something on that, but I'll sustain the objection
7 nevertheless.

8 Any further questions?

9 MR. FOWLER: If I may have a moment, Your Honor? If I
10 may have just a moment, Your Honor, please?

11 THE COURT: Uh-huh.

12 (WHEREUPON, there was a pause in the proceedings, after
13 which the proceedings resumed as follows.)

14 MR. FOWLER: All right. If I may address the Court?

15 THE COURT: Yes, sir.

16 MR. FOWLER: You mentioned about jurisdictional issues,
17 Your Honor. My understanding is -- and it's in the -- one of
18 the applications for post-convicted relief is the *State v.*
19 *Boswell* case in 2011, where I think that there needs to be
20 county council approval of any local law enforcement officer
21 crossing state lines -- excuse me -- well, crossing county
22 lines in terms of receiving information that's used in a
23 conviction, plea, etc. So -- and I think that's documented in
24 the information that we presented today, Your Honor.

25 THE COURT: *State v. Boswell*, 2011?

1 MR. FOWLER: Yes, sir. And also *State v. Burgess*, B-u-r-
2 g-e-s-s.

3 MS. DIXON: And do you have cites for those?

4 MR. RUSS BARLOW: Your Honor, if I may, it's 391 S.C. 592
5 for *State v. Boswell*.

6 THE COURT: Yeah. I recall that, the interplay between
7 Lexington and Calhoun County on a pursuing case.

8 MR. FOWLER: And the State -- and my understanding, Your
9 Honor, is the *State v. Burgess* is a Richland County case.

10 THE COURT: That said what?

11 MR. FOWLER: It's my understanding that *State v. Burgess*
12 is a Richland County case, Your Honor. That's -- I think
13 those are the two prominent territorial jurisdiction cases in
14 South Carolina.

15 MS. DIXON: Do you have a cite for Burgess?

16 MR. FOWLER: I think if *Boswell* is shephardized, I think
17 the Attorney General's Office has it.

18 MR. RUSS BARLOW: *State v. Burgess* would be 408 S.C. 421.

19 MS. DIXON: 408 S.C.?

20 MR. RUSS BARLOW: 421.

21 MS. DIXON: Thank you. Okay.

22 THE COURT: I think my point is the same regarding
23 *Boswell*. They -- the suppression was obtained in another
24 county, in Calhoun County, but that -- that was concerning
25 evidence. I think it's a different situation, actually, and

1 they didn't have the multi-county agreement. And I'm reading
2 it kind of fast, but it -- the arrest took place in Calhoun
3 County, I believe.

4 MS. DIXON: And, Your Honor, I haven't been able to pull
5 these up yet to review them, but I will just say for the
6 record, I -- you know, when there's warrants to be served or
7 when there -- really warrants to be served, search warrants,
8 things like that, it can matter, but here if the officers went
9 to someone's house, I mean, anyone can consent to an officer
10 searching their house.

11 THE COURT: Yeah.

12 MS. DIXON: Anyone can consent to answering an officer's
13 questions. So if the pawn shop owner didn't have any
14 objection to the officer being --

15 MR. FOWLER: Your Honor, you know, I don't know if she's
16 testifying or not. I don't --

17 MS. DIXON: I don't know what jurisdictional issues that
18 would raise, I mean.

19 THE COURT: That's just the lawyer making her -- her
20 response to your comment regarding this case.

21 MR. FOWLER: My understanding is that's good case law.
22 It's fairly recent case law. I didn't mean to interrupt. If
23 there was a problem, Your Honor, I'm sorry.

24 THE COURT: Well, I'm just saying the -- what you -- the
25 case you handed up does not support your -- your -- your

1 argument because, in conclusion, they held that Lexington
2 County officers were not authorized to arrest Boswell in
3 Calhoun County. We don't have that. That would be the same
4 as pursuing -- chasing someone beyond county lines 50 miles
5 into an adjoining county or 30 miles.

6 That's not the circumstance here. I don't -- I'll
7 sustain the objection, but I believe it's all a frivolous
8 point.

9 Any other questions of this witness?

10 MS. DIXON: None from the State.

11 MR. FOWLER: I have none, Your Honor.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you, Judge.

14 THE COURT: Any additional witnesses?

15 MS. DIXON: No other witnesses for the State, Your Honor.

16 THE COURT: Any additional witnesses, Mr. Fowler?

17 MR. FOWLER: No, Your Honor.

18 THE COURT: All right. Testimony is closed. Any
19 arguments by the defense?

20 MR. FOWLER: Your Honor, I think -- and once again, I'm
21 sitting down due to the microphone issue, Your Honor.

22 Your Honor, I think once again, Mr. Hutchinson went
23 through each one of these on the -- on direct and even cross-
24 examined by the State. Your Honor, he went through each one
25 of them thoroughly. He went through each one of them, in my

1 opinion, knowledgeably.

2 I think he raised up issues and we raised issues today,
3 Your Honor, that relate to his attorney's performance and lack
4 thereof, Your Honor, in representing him. There's just a
5 myriad of issues and, you know, I don't want to try the
6 Court's patience. They're all on the record in the
7 transcript.

8 But as to the priors, how they were used, Your Honor, how
9 no expert was called even though his attorney knew that there
10 was a pill problem, in her words. There was no direct appeal
11 filed. There was no apparent -- maybe a question about the
12 reviewing of the evidence, including a DVD, Your Honor. Those
13 pill problems could have led to mental health issues that the
14 attorney was not privileged and knowing due to her lay status
15 in that regard, Your Honor.

16 No psychological evaluation. The list goes on and on and
17 on, and Mr. Hutchinson has notified the Court of these. He's
18 proved them and, Your Honor, he's very knowledgeable about the
19 law. I mean, he's -- these applications that the Court took
20 judicial notice of are full of case law and knowledge about
21 this, Your Honor.

22 And the 13 or so that we went over on the stand today,
23 Your Honor, I mean, it's rare for me to have a witness be so
24 knowledgeable and so specific on each one of these, Your
25 Honor, and we would just ask for a decision in Mr.

1 Hutchinson's favor. And he did indicate that he wanted to go
2 through with his PCR, Your Honor, and we ask for a decision in
3 his favor.

4 THE COURT: By the Attorney General?

5 MS. DIXON: Yes, Your Honor. Real quickly, we would just
6 submit that Mr. Hutchinson has failed to prove any of his
7 allegations. Most of the issues he raised were trial issues
8 that he waived by choosing to plead guilty.

9 I think a reading of the plea transcript in combination
10 with the form that was entered as State's No. 1 will show that
11 this plea was knowing and voluntary. He understood the
12 consequences of his plea. He understood he was waiving his
13 right to challenge the evidence by pleading guilty. He got a
14 negotiated 26-year plea.

15 In terms of the direct appeal issue, we would first note
16 that there is no right to be informed of a direct appeal from
17 a guilty plea. There is from a trial, but not from a guilty
18 plea. Notwithstanding that, the plea transcript at page 7,
19 the Court did inform him that he had a right to appeal. Also,
20 it is -- I believe it's also in the State's Exhibit 1.

21 In terms of whether he asked for an appeal, I think
22 that's just going to be a credibility issue that Your Honor is
23 going to have to determine. The same with terms of whether
24 Ms. Lawson reviewed the video with him. That was, I guess,
25 one of the main components of the State's case against him,

1 but we would submit that he pled guilty voluntarily and
2 knowingly and by doing so waived his right to challenge a lot
3 of the issues he's raised today.

4 And finally, real quickly, I would say in terms of
5 challenging the prior convictions, those were done deals.
6 There's not really much that his lawyer could have done at
7 this point to reopen a 2002 case.

8 THE COURT: All right. Thank you all. I will take the
9 entire matter under advisement and issue a written order.

10 MR. FOWLER: Thank you, Your Honor.

11 MS. DIXON: Thank you, Your Honor.

12 (WHEREUPON, the proceedings ended at 5:02 p.m.)

13

14 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Circuit Court Reporter III for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 86, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 18th day of October, 2022.

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

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

May 14, 2023



ACKNOWLEDGEMENT OF RIGHTS GIVEN UP BY ENTERING GUILTY PLEA

STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS

COUNTY OF Florence

INDICTMENT NO(S):

The State of South Carolina,

Plaintiff,

v.

James E. Hutchinson,

Defendant.

2018-GS-21-15202018-GS-21-1523

April 19 = 263 days
5/24/2040

The Defendant desires to plead guilty to 2 counts of Burglary 1st and certifies to the Court that the answers to the following are true:

- The maximum sentence and penalty for my charge(s) is/are _____.
- Has the State agreed to recommend a sentence to the Judge? yes JA
 - If so, what is that recommendation? 26 negotiated JA
 - If so, has anyone promised you anything else to get you to plead guilty or assured you as to a particular sentence? no JA
- Has anyone promised you anything else, threatened you or put any pressure on you to get you to plead guilty? no other than notice of intent to seek LWOP JA
If so, who and what? _____
- Are you under the influence of any medications, drugs or alcohol? no JA
If yes, explain. no
- Are you aware of any physical, mental, emotional or nervous problem you may have that might affect your understanding of this plea or this court proceeding?
If yes, explain: no JA
- Do you understand that if you plead NOT GUILTY you have the right to have the help of a lawyer at all stages of the proceedings, and if you cannot afford to employ a lawyer, one would be provided to you free of charge?
YES JA NO _____

7. Do you understand that when you plead guilty you give up your right to a jury trial? YES
8. Do you understand that in a trial you would be presumed to be innocent? That you would not be required to prove you were innocent or that you were not guilty? YES YES NO _____
9. Do you understand that in a trial you have the right to see and hear all witnesses called to testify against you and to confront, cross examine and question them, and confront all of the evidence?
YES YES NO _____
10. Do you understand that in a trial you have the right to take the witness stand and testify, or not to take the witness stand as you choose, and that you cannot be required to take the witness stand?
YES YES NO _____
11. Do you understand that at a trial you would have no burden of proof, and that the burden would instead be entirely on the State to prove you were guilty, and you could only be found guilty if all 12 jurors agreed that the State had proven each and every element of the crime against you beyond a reasonable doubt?
YES YES NO _____
12. Have you talked with your lawyer about and do you fully understand the elements of each crime you are pleading guilty to?
YES YES NO _____
13. Do you understand that if you plead NOT GUILTY and that if you do not take the witness stand, the jury (1) cannot take that as evidence against you and (2) the court would tell the jury that, like any citizen, you have the absolute right to remain silent, and that your silence cannot be held against you whatsoever?
YES YES NO _____
14. Do you understand that if you plead NOT GUILTY you have a right to use the subpoena power of the Court to make witnesses attend your trial and testify, whether they want to or not?
YES YES NO _____
15. Do you know that if you plead GUILTY you will be found guilty without a trial and you will have given up all the rights mentioned in questions (9) to (14) along with your right to present any defense(s), and your right to challenge or contest any of the evidence against you including any searches or seizures made by law enforcement, any statements you may have made, and any testing that was done or should have been done?
YES YES NO _____

16. If you are on Parole or Probation, do you know this plea could result in a revocation?
 YES _____ NO ✓
17. Has your lawyer gone over your rights and all circumstances of the charge(s) with you, and done everything you have asked him or her to do on your case?
 YES SH NO _____
18. Are you satisfied with your lawyer? YES SH NO _____
19. Do you understand what you are doing and all the rights that you are giving up? Do you understand that if you are not a U.S. citizen, your guilty plea may result in your being deported?
 YES SH NO _____
20. Are you pleading guilty of your own free choice and will?
 YES SH NO _____

DATE: January 7, 2019

[Signature]
 Defendant's Signature

I certify that the above questions were answered by the Defendant after a full explanation of each question by the undersigned and in my opinion the Defendant understands the elements of the crime(s), the possible punishment(s) and his/her Constitutional rights that will be waived if the plea is accepted.

DATE: January 7, 2019

Caroline B. Lawson
 Signature of Attorney for the Defendant

Attorney's Name Printed: Caroline B. Lawson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT	
	)		
James Edgar Hutchinson, #258003,	)	Case No.: 2019-CP-21-2808	
Applicant,	)		
	)		
v.	)	ORDER OF DISMISSAL	
	)		
State of South Carolina,	)		
Respondent.	)		

FILED
 2021 APR 12 PM 2:33
 CLERK OF COURT
 000P & GS
 FLORENCE COUNTY, SC

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by James Edgar Hutchinson (Applicant) on October 4, 2019. On October 18, 2022, an evidentiary hearing was convened before me. Applicant was present and represented by Steven W. Fowler, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Following a thorough review of the records before this Court and the testimony and evidence presented at the hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is confined in the South Carolina Department of Corrections serving a twenty-six year sentence. In January 2019, the Florence County Grand Jury indicted Applicant for two counts of first degree burglary (2018-GS-21-1520; -1523). These charges arose from home invasions on April 9, 2010 and April 10, 2010, wherein Applicant broke into the same victim's home and stole two televisions. Law enforcement found the televisions at a pawn shop; the pawn receipt indicated Applicant had pawned them. Applicant later confessed to both burglaries.

On January 8, 2019, Applicant pled guilty pursuant a negotiated plea before the Honorable Thomas A. Russo. Assistant Public Defender Caroline Lawson represented Applicant, and Deputy Solicitor John Jeperfinger represented the State. In exchange for the guilty plea, the State agreed

to withdraw a notice of intent to seek life without parole. Judge Russo sentenced Applicant as negotiated to concurrent terms of twenty-six years imprisonment. Applicant did not appeal.

Current Application

Applicant timely commenced this PCR application on October 4, 2019. Thereafter, prior to the appointment of PCR counsel, Applicant filed pro se amended applications on April 22, June 1, July 13, September 14, September 18, September 28, and October 2, 2020. At the PCR hearing, Applicant proceeded on the following grounds:

1. Ineffective assistance of counsel:
 - a. Failure to move to suppress statements/confession;
 - b. Failure to call expert regarding effect of drugs administered prior to interrogation;
 - c. Failure to advise about constitutional rights waived by the plea;
 - d. Failure to advise about filing a direct appeal;
 - e. Failure to review evidence with Applicant;
 - f. Failure to present mitigating evidence related to Applicant's mental health;
 - g. Failure to obtain psychological evaluation;
 - h. Failure to challenge and investigate prior convictions that were used for enhancement;
 - i. Failure to notify him that the burden of proof was on him to prevent the State from using prior convictions for enhancement (*State v. Payne*, 1998).
2. Involuntary guilty plea:
 - a. Not informed the State had to prove its case beyond a reasonable doubt;
 - b. Not informed the State had to prove his confession was voluntary;
 - c. Facts did not support plea (no enhancement in facts).

During the hearing, Applicant also presented testimony regarding whether counsel was ineffective for not moving to suppress pawn shop receipts on the basis law enforcement crossed into another county to obtain them.

Findings of Fact and Conclusions of Law

Before this Court are the Florence County Clerk of Court records of the underlying convictions, Applicant's records from the Department of Corrections, the plea transcript, and the records of this PCR action. This Court has had the opportunity to review records and has heard the testimony at the PCR 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. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to received relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained

prejudice as a result of counsel's deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. To prove prejudice following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.” Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Failure to move to suppress statement/ investigate effect of drug on his confession¹

Applicant first contends counsel was ineffective for not moving to suppress his statements to law enforcement. He further contends counsel was ineffective for not investigating the effects medication had on his statements. This Court finds Applicant has not met his burden of proof on these allegations.

At the PCR hearing, Applicant testified he had an upset stomach after he was detained, and the nurse gave him gabapentin and hydroxyzine. He stated the medicine made him feel depressed and suicidal, and put him in a different state of mind, “like [he] was being lured in and being told to come talk with” law enforcement. Applicant testified he was interrogated shortly thereafter—while still under the effects of the medicine—and averred he should not have been interrogated while medicated. Applicant testified he told counsel the drugs had affected him, but she told him she looked up the drugs online and concluded they did not affect him. He asserted counsel was ineffective for not further investigating the effects of the drugs to determine how they would have impacted his confession. He likewise asserted counsel was ineffective for not seeking expert testimony regarding the effects of the drugs administered prior to his interrogation.

Applicant also asserted he did not recall law enforcement advising him of his Miranda rights. Although he acknowledged signing a Miranda waiver form, he testified he could not read it and law enforcement did not read it to him. According to Applicant, law enforcement told him

¹ Due to the overlap in testimony, this section addresses allegations 1(a) and (b) as set forth above.

to sign it, and Applicant signed it without knowing what it was. Applicant testified that counsel told him she had reviewed the DVD of his confession and concluded it was voluntary. He testified counsel never informed him that the State would have to prove the confession was voluntary. Applicant asserted counsel was ineffective for not moving to suppress his confession.

This Court finds Applicant did not prove plea counsel was deficient in this regard. Plea counsel testified she was aware of the medication issue because Applicant raised it, and she researched the drugs to see what effect they could have on an individual. Plea counsel further testified she reviewed the confession video at least three times, which included a waiver of Applicant's Miranda rights, and she did not believe there was a viable challenge to the confession. Counsel explained Applicant appeared lucid in the video. Although she concluded the confession would likely be admitted, she testified she would have moved to suppress the statement if Applicant had proceeded to trial. Counsel stated she explained to Applicant that he would waive his right to challenge the confession by pleading guilty. This Court finds the foregoing testimony by counsel is credible. Based on counsel's foregoing testimony, counsel was not deficient in failing to further investigate the drugs or in not challenging the confession before this plea.

Likewise, Applicant failed to prove prejudice. Applicant did not present any expert testimony at the PCR hearing about the medication he took to support his allegation that the medication made him incompetent to be interrogated. Further, Applicant's own testimony on this issue indicated the medication primarily made him feel depressed. This does not rise to the level of rendering him incompetent for purposes of an interrogation. Ultimately Applicant did not prove by a reasonable likelihood the drugs affected his statement or the video would have been suppressed had it been challenged. Further—and critically—Applicant knowingly waived his right to challenge the confession when he voluntarily pled guilty. This Court finds Applicant

ultimately pled guilty because he was facing a life sentence—not because of any alleged deficiency by counsel on this issue. Thus, he has not shown prejudice. See Hill v. Lockhart, 474 U.S. 52, 59 (1985) (providing an applicant who pled guilty “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial” to prove prejudice).

Failure to advise about constitutional rights waived by the plea / challenge prior convictions²

Applicant next contends counsel was ineffective for not advising him about constitutional rights he was waiving by pleading guilty. More specifically, in relation to this allegation, at the PCR hearing Applicant asserted counsel as ineffective for not challenging the prior offenses the State used to support his LWOP notice. Applicant has not met his burden of proof on this ground.

At the PCR hearing, Applicant asserted he had “a right not to be convicted on untrue assumptions, invalid premises, misinformation” about the prior convictions. He asserted the prior convictions were unconstitutional and obtained illegally, and thus should not have been used for enhancement. Applicant asserted counsel coerced him with the prior convictions to keep him from challenging the confession, and the confession and prior convictions were used to coerce him into pleading guilty. Applicant testified counsel never advised him that he could challenge the prior convictions or that he had the burden of proof in doing so. He stated he would not have pled guilty if he had known he had the burden; rather, he “would have sit in jail and investigated and tried to come up with a way to defend [himself] against these priors.” Likewise, he asserted counsel did not correct the plea judge when he misadvised Applicant that the State had the burden of proof.

Applicant testified he was told “no matter what [he] did, they was going to use the prior convictions against [him] and give [him] a life sentence.” He asserted counsel should have

² Due to an overlap in testimony, this section addresses allegations 1(c), (h) and (j).

challenged the use of his prior convictions because they were “obtained illegally and against [his] constitutional rights by ineffective assistance of counsel.” He further asserted counsel was ineffective for not investigating the prior convictions, and had she done so she would have learned one of his prior convictions was not a most serious offense: “it was a daytime non-violent, and they got [him] to plead guilty to a nighttime burglary by ineffective assistance of counsel.” Applicant also testified the solicitor failed to prove the chronological order of his prior convictions and thus did not establish that they occurred on separate occasions. He likewise testified the solicitor did not link the prior convictions to him by reading his social security number or address.

Counsel testified she reviewed a form with Applicant that advised him of the rights he waived by pleading guilty, and Applicant signed the form.³ She explained she advised him of the sentences he faced, the fact this was a negotiated plea, the State’s burden of proof, and the constitutional rights he was waiving, including the right to cross-examine witnesses and testify or remain silent. She stated Applicant was intelligent, and she had no concerns about his ability to understand. Counsel likewise testified she did not see any basis to challenge the prior convictions, which she discussed with Applicant.

This Court finds the foregoing testimony by counsel credible. Based on counsel’s foregoing testimony, this Court finds Applicant failed to prove counsel was deficient in her advice regarding the rights he was waiving and the prior convictions. This Court likewise finds Applicant did not prove prejudice. Applicant’s argument here centers on his belief that his prior convictions were not most serious offenses. Based on the records before this Court, which include the LWOP notice, the State used prior December 5, 2002, first degree burglary convictions as qualifying offenses; these convictions constitute a most serious offense under section 17-25-45(C)(1) of the

³ The form was entered as State’s Exhibit 1.

South Carolian Code. Applicant is correct that he has the burden of proof when challenging prior convictions used for enhancement. See State v. Payne, 332 S.C. 266, 272, 504 S.E.2d 335, 338 (Ct. App. 1998) (“[C]onsidering the presumption of regularity given to final judgments, . . . the defendant bears the burden of proof when collaterally attacking a prior conviction which the State seeks to use under a sentence enhancement statute.”). Here, however, Applicant has not met that burden. Applicant complains that (1) his charge was a daytime nonviolent charge, (2) the solicitor did not establish that these offenses occurred on different days, and (3) the solicitor did not read his social security number or address into the record. However, the public index shows Applicant pled guilty to two counts of *first-degree* burglary (HO32229 & HO32231) and a single count of burglary, nonviolent (HO32233) on December 5, 2002. Even if the two first-offense charges arose from a single incident, it would be sufficient to support the LWOP notice. Applicant did not meet his burden of proving these prior convictions were invalid. He likewise did not meet his burden of proving prejudice from counsel’s failure to challenge these prior convictions. Ultimately Applicant waived his right to challenge these convictions by pleading guilty pursuant to a negotiated sentence, and the State withdrew the LWOP notice. Thus, this claim is denied.

Failure to advise about filing a direct appeal (1d)

Applicant contends counsel was ineffective for failing to file a direct appeal. This Court finds Applicant failed to prove counsel was ineffective in this regard. “Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal.” Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “However, the standard for a guilty plea differs. Absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing, there is no constitutional

requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” *Id.*

At the PCR hearing, Applicant testified counsel never advised him he could file an appeal. However, he stated he asked counsel to file an appeal, but she did not do so. When asked what issue he would have raised on appeal, he replied, “The confession issue and the . . . prior conviction not being a most serious offense, that it was really a daytime . . . burglary and it shouldn’t have qualified as a most serious.”

Counsel testified Applicant did not ask her to file an appeal, but if he had, she would have filed the notice of appeal even if she believed it lacked merit. Counsel acknowledged she did not discuss an appeal with Applicant, explaining this was a negotiated sentence. However, she stated the plea judge would have advised Applicant of his right to appeal.

This Court finds credible counsel’s foregoing testimony that Applicant did not ask her to file a direct appeal. This Court likewise finds not credible Applicant’s testimony that he asked counsel to file an appeal. This Court further finds Applicant did not demonstrate any extraordinary circumstances that would have caused counsel to believe Applicant wanted to appeal. The issues Applicant testified he would have raised on a direct appeal were unpreserved and more suitable for PCR—which Applicant has now filed. Based on counsel’s credible testimony, this Court finds Applicant did not prove deficiency or prejudice, and this claim is denied.

Failure to review evidence with Applicant (1e)

Applicant asserts counsel was ineffective for not reviewing the evidence with him. Specifically, he contends counsel did not show him the DVD of his confession. This Court finds Applicant has not proved this ground.

At the PCR hearing, Applicant testified counsel never showed him the DVD of his confession. He testified he asked to see it, but she told him it was on her phone, which she was

not allowed to take inside the detention center. Applicant asserted that when he pressed counsel about the DVD, she “growled at [him] and she said that if [he] F with her that [he] would have to plead guilty to a life sentence and she wouldn’t talk to the prosecutor or nothing.”

Plea counsel testified she met with Applicant seven times and reviewed the evidence with him, including photos, pawn receipts, and home surveillance footage. She stated she showed him the entire file, including the DVD of his confession.

This Court finds counsel’s foregoing testimony credible. Likewise, this Court finds not credible Applicant’s foregoing testimony. Based on counsel’s foregoing testimony, this Court finds counsel adequately reviewed discovery—including the confession—with applicant and thus was not deficient. This Court further finds Applicant did not prove prejudice. Specifically, Applicant did not prove that had he seen the video, he would have proceeded to trial rather than pleading guilty. Applicant likewise did not show what other evidence he did not review that would have made him go to trial rather than plead guilty. Thus, this claim is denied.

Failure to present mitigating evidence related to Applicant’s mental health⁴

Applicant contends counsel was ineffective for not presenting mitigation evidence about Applicant’s mental health issues. This Court finds Applicant did not meet his burden of proof on this ground.

At the PCR hearing, Applicant testified he had been in a car wreck and fallen off a ladder at work, and his doctor prescribed pain medicine. However, his doctor later stopped prescribing the medicine because he believed Applicant was abusing it. Applicant testified he started getting medicine off the street, he and his wife were both addicted to pain medicine, and he was supporting both of their habits. Applicant testified he sought help but “they kept giving [him] outpatient

⁴ Due to an overlap in testimony, this section combines allegation 1(f) and (g).

treatment.” He also testified the Court ordered ATU drug treatment during one of his prior convictions, but he “never got the benefit of the treatment or the programs in prison.” Applicant believed this information could have helped mitigate his sentence or gotten him into a drug treatment program. He stated he asked counsel to have him evaluated by a psychiatrist because he was addicted to drugs and depressed, but counsel did not send him for an evaluation. Applicant also asserted that counsel did not inform him that he could offer mitigating evidence at the plea, and he would have done so if he had known that.

Counsel testified she was aware of Applicant’s drug history, but she did not believe it rose to the level of affecting his competency and she did not see the need for a competency evaluation. She stated she saw no reason to present mitigating evidence or hire an expert for mitigation in a negotiated plea, although she would have pursued an expert if this had proceeded to trial.

This Court finds Applicant failed to prove counsel was ineffective in this regard. Critically, this was a negotiated plea with a negotiated sentence, and under the terms of the negotiation, the State withdrew an LWOP notice. This Court finds counsel worked diligently in obtaining this plea and was not deficient. This Court likewise finds that because this was a negotiated plea with a negotiated sentence, counsel’s decision to not present mitigation evidence was reasonable under prevailing professional norms and not deficient. This Court also finds Applicant did not prove prejudice. Applicant did not present any expert testimony on his mental health condition that would have been useful for mitigation. Ultimately, Applicant pled pursuant to a negotiated plea with a negotiated sentence, and he has not met his burden of showing he would not have accepted the plea had counsel investigated his mental health more thoroughly. Further, because this was a negotiated sentence, he has not shown anything that would have reasonably resulted in the Court giving him a lesser sentence (which it could not do). Thus, this claim is denied.

Failure to move to suppress pawn shop receipts⁵

During the PCR hearing, Applicant averred counsel was ineffective for not moving to suppress pawn shop receipts. Specifically, he claimed that during his interrogation, law enforcement showed him pawn shop receipts they had obtained.⁶ Applicant claimed the receipts were obtained illegally because the pawn shop was located in Dillon County, whereas the officer worked for Marion County.⁷ He stated there was not a multi-jurisdictional agreement plan, and the officer could not go to Dillon County to search for evidence. Applicant testified the receipts should have been suppressed, but they were used by law enforcement to coerce him into giving a statement. Counsel testified she investigated this issue but did not see any problems with the way law enforcement obtained the receipts or any multi-jurisdictional issues.

This Court finds Applicant has not proven counsel was ineffective in this regard. Initially, the cases relied on by Applicant at the PCR hearing to support this claim do not support a finding that law enforcement cannot cross into another county to gather evidence while investigating a crime. See State v. Boswell, 391 S.C. 592, 707 S.E.2d 265 (2011) (finding Lexington County officers did not have authority to *arrest* defendant in Calhoun County when they were not in pursuit of him, they did not have a warrant, the multi-jurisdictional agreement had not been ratified and was thus invalid, and the officers could not effectuate a private citizen's arrest because the defendant did not commit a felony); State v. Burgess, 408 S.C. 421, 759 S.E.2d 407 (2014) (finding multi-jurisdiction agreement invalid and concluding it did not confer officer authority to *arrest* defendant outside his territorial jurisdiction). Although multi-jurisdictional agreements may be necessary for *arresting* an individual, nothing here indicates Applicant was arrested in a county

⁵ Applicant offered testimony about this issue during the PCR hearing.

⁶ These receipts—which were signed by Applicant—were receipts for the victim's stolen televisions.

⁷ This offense occurred in Florence County.

outside the officers' territory. Further, this Court finds Applicant did not have an expectation of privacy in the pawn shop receipts and thus had no basis to move to suppress them on Fourth Amendment grounds. Applicant did not set forth a viable basis for which counsel could have challenged the receipts and thus did not prove deficiency. Finally, this Court finds Applicant ultimately pled guilty to avoid facing a life sentence, and in doing so knowingly waived his right to challenge the evidence. This Court finds that due to Applicant's confessions—which counsel credibly stated would have most likely been admitted—and the LWOP notice, it is not reasonably likely Applicant would have proceeded to trial even if the pawn shop receipts had been suppressed. Thus, Applicant did not prove deficiency or prejudice, and this claim is denied.

Involuntary plea

Finally, Applicant contends his plea was involuntary. Specifically, he asserts he was not informed the State had to prove its case beyond a reasonable doubt, he was not informed the State had to prove his confession was voluntary, and the facts did not support the plea because they did not contain any enhancement. This Court finds Applicant did not prove this claim.

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” North Carolina v. Alford, 400 U.S. 25, 31 (1970). “[A] defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999).

At the PCR hearing, Applicant asserted counsel never explained the charges, and he did not know he could challenge the prior convictions. He testified the plea judge misinformed him of the nature of his crime, and counsel did not correct the judge. He also testified the plea judge

did not address him personally, and he was misinformed that he had the burden of proof. Applicant acknowledged counsel told the plea court that none of his prior crimes were violent. However, he explained he wanted her to tell the Court that he “was actually innocent of . . . a most serious offense, that—that it was non-violent.” Applicant acknowledged the plea judge advised him of the rights he was waiving but claimed he “didn’t know [he] was waiving them rights because [he] didn’t know [he] had any defenses.” He stated he only waived his rights and pled guilty because he was told he didn’t have to prove anything.

In contrast, counsel testified she explained to Applicant the charges he faced and reviewed the discovery with him. She stated she also explained the sentence he faced and the negotiated sentence, and she reviewed a form with him that detailed the rights he was waiving. This Court finds counsel’s testimony in this regard credible. This Court further finds the plea transcript itself shows the plea was knowingly, freely, and voluntarily entered. Specifically, the plea court explained the sentence Applicant faced and the constitutional rights he was waiving, and Applicant indicated he understood. (Pl. 1-14). Applicant by his own testimony at the PCR hearing relayed he was informed that the State had to prove its case beyond a reasonable doubt. Counsel likewise credibly testified she advised Applicant that he was waiving his right to challenge the voluntariness of the confession by pleading guilty. Applicant’s contention that the facts did not support the plea is not supported by the plea transcript. (Pl. 14-18). This Court finds Applicant was advised by counsel and the plea court of the nature of the plea and the rights he was waiving, and he entered the plea knowingly, freely, and voluntarily. Thus, this claim is denied.

Conclusion

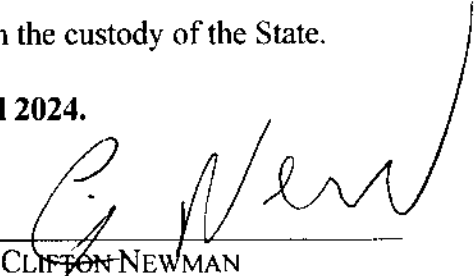
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, __ S.E.2d (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 3rd day of April 2024.


CLIFTON NEWMAN
Presiding Judge
Twelfth Judicial Circuit

Columbia, South Carolina

2024 APR 12 PM 2:37
CLERK J. J. JONES
CCCP & GS
JOHN DEER COUNTY, SC

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP2102808

James E Hutchinson

2024 APR 12 PM 2:55 South Carolina State Of

DOCK 001, 05 0711ARA

PLAINTIFF(S)

CCCP & GS DEFENDANT(S)

FLORENCE COUNTY, SC

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order: (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

4/12/2024

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

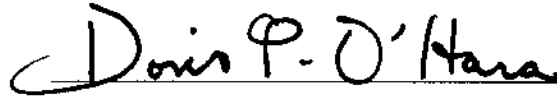
This judgment was entered on **April 12, 2024**, and a copy mailed first class or placed in the appropriate attorney's box on **April 15, 2024**, to attorneys of record or to parties (when appearing pro se) as follows:

Steven Willard Fowler 730 Main Street Unit # 237 North
Myrtle Beach, SC 29582

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Court Reporter

Doris Poulos O'Hara - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED

2018 AUG 23 PM 3:01

DORIS POULOS OHARA
CCCP & GS
FLORENCE COUNTY, SC

WITNESSES

James Allen III Florence County Sheriff

John C Jepertinger

ARREST WARRANT NUMBER

2018A2110100307

ACTION OF GRAND JURY

TRUE BILL

Star Caff
Foreperson of Grand Jury
Date: *8-23-18*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. **2018-GS-21-01520**

The State of South Carolina

County of
FLORENCE

COURT OF GENERAL SESSIONS

AUGUST TERM **2018**

THE STATE

vs.

JAMES EDGAR HUTCHINSON

Indictment for

BURGLARY FIRST DEGREE

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on AUGUST 23, 2018 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That **James Edgar Hutchinson** did in Florence County on or about April 9, 2018, willfully and unlawfully enter the dwelling of Rita Patillo located at [REDACTED] East Old Marion Highway, without consent and with the intent to commit a crime therein, and after having two prior convictions for burglary, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR