

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Horry County

Steven H. John, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

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S.C. Supreme Court

GARY CREAMER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212319

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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STATE OF SOUTH CAROLINA

COUNTY OF Horry

IN THE COURT OF GENERAL SESSIONS

10-GS-26-00768/10-GS-26-00770

10-GS-26-00771

State of South Carolina, )

vs. )

Gary Allen Creamer. )

TRANSCRIPT OF RECORD

August 10, 2011  
Conway, South Carolina

Before:

The Honorable Larry B. Hyman

Appearances:

BY: George H. DeBusk, Jr., Esq.  
Attorney for State

BY: Melinda A. Knowles, Esq.  
Attorney for Gary Allen Creamer

Brenda R. Babb, CVR  
Circuit Court Reporter

2011 AUG 10 10:00 AM  
COURT REPORTER

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Motion to Relieve Counsel - August 10, 2010

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1           Mr. DeBusk:   Your Honor, I believe the Mr.  
2 Creamer has a motion.

3           The Court:   I have a motion from you or it looks  
4 like it's a motion to, you want to fire your attorney and  
5 you want another one appointed, now tell me why?

6           Defendant Creamer:   Well for one thing, Your  
7 Honor, Ms. Knowles has only been my lawyer for the last say  
8 month and a half.

9           The Court:   I thought you were complaining that  
10 you weren't being tried fast enough.

11           Defendant Creamer:   Well I mean I haven't had an  
12 attorney, okay, since you want to ask me a question about  
13 that right there, I filed a fast and speedy trial motion  
14 back in December, okay, the time limit on that had run out.

15           The Court:   What time were you, when were you  
16 arrested?

17           Defendant Creamer:   December the 9th.

18           The Court:   Of last year?

19           Defendant Creamer:   Of last year, yes, sir.

20           The Court:   You're getting a pretty quick trial,  
21 most people don't get a trial within nine months.

22           Defendant Creamer:   Okay, and being that as it  
23 may the time limit had run out on that motion.

24           The Court:   What time limit?

25           Defendant Creamer:   Was six months, hundred and

1 eighty days.

2 The Court: Where do you get that?

3 Defendant Creamer: Well I got that out of the  
4 law statute.

5 The Court: Well which one?

6 Defendant Creamer: I can't name it right off my  
7 head.

8 The Court: Well you, if you want to use it you  
9 need to be able to find it.

10 Defendant Creamer: Well I don't have, I do not  
11 have access to the law library at J. Reuben Long.

12 The Court: Well where did you get that  
13 information if you've been at R. Reuben Long ever since you  
14 were arrested?

15 Defendant Creamer: It's from studying law in  
16 the penitentiary.

17 The Court: Okay, tell me what you don't like  
18 about Ms. Knowles?

19 Defendant Creamer: Okay, there's a conflict of  
20 interest with Ms. Knowles. She contacted my codefendant's  
21 attorney requesting, requesting information about our  
22 situation and that ---

23 The Court: Who represents your codefendant?

24 Defendant Creamer: Barbara Pratt.

25 The Court: Has Ms. Pratt complained about that?

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1 Defendant Creamer: I do not know but I know ---

2 The Court: Do you know what Ms. Knowles was  
3 asking for?

4 Defendant Creamer: Yes.

5 The Court: What was she asking for?

6 Defendant Creamer: She was asking Ms. Pratt  
7 whether or not mine and my codefendant this case actually  
8 was burglary that night.

9 The Court: Well is there anything wrong with  
10 that?

11 Defendant Creamer: Well I feel like that's a  
12 conflict of interest.

13 The Court: How is that a conflict, she may have  
14 gotten some good evidence, something that might help you by  
15 exploring your codefendant's position? You never heard of  
16 a lawyer turning a codefendant out; you've never heard of  
17 that?

18 Defendant Creamer: Well I mean I don't quite  
19 understand what you, what you saying.

20 The Court: Well she may have gotten something  
21 that helped you from that codefendant.

22 Defendant Creamer: Well actually my codefendant  
23 is only my codefendant on two charges; she's not my  
24 codefendant on all five charges and I mean --

25 The Court: Well the charges that you have now

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1 are going to arise out of one situation. I understand you  
2 got two burglary charges. Mr. DeBusk, you're not even  
3 going forward on those, are you?

4 Mr. DeBusk: No, sir.

5 The Court: Well is that codefendant involved in  
6 the burglary or the auto theft?

7 Defendant Creamer: Your Honor, she would be,  
8 the one with the grand larceny would still would be, she  
9 would still be my codefendant under one of the grand  
10 larcenies which by the way should not actually be a grand  
11 larceny because the money value of that was only six  
12 hundred dollars.

13 The Court: Okay, but that would be something  
14 that the State would have to prove and Mr. DeBusk would  
15 lose that case if he couldn't establish it was six hundred  
16 dollars.

17 Defendant Creamer: Yes, sir.

18 The Court: That would keep you from going to  
19 trial.

20 Defendant Creamer: No, sir, but the law states  
21 that, and again I cannot point out, I mean I can't just off  
22 the top of my head cite the law, but it actually, what  
23 statute it is, but it does state that your attorney has to  
24 have a certain amount of time to prepare for a defense for  
25 a trial. Ms. Knowles -

1 The Court: Ms. Knowles told me she's ready to  
2 roll, right, Ms. Knowles?

3 Defendant Creamer: There's no way possible.

4 Ms. Knowles: I've been ready, at 9:00 in the  
5 morning.

6 Defendant Creamer: There's no way possible that  
7 Ms. Knowles could be ready to roll at 9:00.

8 The Court: You got a larceny case, don't you?

9 Defendant Creamer: Sir?

10 The Court: You got a larceny case, don't you?

11 Defendant Creamer: A grand larceny case?

12 The Court: Yeah, isn't that what your cases  
13 are?

14 Defendant Creamer: I've got two grand larcenies  
15 and a malicious injury, yes, sir.

16 The Court: All right, sir.

17 Defendant Creamer: I mean a malicious damage.

18 The Court: And how complicated do you think  
19 that case is, particularly in the case where you say you're  
20 innocent the State couldn't have much evidence against you?  
21 What evidence has been produced by the State that you think  
22 would require a significant amount of time to investigate?  
23 I mean she's been on it for sixty days now; is that right,  
24 Ms. Knowles?

25 Ms. Knowles: I will give you the exact date

1 that I was appointed.

2 The Court: And Mr. Chrisco before that.

3 Defendant Creamer: Mr. Chrisco wasn't ---

4 Mr. DeBusk: Mr. Taylor, Your Honor.

5 The Court: Mr. Taylor before that, have you  
6 talked with Mr. Taylor, Ms. Knowles?

7 Defendant Creamer: Not ne'er time, not ne'er  
8 time.

9 Ms. Knowles: Actually I have, Your Honor.

10 The Court: Okay, and --

11 Ms. Knowles: It was after the fact that he had  
12 moved to a new position but I have addressed ---

13 The Court: Well have you given Ms. Knowles the  
14 names of anybody to be a witness in your behalf?

15 Defendant Creamer: I have no witnesses in my  
16 behalf.

17 The Court: Well that cuts down your trial  
18 tremendously, now only she's got to do is worry about the  
19 State's case. All right, Ms. Knowles, what have you done  
20 in reference to the State's case; are you ready to go?

21 Ms. Knowles: I've researched case law, Your  
22 Honor. I have spoken with several of my colleagues of the  
23 PD's office and I planned on speaking with my client this  
24 afternoon and going over in detail every page of this  
25 discovery.

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1           The Court:    But he's not cooperating with you,  
2 is he?

3           Ms. Knowles:    He's making it difficult.

4           Defendant Creamer:    Your Honor, I'm not trying  
5 to make it difficult but there's been no kind of  
6 investigation done.  I mean I've been sitting in J. Reuben  
7 ---

8           The Court:    Tell me what you want her to  
9 investigate.

10          Defendant Creamer:    For one I was originally,  
11 well I'm still charged with five charges actually, two  
12 burglaries, a second degree burglary, a third degree  
13 burglary, two grand larcenies, and a malicious injury.

14          The Court:    Well we're not going forward on the  
15 burglaries, we're not going forward on the burglaries at  
16 all.

17          Defendant Creamer:    Okay, well stating that I  
18 didn't commit the burglaries the State -

19          The Court:    We're not even going to mention  
20 those burglaries in this trial, are you, Mr. DeBusk?

21          Mr. DeBusk:    No, sir.

22          The Court:    Not even going to talk about them, I  
23 wouldn't let them talk about it, I'd just tell them they  
24 couldn't, in fact I just did.  Now that leaves a grand  
25 larceny involving a wrecker ---

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1 Defendant Creamer: That's right, Your Honor.

2 The Court: A grand larceny involving some, as  
3 I've pre-trialed this case it's an air condition duct work  
4 or something of that nature ---

5 Defendant Creamer: Yes, sir.

6 The Court: And then there's a fence that was  
7 damaged.

8 Defendant Creamer: Yes, sir, okay ---

9 The Court: All right, that's what you got.

10 Ms. Knowles: The air condition units is not  
11 subject to this trial, Your Honor.

12 The Court: So all ya'll going forward with, Mr.  
13 DeBusk, is the truck and the fence?

14 Mr. DeBusk: Yes, Your Honor, just to correct on  
15 the record it's two counts of a property crime third or  
16 subsequent so the value involved doesn't matter; it's any  
17 property crime.

18 The Court: Right.

19 Mr. DeBusk: He has prior convictions so it's  
20 three counts of property crime third or subsequent two of  
21 which will go forth tomorrow.

22 The Court: Okay, and let me get this clear,  
23 you're not addressing the air conditioning?

24 Mr. DeBusk: Not at tomorrow's trial, Your  
25 Honor, that's separate.

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1           The Court:    Oh, so tomorrow all we're talking  
2 about is a truck that gets taken and a fence that gets torn  
3 down.

4           Mr. DeBusk:    Correct, Your Honor.

5           The Court:    That's it, now how complicated is  
6 that? Tell me what witness you want her to see or what  
7 evidence she wants you or testimony or potential testimony  
8 or evidence that you think that she needs to explore to get  
9 ready for tomorrow.

10          Defendant Creamer:   Well I think the dollar  
11 value on the damage of the fence should be investigated  
12 because I don't think it cost five thousand dollars to fix  
13 no gate.

14          Mr. DeBusk:    Your Honor, this is property crime  
15 third or subsequent so if it costs one cent it would still  
16 be a property crime.

17          The Court:    And were you aware of that, Mr.,  
18 I've forgotten your name, Mr. Creamer, and the reason I  
19 forgot it cause they spelled it wrong earlier and they had  
20 Creamery but, Mr. Creamer, do you understand that it  
21 doesn't make any difference what the value of it is? You  
22 could steal a candy bar if it was a property crime, you  
23 could shoplift a candy bar, a five or fifty cent candy bar  
24 it is now, a fifty cent candy bar and it would subject you  
25 to a ten-year sentence, do you understand that; and as to

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1 the grand larceny they ain't got to prove how much it cost,  
2 how much it was worth, nothing. They don't have to even  
3 concern themselves with that, not at all, makes no  
4 difference if you stole a bicycle or a BMW, it's a property  
5 crime third offense, so now tell me what you want Ms.  
6 Knowles to investigate?

7 Defendant Creamer: I reckon there's nothing for  
8 her to investigate, Your Honor.

9 The Court: You have no witnesses, it's a  
10 straight up charge of property crime third offense. Who  
11 you going to call as a witness? I'll make the State tell  
12 you right here, who you going to call, Mr. DeBusk?

13 Mr. DeBusk: Your Honor, we have an officer who  
14 the defendant falsely reported his truck stolen, three  
15 witnesses who he asked to help, help him come extract his  
16 truck saying he had stolen a wrecker but was unable to get  
17 the truck off and we also intend to bring a, I'm serving  
18 this on Ms. Knowles today, a letter in which the defendant  
19 sent to the Solicitor's office where he said I took the tow  
20 truck, I had the keys, subject to, of course, to  
21 authentication, and I believe that's about it, Your Honor,  
22 pictures, of course, with damage and of the ---

23 The Court: Have you got all that and you know  
24 what everybody is going to say, Ms. Knowles?

25 Ms. Knowles: I do now.

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1           The Court:    I mean, you know any statements that  
2 he's had, you've had?

3           Ms. Knowles:    I haven't raised that issue with  
4 him.

5           The Court:    Okay.

6           Ms. Knowles:    That was presented to me today but

7 --

8           The Court:    What was presented?

9           Ms. Knowles:    This letter.

10          The Court:    No, I'm talking about the witness  
11 statements?

12          Ms. Knowles:    Yes, that's all within the  
13 discovery, Your Honor.

14          The Court:    So you have all that?

15          Ms. Knowles:    Yes, sir, I should.

16          The Court:    You haven't heard anything here  
17 that's going to be a surprise to you?

18          Ms. Knowles:    No, sir.

19          The Court:    You heard anything, Mr. Creamer,  
20 that's going to be a surprise to you, anything you didn't  
21 know about?

22          Defendant Creamer:    Sure.

23          The Court:    What?

24          Defendant Creamer:    The third witness.

25          The Court:    Who is the third witness?

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1           Mr. DeBusk:    It's the manager of the apartment  
2 complex where the defendant lives who also heard him say  
3 that he had stolen the truck, Your Honor.

4           The Court:    Is that your neighbors and stuff  
5 going to testify against you, Mr. Creamer?

6           Defendant Creamer:    Yes, sir.

7           The Court:    Well, Mr. Creamer, I know Ms.  
8 Knowles, she is one of the most conscientious defender's we  
9 have here.  She's a good lawyer, I think you need to start  
10 listening to her.  You've obviously had some misconception  
11 as to what the State was going to have to prove to make  
12 your case.  You didn't understand what property crime is or  
13 didn't want to understand.  We're going to start this case  
14 in the morning; we're going to pull a jury and Ms. Knowles  
15 is going to be your attorney.

16          Ms. Knowles:    One moment, Your Honor, if I may?

17          The Court:    Do you want to go back in the back  
18 with your client and let me go and do the next plea?

19          Ms. Knowles:    Yes, sir.

20          Mr. DeBusk:    Your Honor, before they leave I  
21 need to put on the record for the Clerk of Court the  
22 indictment numbers which in this it's obviously going to  
23 trial tomorrow would be 2010-GS-26-770 and 771, each one  
24 count of property crime third or subsequent and I would  
25 like to serve on Ms. Knowles a copy of the letter and of

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1 the handwriting that's applied to the letter.

2           The Court:    It's my understanding that your  
3 offer in this involved a dismissal of these other three  
4 cases?

5           Mr. DeBusk:   Your Honor, my offer was three  
6 counts of property crime third or subsequent, the  
7 burglaries, of course, would be dismissed, and because  
8 they're direct indictment with the original grand larceny  
9 would be dismissed. It would be the direct indictments  
10 that would go forth.

11          The Court:    The third property crimes and you  
12 will dismiss everything else?

13          Mr. DeBusk:   Everything else would be gone.

14          The Court:    Okay.

15          Mr. DeBusk:   Thank you, Your Honor.

16          The Court:    All right.

17                         **Gary Allen Creamer,**  
18                         **having been duly sworn,**  
19                         **testified as follows:**

20          Mr. DeBusk:   Your Honor, this is indictment  
21 2010-GS-26-768, a charge of property crime third or  
22 subsequent arises from a grand larceny, a property crime  
23 third accessory arising from another grand larceny 2010-  
24 770, and a proper crime third or subsequent arising from  
25 malicious damage 2010-771.

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1           The defendant is Gary Allen Creamer represented  
2 by Melinda Knowles. He is pleading guilty without  
3 recommendation from the State.

4           The Court: All right, Ms. Knowles, you  
5 represent Mr. Creamer?

6           Ms. Knowles: Yes, Your Honor.

7           The Court: And you have had an opportunity to  
8 review the evidence in this case?

9           Ms. Knowles: I have, Your Honor.

10          The Court: And have you had an opportunity to  
11 discuss that evidence with your client?

12          Ms. Knowles: I have on several occasions.

13          The Court: Is that right, Mr. Creamer?

14          Defendant Creamer: Yes, sir, Your Honor.

15          The Court: And have you had an opportunity to  
16 explain to him the possible penalty as well?

17          Ms. Knowles: Yes, sir.

18          The Court: Have you explained to him his  
19 constitutional rights and any defenses that might be  
20 available?

21          Ms. Knowles: We've discussed those issues, Your  
22 Honor.

23          The Court: All right, Mr. Creamer, I see here  
24 that you're 44; is that correct?

25          Defendant Creamer: Yes, sir.



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1 relocate to a different climate because my lungs was in  
2 such bad shape, so I decided to move to Myrtle Beach, so I  
3 moved to Myrtle Beach and I kind like was half owners of a  
4 thrift store down here on 9th Avenue North and wasn't doing  
5 too good because the season had changed and I was having to  
6 scrap metal to try and keep the store rent paid and plus  
7 the rent on my apartment and I kind, I guess I kind of made  
8 the wrong choice, I guess. I didn't know I was taking  
9 something that was any good when I found it beside the  
10 dumpster but anyway, you know, I've been down here for two  
11 years and I haven't been into any trouble till up until  
12 now.

13           The Court: My question was, and I'm going to  
14 get to all that, Mr. Creamer --

15           Defendant Creamer: Yes, sir.

16           The Court: My question to you was what kind of  
17 work do you do and I think you answered that. Have you  
18 ever had any mental health problems or any addiction  
19 problems?

20           Defendant Creamer: Yes, sir, I suffer from  
21 acute anxiety disorder.

22           The Court: All right, are you under treatment  
23 right now?

24           Defendant Creamer: Yes, sir.

25           The Court: All right, do you believe that your

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1 condition would prevent you from understanding what you're  
2 doing here today?

3 Defendant Creamer: No, sir.

4 The Court: Do you have any doubts as to your  
5 client's competency, Ms. Knowles?

6 Ms. Knowles: None, Your Honor.

7 The Court: Mr. Creamer, have you had any  
8 alcohol or drugs in the last twenty four hours?

9 Defendant Creamer: I take medication.

10 The Court: Other than your medication?

11 Defendant Creamer: No, sir.

12 The Court: Well I guess what I'm asking, Mr.  
13 Creamer, is there anything going on in your life that would  
14 prevent you from understanding what you're doing here  
15 today?

16 Defendant Creamer: No, sir.

17 The Court: Okay, all right, Mr. Creamer, I've  
18 got several indictments that have been true billed by the  
19 grand jury. One indictment alleges that on December the  
20 9th, 2009, you did maliciously injure the property of one  
21 Rick Rainer, or Ronner, isn't it, Mr. DeBusk, Ronner?

22 Mr. DeBusk: Ronner, yes, Your Honor.

23 The Court: Ronner, by damaging his fence.  
24 Another indictment alleges that on that same day you did  
25 take, steal and carry away Mr. Ronner's property, that

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1 being a tow truck, and the other is a larceny for taking  
2 and carrying away property of another and that was some air  
3 condition units. All of these give rise to the present  
4 charge which is essentially property crime third or  
5 subsequent offense. Are you familiar with the incidents  
6 that give rise to these charges; do you know which ones  
7 we're talking about?

8 Defendant Creamer: Yes, sir.

9 The Court: All right, now I understand that  
10 there are two other burglaries but we're not addressing  
11 those at all today; you understand that?

12 Defendant Creamer: Yes, sir.

13 The Court: As I understand it part of the plea  
14 arrangement would result in dismissal of those charges?

15 Defendant Creamer: Yes, sir.

16 The Court: But we're not here today on those  
17 charges; do you understand that?

18 Defendant Creamer: Yes, sir.

19 The Court: Other than for purposes of  
20 dismissal?

21 Defendant Creamer: Yes, sir.

22 The Court: All right, Mr. DeBusk, tell me about  
23 the facts?

24 Mr. DeBusk: Your Honor, as to the grand larceny  
25 and malicious damage that occurred on December 9th and 10th

1 of 2009. The Myrtle Beach Police Department responded to  
 2 the building where the defendant lives and they went to the  
 3 wrong apartment. They spoke to some witnesses there. The  
 4 witnesses said that the defendant had come to them in the  
 5 middle of the night and said he had gotten his truck stuck  
 6 in the mud and had stolen a wrecker and had tried to get it  
 7 out and gotten the wrecker stuck, too. At that point the  
 8 police began an investigation and found three witnesses to  
 9 that affect.

10 They talked to Mr. Creamer, Mr. Creamer at that  
 11 time not knowing what the neighbors had told him, reported  
 12 his truck stolen to the officer. The officer knowing in  
 13 fact what had happened had him write a statement out  
 14 reporting the truck stolen. Shortly after that a report  
 15 came from Quality Towing that their tow truck had been  
 16 stolen and they found Mr. Creamer's truck stuck in the mud  
 17 and nearby a dump truck, I'm sorry, the tow truck stuck in  
 18 the mud.

19 Your Honor, in order to get the truck out of the  
 20 tow yard where it was stored Mr. Creamer drove over the  
 21 fence causing damage to the fence.

22 He has a number of prior burglary crimes, Your  
 23 Honor, by my count, property crimes, by my count fourteen,  
 24 thirteen prior crimes the penalty for which is dependent  
 25 upon the amount stolen making them higher property crimes.

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1           As to the third charge, the grand larceny, 2010-  
2 768, that had to do with a number of air conditioning units  
3 that belonged to a hotel in Myrtle Beach, that was at 400  
4 North Ocean Boulevard. They had been put out to be picked  
5 up to take, be taken and be repaired. They disappeared one  
6 night. The units, some of the units, not all of them, some  
7 of them were found in the woods near the Wal Mart on  
8 Seaboard Street and they ultimately determined that the  
9 defendant and one other person had taken those air  
10 conditioning units from the location where they were put to  
11 picked up for repair.

12           As I said before, Your Honor, the defendant has a  
13 rather extensive prior record and I'll not go through all  
14 of them but just the prior property crimes, 1986 malicious  
15 damage two counts; 1987 breaking in and auto grand larceny;  
16 1990 malicious damage two counts; 1990 malicious damage;  
17 1992 grand larceny of a vehicle; 1993 malicious damage and  
18 grand larceny of a motor vehicle and grand larceny and then  
19 three counts of petty larceny; one count of grand larceny  
20 from 1994 as well as four counts of burglary second.

21           Your Honor, the defendant's arrest record stops  
22 from 1994 until about 2007 because he was incarcerated in  
23 the Department of Corrections for that, all or most of that  
24 time. He has had several arrests lately but no convictions  
25 since 1994.

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1           The Court:   All right, Mr. Creamer, is that  
2 correct?

3           Ms. Knowles:   Your Honor, he disputes some of  
4 the convictions.

5           The Court:   Well let me ask you this, Mr.  
6 Creamer?

7           Defendant Creamer:   Yes, sir?

8           The Court:   Do you admit that you had this is at  
9 least a third property crime?

10          Defendant Creamer:   Yes, sir, I will, I will  
11 admit that.

12          The Court:   Okay, and do you admit, sir, the  
13 other allegations about you took the wrecker to get your  
14 truck out?

15          Defendant Creamer:   Yes, sir, I did.

16          The Court:   Your truck was bogged down and you  
17 ran over the fence and that you took the air condition  
18 units; you understand that?

19          Defendant Creamer:   Yes, sir.

20          The Court:   You admit all that?

21          Defendant Creamer:   Yes, sir.

22          The Court:   Okay, now has Ms. Knowles explained  
23 to you that you have a right to a jury trial?

24          Defendant Creamer:   Yes, sir.

25          The Court:   And do you understand that if you

Guilty Plea - August 10, 2011

24

1 enter this plea you waive your right to a jury trial?

2 Defendant Creamer: Yes, sir.

3 The Court: Do you understand that if you were  
4 to have a trial there would many many rights that are, that  
5 come along with that trial. There are so many we could  
6 never discuss them in a day or a week or a month, but some  
7 of the most important ones, at least in my opinion, are  
8 your right to require the State to prove your guilt beyond  
9 a reasonable doubt to twelve jurors; do you understand  
10 that?

11 Defendant Creamer: Yes, sir.

12 The Court: And you understand you have a right  
13 to be represented by Ms. Knowles during that trial?

14 Defendant Creamer: Yes, sir.

15 The Court: You understand that you have a right  
16 to remain silent during that trial, but if you wanted to  
17 testify you could but if you chose not to you would not  
18 have to; you understand that?

19 Defendant Creamer: Yes, sir.

20 The Court: And you also understand that I'd  
21 even tell the jury that they couldn't use that against you;  
22 you understand that?

23 Defendant Creamer: Yes, sir.

24 The Court: All right, sir, knowing that you  
25 have these rights and many others that are affected by your

Guilty Plea - August 10, 2011

25

1 plea in this matter do you still wish to go forward with  
2 your plea?

3 Defendant Creamer: Yes, sir, Your Honor.

4 The Court: All right, now the State is making  
5 no recommendation but you do understand that each of these  
6 offenses could carry up to ten years?

7 Defendant Creamer: Yes, sir.

8 The Court: All right, now the State although is  
9 not making a recommendation I believe, and I'm going to  
10 make sure that this is on the record for your protection, I  
11 believe that this plea will clear up all known pending  
12 charges in the fifteenth judicial circuit or Horry County,  
13 let's put it that way; is that right, Mr. DeBusk?

14 Mr. DeBusk: Your Honor, for the record I want  
15 to state exactly, the State will not, at the end of the  
16 this plea the State will nol pros indictment 2010-808 for  
17 burglary third, will dismiss warrant M346205 for grand  
18 larceny, and there's no subsequent direct indictment on  
19 that for burglary property grand third, will nol pros  
20 indictment 2010-769 for burglary second degree, and will  
21 dismiss warrants M346250 for grand larceny, and M346251 for  
22 malicious damage, and that will take care of all pending  
23 charges I know about in the Horry County general sessions  
24 court.

25 The Court: All right, so, Mr. Creamer, what

Guilty Plea - August 10, 2011

26

1 he's saying here is that all those other charges that you  
2 have here that are pending are going to be dismissed with  
3 prejudice against the State; do you understand that, that  
4 means they can't try them?

5 Defendant Creamer: Right, right.

6 The Court: All right, now tell me about Ms.  
7 Knowles, are you satisfied with her?

8 Defendant Creamer: Yes, sir.

9 The Court: All right, no complaints?

10 Defendant Creamer: No, sir.

11 The Court: All right, has she given you all the  
12 information that you think you need?

13 Defendant Creamer: Yes, sir.

14 The Court: Okay, has anybody threatened you in  
15 any way to make you plead guilty?

16 Defendant Creamer: No, sir.

17 The Court: Has anyone intimidated you or done  
18 anything inappropriate to make you plead guilty against  
19 your will?

20 Defendant Creamer: No, sir.

21 The Court: All right, and again I want to ask  
22 you have you been promised anything other than what I've  
23 heard in this courtroom and we've talked about what's going  
24 to be dismissed and all that; have you been promised  
25 anything else?

Guilty Plea - August 10, 2011

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1 Defendant Creamer: No, sir.

2 The Court: All right, is that right, Ms.  
3 Knowles?

4 Ms. Knowles: That is the extent of our  
5 agreement at this minute, Your Honor.

6 The Court: All right, now have you had plenty  
7 of time to think about it, Mr. Creamer?

8 Defendant Creamer: Yes, sir.

9 The Court: Have you answered all my questions  
10 truthfully?

11 Defendant Creamer: Yes, sir.

12 The Court: Have you understood my questions?

13 Defendant Creamer: Yes, sir.

14 The Court: You don't need any more time to  
15 think about it, this is what you believe is in your best  
16 interest?

17 Defendant Creamer: Yes, sir.

18 The Court: All right, do you understand that  
19 even though this is a plea you have a right of appeal; you  
20 know what an appeal is, don't you?

21 Defendant Creamer: Yes, sir.

22 The Court: All right, you do have a right of  
23 appeal but only if you file a notice of your intention to  
24 appeal within the next ten days?

25 Defendant Creamer: Right.

Guilty Plea - August 10, 2011

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1           The Court:    I'm sure you don't know how to do it  
2 or where to do it but Ms. Knowles can; do you understand  
3 that?

4           Defendant Creamer:    Yes, sir.

5           The Court:    All right, I find that there's a  
6 substantial factual basis for the plea. I find it's made  
7 freely, voluntarily, knowingly, and intelligently after the  
8 advice of a very competent attorney with whom he says he's  
9 satisfied and I will accept his plea.

10          All right, do you want to add anything, Mr.  
11 DeBusk, is there a restitution matter, anything like that?

12          Mr. DeBusk:    Your Honor, there was restitution  
13 matter on the, not all of the air condition units were  
14 recovered but since we're at, if there's going to be any  
15 active time that we not seek restitution.

16          The Court:    All right, Ms. Knowles?

17          Ms. Knowles:    Your Honor, thank you. You've  
18 pretty much covered everything I was going to say but I  
19 will go over those points again. He is 44; he's married.  
20 He has three children; they're all over the age of 18. He  
21 tells me that he suffers from acute anxiety disorder. He  
22 tells me that on the day that the grand larceny and the  
23 truck took place he basically had taken his meds and  
24 combined that with alcohol. He knows now that he made a  
25 poor poor decision and that drinking given the fact that he

Guilty Plea - August 10, 2011

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1 is a recovering alcoholic and its led him here today.

2 He's spent 244 days in jail for this crime, we  
3 would ask that you consider that and consider a five year  
4 sentence in this case.

5 The Court: Anything you want to say to me, Mr.  
6 Creamer?

7 Defendant Creamer: Yes, sir, I mean I made a  
8 mistake, I mean I made a bad decision. I even wrote the  
9 victim even though I know that I might not was supposed to  
10 have done that I even wrote him and apologized for taking  
11 his tow truck. I even wrote Mr. DeBusk, told him the same  
12 thing that, you know, I know what I did was wrong. I  
13 wasn't trying to sugar coat nothing, you know, I've been  
14 trying to get to court. I ain't had a, I really hadn't had  
15 an attorney up until now. You know the only thing I can  
16 say is made a mistake.

17 The Court: We do that sometimes.

18 Defendant Creamer: Yeah, you know --

19 The Court: Is that it? All right, Mr. Creamer,  
20 Mr. Creamer, because of your prior record for one thing I  
21 have to give you some time but, Mr. Creamer, I want to say  
22 that I'm not going to give you the maximum time. I could  
23 give you up to thirty years for this. I'm not even going  
24 to give you the maximum time on one charge, I'm going to  
25 run everything I've got here concurrent. Your attorney has

1 done a good job getting these burglaries off of you, I can  
2 certainly tell you that. She's done a good job talking to  
3 me about what I should do in this case.

4           What I'm going to do is this, I'm going to give  
5 you ten years on each offense suspended upon seven years on  
6 each offense but I'm going to run them all concurrent,  
7 okay, and I'm going to give you credit for the time you've  
8 served.

9           Ms. Knowles: Thank you, Your Honor.

10          Mr. DeBusk: Thank you, Your Honor.

11          Defendant Creamer: Thank you, Your Honor.

12          The Court: All right.

End of requested transcript....

## CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, official court reporter the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina.

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

October 26, 2011

Brenda R. Babb

Brenda R. Babb, CVR

OFFICIAL REPORTER

FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF Horry )

Bary A. Creamer #20555  
Full name and prison number (if any) of Applicant. )

11

6445

v. )

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF

Horry

Horry County  
CLERK OF COURT  
JUL 29 PM 12:33

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (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 Horry
2. Name and location of Court which imposed sentence Horry County P.O. Box 677  
Conway S.C. 29528
3. Name(s) of co-defendant(s) (if any) Justine Morgan
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2010 GS 2600 768
  - (b) 2010 GS 2600 771
  - (c) 2010 GS 2600 770
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 8-10-2010
  - (b) Seven Years

- (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* \_\_\_\_\_

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) *I had already been pretty much forced*
- (b) *into taking the plea didn't see where*
- (c) *asking the same judge for reconsideration*

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

- (a) Ineffective Assistance of Counsel
- (b) Waiver due process by law
- (c) Single system illegible handwriting

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

- (a) Attorney had only been my attorney for three weeks had only come see me twice and one of those times she didn't even have my file

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

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

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

- (a) the specific nature thereof:
  - i. I filed for post conviction relief in
  - ii. Dep. of Prob and after seven months
  - iii. by mail wondering why I haven't heard
  - iv. anything I write to find out why! Clerk of Court said
- (b) the name and location of the Court in which each was filed.
  - i. they never received it I had return address and it
  - ii. hasn't been returned to me, where did it
  - iii. go? with the mail as it is today I'd say
  - iv. my P.C.R. found its way into a trash can
  - in the Clerk's office in Horry County
- (c) the disposition thereof:
  - i. it filed it in Horry County!
  - ii. they stated they never received it!
  - iii. \_\_\_\_\_

it went as far to file a motion to have her taken off my case a mock hearing was heard on this motion! she hadnt been on my case long enough to be able to build a proper defense! When I told this to the judge he merely ask me what defence could she possible build for my case! I thought it was up to the jury to decide whether I had a defense or not! Malinda Knowler actually didnt prepare any type of case period! she was simply there to plea me out and I was pretty much forced to plea it was either plea today or go to trial tomorrow!

- ③ My due process of law was violated a number of ways
  - ① I filed for a preliminary hearing! none was given
  - ② I filed for fast and sped trial in december 2009 nothing was done! I never had an attorney until last part of July 2010 well had one in name only never seen him nor would he receive any of my calls! nor would he return any of my letters!

I filed my own motions which was never recognized by the court! a motion was filed on my behalf by Malinda Knowler July 14 2010! and judge wouldnt hear motion he said in open court that if I want tried by July 2011 then heid he that motion at that time! this is a perfect example of the break down in the judicial system! a mockery of justice!

④ In 1992 in the Court of Anderson County I went to court for P.C.R. on two case of malicious damage! and my case was over turned! I brought

this to the attention of my attorney!, and that it should be used against me just because these malicious damage charges are still on my record!, she stated she couldn't find anything on it! It at the level of the department of corrections has record of it! but <sup>in</sup> consideration it's a legal issue that took place and I was released from the Department of corrections due to those court proceedings, it further shows the incompetence by my lawyer proof of point at those same court proceedings a assistant solicitor for Anderson County was called into the judges chambers and ask for resignation due to the outcome of those proceedings! and it's ironic that this person should end up in Henry County as a public defender. and again I brought this to my attorney attention! and she merely said she was aware that he came from a different County why he left and came to Henry County she wasn't aware of!

the point I'm try to make is vindictive prosecution  
Conflict of interest!

now if say you take away the sub charges and the charges are what they are misdemeanors then I have grounds to challenge the courts on this issue!

## PUBLIC DEFENDER OF HORRY COUNTY

203 LAUREL STREET  
P.O. BOX 1666  
CONWAY S.C. 29528

PHONE: 843-248-1570  
FAX: 843-248-1578  
TOLL FREE IN S.C. 1-800-849-0101

December 21, 2009

**YOUR ATTORNEY IS: PAUL TAYLOR**

**YOUR 1ST COURTHOUSE APPEARANCE IS: 22nd day of January, 2010 at 1:00 P.M.**

**YOUR 2ND COURTHOUSE APPEARANCE IS: 26th day of February, 2010 at 8:30 A.M.**

**BOTH DATES ARE ON FRIDAY**

Gary Creamer

Greenville SC 29617

**Re: State v. Gary Creamer    Our File No.: A 09-00003732**

Dear Gary Creamer:

I have been appointed to represent you on your pending criminal charges. I have filed a Certificate of Representation and a Brady Motion with both the Clerk of Court of Horry County and the Horry County Solicitor. The Brady Motion is to request that the Solicitor send me a copy of the evidence that they have against you. (A Discovery Motion)

I cannot evaluate your case or give you legal advice on your case without receiving a copy of the evidence in your case. **Once I have received the evidence in your case I will send you a letter scheduling an appointment for you to come to the office and meet with me to discuss your case.**

If your address or phone number changes for any reason, please call this office and tell the receptionist of your change of address and or phone number.

**IF YOUR ARE IN JAIL**, our paralegal, Gerald Ballen or our investigator, Jerome Randall, will try to speak with you within 30 days of the date of this letter.

General Sessions is scheduled for the first two weeks of each month. When I am not in Court, I interview clients that are in jail and on bond. I will attempt to see you within 45 days of the date of this letter.

Until I have met with you, please do not make any statements to ANYONE concerning your case. This includes police officers, detention officers, detectives, investigators and cell mates. Any statements made by you will be used against you. Any promises made by police officers do not have to be kept by the prosecutor. Only the prosecutor can make a deal with you about the prosecution of your case once the warrant has been served. Please remember the prosecutor represents the STATE'S interest, not yours.

**BOND SET:** If your charge requires a Circuit Court Judge to set your bond, your name is automatically placed on a list and given to the Solicitor for a hearing.

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS  
OF THE FIFTEENTH JUDICIAL CIRCUIT

COUNTY OF Horry )

STATE OF SOUTH CAROLINA )

NOTICE OF SUBSTITUTION  
OF COUNSEL

V. )

PUBLIC DEFENDER TO PUBLIC DEFENDER

GARY CREAMER )

DEFENDANT )

NEW ATTORNEY: MELINDA A KNOWLES

File No. 26A09-00003732

S.S. No.

To: Court of General Sessions of the Fifteenth Judicial Circuit  
Office of the Solicitor  
Appointed Counsel  
DefendantFILED  
APPROPRIATELY  
2016 MAY 26 PM 1:01  
MELANIE ROBERTSON  
CLERK OF COURT

Please be advised that Paul Taylor, Public Defender for the above named defendant in the above-captioned matter has been replaced by Melinda A Knowles, Public Defender.

**MELINDA A KNOWLES**

203 Laurel Street

P.O. Box 1666

Conway, SC 29526

Phone: 843-248-1570

Fax: 843-248-1578

On the offense(s) listed below:

M-346251 Malicious / Malicious injury to animals, personal property, value \$5,000 or more  
M-346250 Larceny / Grand Larceny, value \$5,000 or more  
M-346249 Burglary / Burglary 2nd NV (Non - Violent) (After June 20, 1985) - Second degree  
M-346205 Larceny / Grand Larceny, value \$5,000 or more  
M-346204 Burglary / Burglary 3rd (After June 20, 1985) - Third degree - 1st offense

Respectfully Submitted



Conway, South Carolina

ORRIE E. WEST  
CHIEF PUBLIC DEFENDER

203 Laurel St.

P.O. Box 1666

Conway, South Carolina 29526

May 26, 2010

STATE OF SOUTH CAROLINA )  
COUNTY OF Horry )  
STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS  
OF THE FIFTEENTH JUDICIAL CIRCUIT

-VS-

NOTICE OF MOTION AND MOTION  
FOR SPEEDY TRIAL PURSUANT TO  
SECTION 17-23-90 SC CODE

GARY CREAMER )  
DEFENDANT )

2016 JUL 14 PM 2:21  
CLERK

FILE NO: 26A09-00003732

MOTION BY: MELINDA A KNOWLES, PUBLIC DEFENDER  
TO: GEORGE DEBUSK, ASSISTANT SOLICITOR

Now comes the Defendant, Gary Creamer, by and through his/her attorney, Melinda A Knowles, Public Defender, who moves before this Court to be heard on the matter of a Speedy Trial pursuant to Section 17-23-90 of the South Carolina Code of Laws as Amended, Article I, Section 14 of the South Carolina Constitution, the Sixth Amendment to the United States Constitution, Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), State v. Chapman, 289 S.C. 42, 344 S.E.2d 611 (1986), State v. Waites 270 S.C. 104, 240 S.E. 2d 651 (1978), and State v. Smith 307 S.C. 376, 415 S.E. 2d 409 (1992).

The Defendant was arrested on December 10, 2009 for the charge(s) of:

- M-346251 Malicious / Malicious injury to animals, personal property, value \$5,000 or more
- M-346250 Larceny / Grand Larceny, value \$5,000 or more
- M-346249 Burglary / Burglary 2nd NV (Non - Violent) (After June 20, 1985) - Second degree
- M-346205 Larceny / Grand Larceny, value \$5,000 or more
- M-346204 Burglary / Burglary 3rd (After June 20, 1985) - Third degree - 1st offense

which is/are Felony Offense(s) pursuant to the laws of this state. The Defendant is presently incarcerated at the J Reuben Long Detention Center and has been since the

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS  
OF THE FIFTEENTH JUDICIAL CIRCUIT

WARRANTS: M-346251; M-346250;  
M-346249; M-346205; M-346204

-VS-

CERTIFICATE OF SERVICE BY MAIL

GARY CREAMER

DEFENDANT

MR. AUSTIN  
CLERK OF COURT  
2010 JUL 14 PM 2:21  
JURY

I certify that on :

14th day of July, 2010

I served a copy of the attached Motion in this Criminal Matter on:

George DeBusk by:

depositing a copy of it in the United States Mail, postage prepaid on the above date  
address to the Horry County Solicitor listed above to the address listed as follows:

George DeBusk  
Assistant Solicitor  
Horry County Solicitor's Office  
P.O. Box 1276  
Conway, SC 29528

*Melinda Knowles*

Melinda Knowles  
Public Defender  
Horry County  
203 Laurel Street  
Conway, SC 29526  
Phone 843-248-1570

DATE DOCUMENT PRINTED: July 14, 2010


*Spq M. Hughes*  
Employee Signature

date of his arrest.

The Grand Jury for Horry County met on February 18, 2010. The allegations against the Defendant WERE presented to the Grand Jury. The Defendant moves for this Court to hear this matter and, applying the factors established in Barker v. Wingo, *supra*, and its progeny, determine whether a violation of this Defendant's right to speedy trial as vouchsafed by the Constitution of the State of South Carolina and the Constitution of the United States has been violated.

If the State fails to try this matter during this present term of Court the Defendant requests that this Court, pursuant to Section 17-23-90 of the South Carolina Code of Laws as Amended, release the Defendant on his own recognizance until the Solicitor's Office can call this matter for trial.

RESPECTFULLY SUBMITTED



MELINDA A KNOWLES  
PUBLIC DEFENDER  
203 LAUREL STREET  
CONWAY, SC 29526  
PHONE: 843-248-1570

DATED: July 8, 2010  
CONWAY, SOUTH CAROLINA

**MELANIE HUGGINS WARD**

CLERK OF COURT  
1301 2ND AVENUE  
CONWAY, SC 29526  
(843) 915-6080 Fax: (843) 915-6081

June 30th, 2011  
Gary A. Creamer #209555  
E.C.I. F2 A 283  
610 Hwy 9 West  
Bennettsville SC 29512

Dear Mr. Creamer

We received your letter requesting information about your PCR application. We do not have one from you and I can't find where we ever got one. I am sending you another PCR application. Please fill it out and return it back to us.

If we can be of any further assistance, please do not hesitate to let us know.

Sincerely,

*Melanie Huggins Ward*  
Melanie Huggins Ward

MHW/ac

Mrs. Huggins

Back in December of 1962 you a  
application for Post Conviction Relief to be filed  
However its been six months and we  
yet to hear anything about it, and I know its normal  
practice to send a time stamped copy from other  
Counties Clerk of Court however we realized that  
Horry County doesnt work within the norm.

Never the less im pretty concerned about  
my P.C.R application and not hearing anything  
and understanding that one year statute limitation  
if something has went awry with my application  
I need to know! for I feel I should have already  
heard something!

Therefore if you would please write  
me a return copy of my application with a time  
stamp and let me know why I havent heard anything.

Respectfully  
Gary  
Peamer

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. Letter from Clerk of Court along with  
ii. my letter to them included.  
iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

NO

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) it filed motion for post & speedy trial!

(b) I also had motion heard to have attorney

(c) relieved as Counsel

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

- (a) your arraignment and plea? Yes Orrie West
- (b) your trial, if any?
- (c) your sentencing? Yes Melinda Knowles
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes for the fast speed trial

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. Orrie West 303 Laurel St. Conway S.C.
  - ii. Melinda A Knowles
  - iii. Paul Taylor
- (b) the proceedings at which each such attorney represented you:
  - i. Paul Taylor - none.
  - ii. Orrie West, arraignment / and to have motion for fast speed trial heard
  - iii. Melinda Knowles forced plea & sentencing

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

I want to be reheard on charges and to be released

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

NO

STATE OF SOUTH CAROLINA )

County of Horry )

VERIFICATION

11

6445

I, Bary Crasner, 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.

Bary Crasner

SWORN to and subscribed before me this 28  
day of July, 2011

Janet Bruggs Maxwell (L.S.)  
Notary Public

My Commission Expires: August 18, 2018

HORRY COUNTY  
11 JUL 29 PM 12:33  
HELAHLE HARRIS-WARD  
CLERK OF COURT

6445

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

I, Gary Cranner, hereby apply for leave to proceed in this action without prepayment of fees or costs of 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.

Gary Cranner  
Applicant

SWORN or affirmed to and subscribed before me this  
28 day of July, 2011

Pamela D. Jones McDowell  
Notary Public

My Commission Expires: August 18, 2018

HORRY COUNTY  
11 JUL 29 PM 12:33  
MELANIE B. BURNS-WARD  
CLERK OF COURT

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS )  
FIFTEENTH JUDICIAL CIRCUIT )

Gary A. Creamer, # 209555, )

2011-CP-26-6445 )

Applicant, )

v. )

**RETURN**  
**(Attorney Appointment Requested)**

State of South Carolina, )

Respondent. )

Respondent, making its Return to the Application for post-conviction relief filed July 29, 2011, by Gary A. Creamer, would respectfully show this Court:

I. – Procedural History

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to convictions from Horry County. The Applicant was indicted in February 2010 for two counts of larceny, third or subsequent property offense (2010-GS-26-768; -770), and one count of malicious injury to personal property (2010-GS-26-771). On August 10, 2010, the Applicant pled guilty before the Honorable Larry B. Hyman, Jr. Melinda A. Knowles, Esquire, represented him. Judge Hyman imposed a sentence of 10 years, suspended to 7 years, with the sentences to run concurrently. Several charges were dismissed following the plea, including burglary second degree (non-violent) (2010-GS-26-769); burglary third degree (2010-GS-26-808); two counts of grand larceny in an amount of \$5,000 or more (M-346205 & M-346250); malicious injury to personal property in an amount of \$5,000 or more (M-346251); and burglary second degree (non-violent) (M-346249). No direct appeal was filed.

Incorporated herein by reference are the records of the Horry County Clerk of Court regarding the conviction and the Applicant's records from the South Carolina Department of

Corrections. The guilty plea transcript will be forwarded upon receipt from the court reporter. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II. – Allegations and Relief Sought

In his Application, Mr. Creamer alleges that his custody is unlawful for the following reasons:

- (1) Ineffective assistance of counsel;
- (2) Violation of due process of law; and
- (3) Illegal sentence.

The Applicant states he is seeking “to be reheard on charges and to be released.”

## III.

In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where an application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was deficient and (2) there is a reasonable probability that but for counsel’s errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). However, a guilty plea is a solemn, judicial admission of the truth of the charges against a defendant. Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, statements made during the plea will be considered conclusive unless the defendant presents persuasive reasons why he should be

allowed to depart from the truth of those statements. See Crawford v. U.S., 519 F.2d 347 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

Respondent submits that the record will support that the Applicant did not receive ineffective assistance of counsel and did not suffer any violations of his rights. Nevertheless, the allegations may raise questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve any questions raised. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

WHEREFORE, having made its Return, the Respondent requests that counsel be appointed and an evidentiary hearing held.

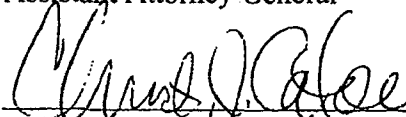
Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

CHRISTINA J. CATOE  
Assistant Attorney General



**ATTORNEYS FOR RESPONDENT**  
Office of the Attorney General  
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September 26, 2011

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS NON-JURY
	)	
COUNTY OF Horry	)	(11-CP-26-6445)
	)	
GARY CREAMER	)	
	)	
VERSUS	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA	)	April 23, 2012
	)	Conway, S. C.
	)	

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge

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

PAUL ARCHER, ESQ.  
ATTORNEY FOR PLAINTIFF

TYSON ANDREW JOHNSON, SR., ESQ.  
ATTORNEY FOR DEFENDANT

DIXIE COX EUBANK  
CIRCUIT COURT REPORTER  
FIFTEENTH JUDICIAL CIRCUIT

I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>
<u>WITNESSES</u>				
GARY CREAMER				
MR. ARCHER	4			
MR. JOHNSON		11		
MELINDA KNOWLES				
MR. JOHNSON	16			
MR. ARCHER		22		
COURT'S RULING	26			

1 (THE FOLLOWING TAKES PLACE ON APRIL 23, 2012.)

2 MR. JOHNSON: Your Honor, the next matter, that we  
3 would like to take out of order because Mr. Archer is still  
4 with us in the courtroom, is Gary Creamer. That's the next to  
5 the last case on the roster.

6 THE COURT: All right. Very good.

7 All right. This is (11-CP-26-06445). It is the Post-  
8 Conviction Relief Application of Gary Allen Creamer versus the  
9 State of South Carolina.

10 All right, Mr. Archer, I'll be glad to hear from you,  
11 sir.

12 MR. ARCHER: Your Honor, the Applicant pled guilty to  
13 several charges, and several charges were dismissed, some  
14 burglary charges. He received seven years. He pled to a  
15 larceny, damage to property. I explained to him that he maxes  
16 out in less than a year. I explained to him that if he wins  
17 this PCR it can only be vacated, they will probably appeal it  
18 to the Supreme Court, that could take a couple of years, he  
19 goes back to jail, and he would be tried - he's asking for a  
20 trial - he would be tried on all the charges, even the ones  
21 that were dismissed, and he wishes to go through with this  
22 PCR, and I would just like to put that on the record that I  
23 explained to him what the procedure would be, and he still  
24 wishes to go -- go ahead.

25 THE COURT: All right. Very good. Do you wish to call

1 the Applicant to the stand then?

2 MR. ARCHER: Yes sir.

3 THE COURT: All right, Mr. Creamer, if you would come  
4 around to the stand, please sir.

5 GARY ALLEN CREAMER, being first  
6 duly sworn, testifies as follows:

7 DIRECT-EXAMINATION BY MR. ARCHER:

8 THE COURT: All right, Mr. Archer, you may proceed,  
9 sir.

10 MR. ARCHER: Yes sir.

11 Q. Is it Creamer or Creamer?

12 A. Creamer.

13 Q. Mr. Creamer, you -- apparently you filed a Post-  
14 Conviction Relief, and I understand that you are claiming  
15 ineffective assistance of counsel; is that correct?

16 A. Yes sir.

17 Q. And your counsel was whom?

18 A. Melinda Knowles.

19 Q. Was she retained, or was she part of the Public  
20 Defender's Office?

21 A. Part of the Public Defender's Office.

22 Q. All right. When you were arrested did you make bond?

23 A. No sir.

24 Q. All right. When was the first time that you saw  
25 Melinda?

1 A. June, middle part of June of 2010.

2 Q. All right, how much time did she spend with you at that  
3 time?

4 A. The first time that she come saw me she didn't even  
5 have my file. The second time she spent about thirty minutes.

6 Q. All right. And at that time did you say that you  
7 wanted a trial?

8 A. Yes.

9 Q. All right. And what was the reason that you did not go  
10 to trial?

11 A. Well, at that time I had five charges, two burglary  
12 charges, two grand larceny charges, and a malicious injury  
13 charge. We argued the points of law on whether or not my  
14 crime was actually burglary or not. She didn't want to  
15 listen, so I mean, being as it may, I told her there's no way  
16 possible that I would plead to no burglary charges, a grand  
17 larceny charge that I know that I didn't do, so I mean, I  
18 never tried to sugar-coat nothing. I admitted to what I did  
19 do, even though it shouldn't have been what it was. I didn't  
20 feel like I was charged properly to begin with, and I mean, I  
21 come up here to the courthouse for -- filed a motion for a  
22 fast and speedy trial, had been in jail for eight months, had  
23 heard nothing, and she didn't even stand at the table with me.  
24 She sent Orrie West to stand -- stand with -- you know to  
25 defend me on that right there, and it wasn't even what it was

1 for. I had been -- I had been bamboozled, I guess you could  
2 say. She was here. She talked to another client, but yet  
3 when it come time for me to come up in front of the Judge to  
4 have my hearing heard she wasn't there - it was Ms. West - and  
5 my hearing was never heard.

6 Q. All right, let me ask you this. As far as the charges  
7 that were dismissed, when were they dismissed? Were they  
8 dismissed as part of your plea?

9 A. During the plea process George DeBusk got up and made  
10 reference to the charges that he planned to have dismissed,  
11 and he dismissed all five of my charges with prejudice, which  
12 means they can't be brought back forward.

13 Q. All right.

14 A. Then the so-called direct indictment, I was never  
15 served a warrant for a direct indictment. Everything was --  
16 as far as the record showed, was -- I was sentenced as -- as  
17 indicted.

18 Q. All right, let me ask you this so -- I think the Judge  
19 can understand this, and actually to be true to you, so I can  
20 understand this. Do you feel that the charges were dismissed  
21 were not part of the plea bargain; is that what you are  
22 saying?

23 Well, let me ask you this, were you going to trial ---

24 A. There really wasn't no plea bargain if the State -- I  
25 mean, if they have their say about it there was -- never was a

1 plea bargain. It was either I would take zero to ten, or I  
2 would go to trial the next day, so I felt like -- I mean, I  
3 didn't want to go to trial. I -- you know, at the time --  
4 I've got -- I've got the -- all the paperwork over there. I  
5 had five charges on me, and there had nothing -- been nothing  
6 discussed about -- nothing about a direct indictment for a  
7 subsequent offense, or an enhancement, or nothing like that of  
8 the sort, right. I come up here. Five minutes after talking  
9 to the Public Defender's Office, telling me I was thirteenth  
10 on the docket list I wouldn't -- there was no way I was fixing  
11 to get tried. Five minutes later they are calling me, telling  
12 me to get ready, I'm going to court. I come up here. There's  
13 no way that Melinda Knowles could have been prepared to defend  
14 the case. She had only been my lawyer for what, three weeks,  
15 four at the most. She had only been to see me twice. One  
16 time she didn't even have my file. I mean, the record shows  
17 itself at my -- I filed a motion to have her relieved as  
18 counsel. The record shows itself that she wasn't prepared.  
19 The Judge asked her one -- one spot, said, have you been over  
20 all this with him. This is what she said, I was planned on  
21 doing that this afternoon. Well, if you are prepared to roll  
22 at nine o'clock in the morning, there's no way possible you  
23 suppose to have to be going out there to do it this afternoon.  
24 So that's just prime example that she wasn't prepared to  
25 defend my case. I asked her to investigate certain things,

1 she didn't do it.

2 Q. All right. What did you ask her to investigate?

3 A. I asked her to -- all she had to do was make a phone  
4 call. The -- one of the larceny charges pertaining to some  
5 air-conditioning units that had got gone -- now I will bring -  
6 - I'll bring this to the attention of the Court. I did send  
7 the Solicitor a letter, and I stated what I did and what I  
8 didn't do. Okay, I -- at that time I was scrapping a lot of  
9 metal. Now, to say that this was even the same place that I  
10 got these air-conditioners from, I can't say, but I do know  
11 this, and this right here can be solidified by one phone call.  
12 I was in the Myrtle Beach City Jail for driving under  
13 suspension the whole day of the 26th, which was Thanksgiving.  
14 There's no way I could have done that crime and being in the  
15 City of Myrtle Beach too. There's just no way possible.

16 But she know -- she comes and tells me there's no --  
17 nothing that she could find that I ever been in the City Jail.  
18 Well, that's how I got here to begin with, was through the  
19 City Jail this time.

20 Q. Is there anything else that you think she should have  
21 done? You are asking the Judge to vacate your sentence so you  
22 can have a trial.

23 A. Right.

24 Q. All right, so is one of -- one of your claims is that  
25 you thought that the burglaries were dismissed; is that

1 correct?

2 A. The burglaries was dismissed. The burglaries was never  
3 a fact to begin with. I never committed a act of burglary.  
4 The only thing that the Officer did -- I made the Officer mad  
5 by when I lied. I did tell a lie. I filed a false police  
6 report that my truck was stolen. I admitted to that. Okay, I  
7 done done that. I admitted my wrong. I done wrote the  
8 Solicitor and told him, listen, I done this; this is what I  
9 did; this is what I did right here, but you've got me charged  
10 with five felony charges, five felony charges that I did not  
11 commit.

12 Now I went to court on those five felony charges.  
13 During that process of me going to court those five felony  
14 charges was disposed of, with prejudice, which meant that they  
15 cannot be picked back up. Now, was that part of the plea  
16 agreement? I never got char -- I never had -- I never got a  
17 warrant for direct indictment.

18 Q. All right. So you feel that Ms. Knowles was  
19 ineffective for not challenging that? You were going to go to  
20 trial on the burglaries; is that correct?

21 A. I want to go on a trial on it all.

22 Q. No. I'm saying, what were you going to go to trial  
23 for?

24 A. The burglary charges and all. I was going to go on the  
25 burglary charge and the grand larceny charge. The other I --

1 you know, I could live -- I live -- I could live with that,  
2 but it still wasn't charged for what I actually did. It was -  
3 - I mean, they enhanced something that -- I mean, they never  
4 even enhanced nothing, so where did they get property third  
5 subsequent offenses and enhancement when nothing was enhanced;  
6 everything was tried and charged as was. So there was never  
7 no enhancement. I got zero to ten.

8 Q. All right. So you feel that if Ms. Knowles was doing  
9 her job you would have gone to trial, and the jury would have  
10 found you not guilty on these burglaries?

11 A. Oh, there ain't no doubt they would have found me not  
12 guilty on no burglary charge.

13 Q. All right. And do you have anything else to tell the  
14 Judge, what you think she did wrong?

15 A. I mean, I -- to be honest with you - I'm not being cute  
16 -but I have yet to find anything that she done right. I mean,  
17 I filed for a motion for a fast and speedy trial in December  
18 of '09. Eight months later I've not got no lawyer, only in  
19 name only, okay, and I mean, they just -- I hate to say this,  
20 but there was -- there was other allegations that I made on my  
21 Post-Conviction Relief about the Public Defender's Office.  
22 One of them has got to do with Ed Chrisco.

23 Q. Well, we are here today talking about Ms. Knowles, so  
24 let's just stick with her.

25 A. All right.

1 Q. All right. On the -- on the speedy trial, you felt  
2 that she should have made a motion to have your charges  
3 dismissed because you weren't given a speedy trial; is that  
4 what you are claiming?

5 A. She was suppose to have went to my hearing with me.  
6 She was here at the courthouse. I seen here. I seen her talk  
7 to another inmate. But then when it come time for me,  
8 supposedly, to come in here for -- in front of Judge John here  
9 for my motion for a fast and speedy trial I get in here and  
10 find out that I'm not here for that, that I'm in here to be  
11 arraigned; so Ms. Knowles has lied to me.

12 Q. All right. Is there anything else that you would like  
13 to tell the Court?

14 A. No sir.

15 MR. ARCHER: All right. Answer any questions that the  
16 Attorney General may have.

17 THE COURT: All right. Cross-examination.

18 CROSS-EXAMINATION BY MR. JOHNSON:

19 Q. Mr. Creamer, you are saying that you want a trial in  
20 this matter; is that right ---

21 A. Yes sir.

22 Q. ---On all of the charges?

23 A. On all five charges.

24 Q. Even those charges that were dismissed?

25 A. Well, really, actuality, all five charges was dismissed

1 with prejudice, which means they can't be brought back  
2 forward.

3 Q. Would it change your opinion if you learned that they  
4 could be brought back?

5 A. Well, no, it wouldn't.

6 Q. You still want to be tried on all the charges?

7 A. If that's what it takes.

8 Q. Did you have a defense at the time when Ms. Knowles was  
9 representing you?

10 A. Exactly what I just told Mr. Archer I told her. If she  
11 didn't prepare -- she never tried to prepare a defense. Her  
12 main goal was to get me to plead. I was forced to plead. It  
13 was either take this today, or tomorrow we are going to try  
14 your case. Prepare for a defense. She never prepared for a  
15 defense.

16 Q. Now at some point you wrote a letter to the Solicitor;  
17 is that correct?

18 A. That is correct.

19 Q. And in that letter you admitted to certain crimes?

20 A. Certain. Certain crimes.

21 Q. Which ones?

22 A. Okay. I took the tow truck without owner's consent. I  
23 had the keys to the tow truck. That, and I mean again, I said  
24 that I -- at that time I was doing a lot of scrapping. I had  
25 part ownership of a store in Myrtle Beach and it wasn't doing

1 too good, so to try and make ends meet, keep the rent paid on  
2 my store, I was going around to different places and I mean, I  
3 don't know, I don't -- I didn't know that it was a law to get  
4 junk that was stacked up beside a dumpster, because everything  
5 that I got -- I got some air-conditioners - all the cords was  
6 cut off of them - and they was stacked up beside the dumpster.  
7 I tried to explain this to her but she -- she done no  
8 investigation. There was no investigative work done  
9 whatsoever.

10 Q. All right, sir, getting back to the letter. You  
11 admitted in the letter that you took the wrecker; is that  
12 right?

13 A. I did take the two truck without owner's consent.

14 Q. Did you admit to knocking down the fence as well?

15 A. I did knock down the fence.

16 Q. All right. And did you load those air-conditioning  
17 units onto a truck?

18 A. I'm not sure. It could be -- it could have been -- I  
19 mean, it might not, it could have been. The thing is, again,  
20 all it would take was a phone call, and she never even made  
21 that phone call.

22 Q. All right, but I mean, you are not here denying that  
23 you took the wrecker, knocked the fence down. Those things  
24 are established; is that right?

25 A. Right.

1 Q. All right.

2 A. But I do not believe the charges should have been what  
3 they was.

4 Q. And just to be clear, any charges dismissed, you  
5 understand, if you win today will be brought back.

6 A. All right.

7 Q. The Judge could have given you thirty years; is that  
8 right?

9 A. That is correct.

10 Q. Okay. And then you got ten, suspended to seven.

11 A. That is correct also. But can I ask you a question?

12 **THE COURT:** No sir. You cannot ask a question. You  
13 can answer the questions. If you need to explain your answer  
14 you may do so.

15 Q. When is your current max-out?

16 A. August, 2013.

17 Q. That is August of this year, correct?

18 A. 2013.

19 Q. 2013.

20 A. 2013.

21 Q. All right. And you are willing to give that up?

22 **COURT REPORTER:** I'm sorry.

23 Q. So you are willing to give that up, Mr. Creamer?

24 A. Yes.

25 Q. All right. As I read the transcript, you told the

1 Judge you were satisfied with Ms. Knowles; is that right?

2 A. Well, if you go back to the beginning of the transcript  
3 you also see where we had a hearing for a motion to have her  
4 relieved as counsel, where I wasn't pleased with her.

5 Q. But you did tell the Court that you were pleased with  
6 Ms. Knowles. Look down on page twenty-six, lines six through  
7 thirteen. Didn't you do that?

8 A. When you are put in a position ---

9 Q. Sir, is that a yes?

10 THE COURT: You may explain your answer. You need to  
11 respond to the question. Thank you.

12 A. All right. To explain that. When you are put in a  
13 position ---

14 THE COURT: You need to answer first, whether or not  
15 you said that.

16 A. Yes.

17 THE COURT: All right. Very good. You can explain  
18 your answer.

19 A. When you are put in a position where you are in a no  
20 win win situation, when you see that your best interest is to  
21 go ahead and do this today, and come back to fight another  
22 day, I wasn't given a -- really another option. What was the  
23 option? Thirty years? Going in front of a Judge and a jury  
24 with an attorney who was not prepared? What kind of win did I  
25 have there? None.

1 Q. When the Court was asking you questions you told him  
2 that you wanted to plead guilty that day; isn't that right?

3 A. There's a lot of things that was said that ain't on the  
4 record.

5 Q. But you did tell the Judge that you wanted to plead  
6 guilty?

7 A. I wasn't going to plead guilty, but when it gets to the  
8 point where you are forced, it's either do this today, or do  
9 this tomorrow, I mean, you weigh the options.

10 Q. But you understood the potential sentence, and what  
11 that was going to be, was up to thirty years.

12 A. Okay.

13 Q. Did you?

14 A. Of course.

15 Q. All right. Were you hoping for less?

16 A. A whole lot less.

17 Q. All right.

18 MR. JOHNSON: I think that's all I have.

19 THE COURT: All right. Very good.

20 Any redirect?

21 MR. ARCHER: No sir.

22 THE COURT: All right. You may step down, sir.

23 Other evidence on behalf of the Applicant in this  
24 matter.

25 MR. ARCHER: No sir.

1 THE COURT: All right. Very good.

2 Attorney General.

3 MR. JOHNSON: We'll call Ms. Melinda Knowles, Your  
4 Honor.

5 THE COURT: All right. Please come around to be sworn,  
6 Ma'am.

7 MELINDA KNOWLES, being first duly  
8 sworn, testifies as follows:

9 DIRECT-EXAMINATION BY MR. JOHNSON:

10 THE COURT: Go ahead, sir.

11 Q. Ma'am, would you start by giving a brief history of  
12 your experience, and how you came to represent the Applicant?

13 A. Yes sir. This file was originally another Public  
14 Defender's file. I was transferred this case. I was  
15 appointed on May 26th of 2010. Substitution of Counsel was  
16 filed with the Clerk of Court on July 17th of 2010, and I had  
17 my first meeting with the Defendant on July -- I apologize --  
18 June of that same year.

19 Q. And did you have any other meetings with him?

20 A. I met with him a couple of times, and I also spoke with  
21 him over the telephone as well. This was a situation where  
22 Ms. West was also involved, so she spoke with him several  
23 times too.

24 Q. What did you discuss?

25 A. We discussed the case, all the discovery documentation.

1 We discussed any defenses that he would have. He had  
2 mentioned several things that he wanted me to investigate, one  
3 which he had already mentioned, which was his incarceration at  
4 a local jail, which I did look into and did not find any  
5 record of.

6 Q. Do you remember making a discovery motion?

7 A. There was a motion filed, yes sir.

8 Q. And did you receive the discovery?

9 A. I did.

10 Q. Did you go over it with Mr. Creamer?

11 A. Yes sir, I did.

12 Q. Did you discuss his version of the facts?

13 A. I did.

14 Q. And what did he tell you?

15 A. Basically it seemed to coincide with what the report  
16 indicated. Now, he did tell me that he had keys, but did not  
17 tell me he had permission to use the vehicle that was taken,  
18 that was actually the subject of one of the charges, two of  
19 the charges. I apologize.

20 But anything that he asked me to investigate I did look  
21 into. Unfortunately a lot of those factors were not in his  
22 favor because they did not turn out to be what he had told me  
23 that they would show.

24 Q. Let me go back a little bit. When you say he -- he  
25 indicated that he had keys but not permission, did he actually

1 tell you that he did not have permission?

2 A. Yes sir.

3 Q. Okay.

4 A. There was -- there was no reason that he could have  
5 been on that property.

6 Q. I'm going to ask you about the level of cooperativeness  
7 that he had with you. Did he cooperate in the defense of the  
8 case?

9 A. He was very combative. From the get-go it seemed like  
10 he was upset with the position that he was in, and I explained  
11 that I didn't put him there; he put himself there, but he was  
12 not easy to deal with.

13 Q. I understand there was a statement or a letter that he  
14 wrote. What can you tell the Court about that?

15 A. I was informed of that, and I don't have a copy of it.  
16 I was given a copy to look at the day that it was presented,  
17 and I did read it. Basically it indicated that he was guilty  
18 of at least two of the charges that he had been charged with.

19 Q. You don't remember what they were?

20 A. I can't recall. It was one burglary and one malicious  
21 damage. The specific indictment numbers I can't recall.

22 Q. How did that affect your ability to put up a defense in  
23 the case?

24 A. Well, obviously all the State would have to do is  
25 present that letter, and authenticate that document as being

1 his, and that would be an open and shut case for them as far  
2 as guilt goes, and so that factored into my advisement of  
3 whether or not to accept a guilty plea.

4 Q. Do you remember making, or entering into negotiations  
5 with the State regarding any potential plea?

6 A. The State was willing to dismiss several charges if he  
7 would plead to two counts of property enhancement, which is  
8 actually what happened, and they were not going to make a  
9 recommendation. They were going to leave that up to the  
10 Judge. But part of the plea negotiation was that several  
11 charges would be dismissed.

12 Q. So these charges that were dismissed were dismissed  
13 because he was pleading?

14 A. Yes sir.

15 Q. Okay. Would you discuss his rationale for deciding to  
16 enter a plea?

17 A. Rationale. He understood that it would be in his best  
18 interest to do so given the evidence that they had against  
19 him, and the fact that they were going to be dismissing  
20 several of the charges.

21 Q. So you discussed this specifically with him ---

22 A. Yes sir.

23 Q. ---That the plea ---

24 A. The day he pled.

25 Q. ---That in exchange for his plea they would be

1 dismissing several charges?

2 A. Yes sir. And I believe that is on the transcript as  
3 well, that that specific point was made available to him; he  
4 was made aware of that.

5 Q. Do you feel that he was getting the benefit of bargain  
6 by entering a plea?

7 A. Most definitely. Given his record, and that they were  
8 going to be dismissing so many charges.

9 Q. How would his record have played into your defense?  
10 Would it have made it more difficult?

11 A. Yes, it would, because he would be advised not to take  
12 the stand, therefore, telling his side of the story would be  
13 quite difficult.

14 Q. Whose decision was it for him to plead guilty that day?

15 A. The decision to plead guilty or not was totally his.  
16 I, in no way, forced him. I only advised that I believed that  
17 would be in his best interest to do so.

18 Q. Do you feel his decision was entered into freely and  
19 voluntarily?

20 A. Yes, I do.

21 Q. Tell me this, were there any other persons that were  
22 prepared to testify against him had he gone to trial?

23 A. He had two co-defendants. I don't know if the State  
24 was going to use those, but to my knowledge they possibly  
25 would have factored in.

1 Q. Were there people at the scene that he had admitted to  
2 that he stole the truck?

3 A. I'm not quite sure as to what -- I can't recall as to  
4 what he told the Officers that investigated, originally, but  
5 you know, he definitely had others that were aware, I believe  
6 neighbors that were present, that he had indicated that he had  
7 just taken a truck and it had gotten stuck, and that was the  
8 basis of one of the charges.

9 Q. He claimed a little earlier in his testimony that he  
10 didn't think he was charged properly. Did he ever bring this  
11 up with you?

12 A. The only thing that I can recall that he ever had a  
13 dispute with was as to the values of the malicious damage  
14 charge, and I explained to him that that would be on the State  
15 to have to prove the actual value, but again, he was pleading  
16 guilty, or the charge that he would be going to trial on was  
17 an enhancement charge based upon his prior offenses, so really  
18 the value didn't play much of a role.

19 Q. Was this also concerning the phone call that he asked  
20 you to make concerning the AC unit? Did that have to do with  
21 the value of the property that you were just talking about?

22 A. There was some investigation done as to the value, but  
23 I don't recall a phone call. I don't know what he's talking  
24 about there.

25 MR. JOHNSON: I think that's all I have, Your Honor.

1 THE COURT: All right.

2 All right, Mr. Archer.

3 CROSS-EXAMINATION BY MR. ARCHER:

4 Q. Ms. Knowles, I would just like to clear up a couple of  
5 things. I noticed on the representation of counsel Paul  
6 Taylor is down as the attorney. What was that about?

7 A. Paul Taylor, I think was originally assigned. That was  
8 whenever he was working with the Public Defender's Office as a  
9 conflict attorney, and a contract attorney, and that is one of  
10 the reasons, whenever he moved positions and he left the  
11 Public Defender's Office, that this case had to be reassigned.

12 Q. But you did the bulk of the work, not Paul Taylor, as  
13 far as you know?

14 A. Correct. As far as we -- when we received the  
15 discovery I was the one that actually spoke with the Defendant  
16 and went over the discovery materials with him.

17 Q. Did you discuss the case of Paul Taylor, or he wasn't  
18 even that familiar with it; do you remember?

19 A. I don't think that he was that familiar with it. It  
20 was during a period of time that he was transitioning.

21 Q. On the burglaries, was he indicted for burglary?

22 A. Yes, he was.

23 Q. All right. So therefore your decision, one way or the  
24 other whether to go to trial, would be based upon he would be  
25 going to trial on all the charges, including the burglary; is

1 that correct?

2 A. Yes. My understanding was that he would be going to  
3 trial on everything; that is right, but not -- not the same  
4 day, because the charges happened different time periods.

5 Q. All right. As far as his plea is concerned, he's  
6 making a big issue that the burglaries were already dismissed,  
7 and they are not part of the plea bargain, therefore he  
8 couldn't be charged with burglary again.

9 A. That's not my understanding. I'm not sure where he's  
10 getting that from, but the trial transcript, or the court  
11 transcript - I apologize - pretty much reflects that that was  
12 part of the plea negotiations.

13 Q. All right. So therefore he -- and there is also  
14 another date on there. Maybe you could clear that up. I  
15 think it was dated the date before something, but you are  
16 saying that's all part of the plea bargain.

17 A. That was my understanding.

18 Q. And then when you went to court, and he wanted to go to  
19 trial, did he understand he was going to trial on all these  
20 charges?

21 A. I explained that to him. I -- and I felt like he  
22 understood. I -- that was my position, is that he totally  
23 understood what he was getting himself into.

24 Q. And then at that time did he still insist on going to  
25 trial, or did he say that if they are going to charge me with

1 the burglary I'll take the plea?

2 A. He made a motion to have me relieved. That motion was  
3 heard, and in the midst of that motion the discussion was had  
4 as far as what he would be going to trial on, and the Court,  
5 Judge Hyman, made it very clear what that would be. He seemed  
6 to understand. And it was after that hearing that we went and  
7 had some discussion and he decided to accept the plea.

8 Q. All right. You made a comment that he was a very  
9 difficult client. What was that about?

10 A. Very confrontational. It seemed as if nothing that I  
11 did was good enough, and he wanted to talk about several other  
12 issues that I didn't feel was even really necessary and  
13 appropriate to be discussing, some issues that he had with Mr.  
14 Chrisco. We spent, you know, a lot of time discussing that,  
15 and it really had nothing to do with his case.

16 Q. And do you recall what the reasons he wanted you  
17 dismissed? That he just didn't like you, or he didn't think -  
18 - what was that about? Why did he want -- why did he want you  
19 dismissed?

20 A. I believe that the court transcript reflects that he  
21 felt like I had done investigating -- done enough  
22 investigating in the case, but when the Court questioned him  
23 as to what else I could do he couldn't give an answer.

24 Q. All right. As far as the investigation, did he tell  
25 you anything specific that he wanted you to do?

1 A. Anything that he said that he wanted looked into I  
2 looked into.

3 Q. All right. How about that phone call to the jury; did  
4 you do that?

5 A. I looked that up online. I couldn't find anything.

6 Q. Did you tell him that?

7 A. I did.

8 Q. So you didn't believe that was a defense, that he was  
9 in jail?

10 A. I couldn't find proof of it.

11 Q. All right. Is there anything else you could have done  
12 for him?

13 A. Not that -- not that I'm aware of.

14 MR. ARCHER: All right. Thank you.

15 A. Uh huh (indicating positive)

16 THE COURT: Any redirect?

17 MR. JOHNSON: None, Your Honor.

18 THE COURT: All right. You may step down, Ma'am.  
19 Anything further from the State?

20 MR. JOHNSON: No, Your Honor.

21 THE COURT: All right. Very good.

22 All right, Mr. Archer, I'll be glad to hear any  
23 arguments that you would like to make, if any.

24 MR. ARCHER: I have no closing argument.

25 THE COURT: All right. Very good.

## COURT'S RULING

27

1           Anything from the State?

2           **MR. JOHNSON:**   No, Your Honor.

3           **THE COURT:**   All right.   Very good.

4           In this particular matter, regarding the Post-Conviction  
5 Relief Application as made, there is a two-prong test that  
6 exists on the claim of ineffective assistance of counsel.  
7 First, the Defendant has to show that his counsel's  
8 performance was deficient, and that means that it falls below  
9 an objective standard of reasonableness.  Secondly, the  
10 Defendant has to establish a reasonable probability that, but  
11 for the counsel's unprofessional errors the result of the  
12 proceeding would have been different.

13           In this the Applicant, again, must show that the counsel  
14 departed from professional norms, resulting in prejudice to  
15 him.  In this particular matter, and an examination of the  
16 facts, in looking at the transcript before Judge Hyman in this  
17 particular matter, Judge Hyman fully explored the issues that  
18 Mr. Creamer had with his particular cases.  At the time of the  
19 plea Judge Hyman fully explained the matter to him.  The  
20 Applicant stated he understood, that he had an understanding  
21 one, of his prior record.  It was stated to Judge Hyman a  
22 prior record that would establish the foundation for the  
23 pleas, the enhancement, those being prior property crimes.  
24 The State did not put in his entire record, just the property  
25 crimes, which were numerous, as reflected by the transcript.

## COURT'S RULING

1           The Court explained all of Mr. Creamer's Constitutional  
2 Rights to him. He stated that he understood them, that he was  
3 waiving them.

4           In Mr. Creamer's guilty plea the State indicated that,  
5 in conjunction with the plea, and at the end of the plea, the  
6 State would nolle pros the indictment for burglary third,  
7 dismiss a warrant for grand larceny, nolle pros the indictment  
8 for burglary second degree, dismiss the warrant for grand  
9 larceny and malicious damage, and that would be in exchange  
10 for the plea by Mr. Creamer to the three property crimes.

11           Mr. Creamer said that he was making the decision of his  
12 own freewill, nobody threatened him to, that he had no  
13 complaints, he was satisfied with his counsel, he had had all  
14 the time necessary to think about his decision, that he  
15 understood everything that had been explained to him.

16           Mr. Creamer made a statement to Judge Hyman indicating  
17 that he made a mistake, that he made a bad decision. He wrote  
18 the victim to apologize for taking the tow truck. He wrote  
19 the Solicitor's Office and explained the situation to the  
20 Solicitor's Office, even indicating he knew he was not suppose  
21 to do either one of those, that it would harm his case.

22           Based on all this the Court finds that the Applicant has  
23 failed to show that his counsel in this particular matter  
24 departed from the professional norms in this particular  
25 matter, therefore it's unnecessary for the Court to see

## COURT'S RULING

29

1 whether or not there was a reasonable probability that but for  
2 counsel's unprofessional errors the result of the proceeding  
3 would have been different, finding that the Applicant failed  
4 to prove counsel's errors, if any, in this matter, therefore  
5 the Application of the Applicant in this matter is hereby  
6 denied.

7 Ask the State to produce a proposed order to that effect  
8 within seven days of today's date, forward it to the Court and  
9 Mr. Archer at the same time.

10 Thank you very much.

11 -----END OF REQUESTED TRANSCRIPT OF RECORD-----  
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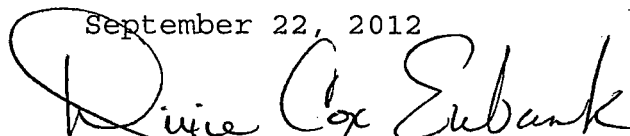
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C E R T I F I C A T E

I, the undersigned, DIXIE COX EUBANK, Official Court Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the POST-CONVICTION RELIEF HEARING of the captioned case, relative to appeal, in the COURT OF COMMON PLEAS NON-JURY for HORRY COUNTY, SOUTH CAROLINA, on the 23rd day of April, 2012.

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

September 22, 2012

  
DIXIE COX EUBANK

CIRCUIT COURT REPORTER  
FIFTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 Gary Creamer, 209555 )  
 )  
 )  
 )  
 Applicant, )  
 )  
 VS. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 2011-CP-26-6445

**COPIES  
 MAILED**

**ORDER OF DISMISSAL**

FILED  
 Horry County  
 2012 MAY 31 PM 3:25  
 JANE HUGGINS-WARD  
 CLERK OF COURT

This matter is before this Court by way of an application for post-conviction relief (PCR) filed July 29, 2011. The State made its return on September 26, 2011. A hearing on the matter was convened at the Horry County Courthouse on April 23, 2012. Applicant was present and represented by Paul Archer, Esquire. The State was represented by Tyson Andrew Johnson, Sr., Esquire of the South Carolina Office of the Attorney General.

Applicant testified on his own behalf at the hearing. His plea counsel, Melinda A. Knowles, Esquire, also testified. In addition, this Court had before it the transcript of Applicant's guilty plea proceeding, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the Department of Corrections, the PCR application and the State's return.

**PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. Applicant was indicted at the February 2010 term of the Florence County Grand Jury for two counts of larceny, third or subsequent property offense (2010-GS-26-768; -770), and one count of malicious injury to

1 of 6  
 [Signature]

personal property (2010-GS-26-771). On August 10, 2010 the Applicant pled guilty before the Honorable Larry B. Hyman, Jr. Melinda A. Knowles, Esquire represented him. Judge Hyman imposed a sentence of ten years, suspended to seven years with the sentences to run concurrently. Several charges were dismissed following the plea, including burglary second degree (non violent) (2010-GS-26-769); burglary third degree (2010-GS-26-8080; two counts of grand larceny in an amount of \$5,000.00 or more, malicious injury to personal property and burglary second degree. Applicant did not appeal his conviction or sentence.

#### ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully because he received ineffective assistance of counsel rendering his plea involuntary. Applicant contends a violation of due process of law and that his sentence is illegal.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

#### Ineffective Assistance of Counsel

Applicant alleges his plea was rendered involuntary by ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court will now address each allegation of ineffective assistance of counsel:

Allegations of general ineffectiveness

Applicant alleges that he first saw his counsel in the middle of June, that she did not have her file, and that the second time he met with counsel it was only for half an hour. Counsel testified she was familiar with the facts of the case against Applicant but when she tried to meet with him he was combative and blamed her for his situation. Counsel's attempts at assisting Applicant were met with Applicant acting in a confrontational manner. Applicant complained that his motion for a speedy trial was met with delay for eight months, but he himself attempted to relieve his attorney at his plea and asked for more time to prepare, as he indicated he thought he was in court for his arraignment, not trial.

Applicant claimed he did not think he was charged properly. Applicant complained that his charges were dismissed separately from his plea proceeding, and that he was then "bamboozled" into pleading guilty. Counsel testified Applicant did not raise these concerns to her, and that the only thing Applicant ever disputed was the value of the property that was damaged. (A fence Applicant drove a truck through as well as AC units he was charged with stealing). Counsel further testified that Applicant admitted to law enforcement and others his involvement in the crimes, and the evidence showed that Applicant wrote to the victim to apologize indicating he knew it would hurt his case. Counsel testified that it was Applicant's decision to plead guilty, and that he was receiving the benefit of the bargain considering his prior record and that he was getting additional charges dismissed as a result of his plea.

This Court finds that Applicant was aware of the charges, elements of the offense, and potential defenses. Further, this Court finds that Applicant was not coerced, pressured, or promised anything in return for his guilty plea. Applicant admitted his guilt at the plea hearing and acknowledged his involvement at the PCR hearing. Under these circumstances, Counsel's

advice to Applicant to plead guilty was well within the professional norms of competent representation. This Court further finds Counsel's testimony credible and gives it great weight. This Court finds Applicant's testimony to the contrary lacks credibility.

#### Failure to investigate

Applicant also claimed he asked counsel to make a telephone call regarding the larceny of the AC units in that he asked her to investigate the value of the units, but counsel indicated no such request had been made of her. This Court finds that Applicant failed to show what benefits would have accrued from further investigation and has failed to meet his burden of proof. Further, Counsel indicated that she was prepared for trial should Applicant have chosen to go to trial. Counsel felt conviction was likely, however, since Applicant admitted to participating in the larceny. This Court finds Counsel's testimony was credible and she adequately investigated and prepared the case for trial. Further, this Court finds Applicant failed to meet his burden of proving prejudice. Accordingly, this allegation is denied.

#### CONCLUSION

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

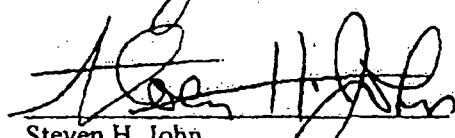
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620

S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15th day of May, 2012.

  
 Steven H. John  
 Chief Administrative Judge  
 15th Judicial Circuit

Conroy, South Carolina

**WITNESSES**

Doug Damm Myrtle Beach Police Department

C

**The State of South Carolina**

County of Horry

George Debusk

09H04966

**COURT OF GENERAL SESSIONS**

**February, 2010 TERM**

**ARREST WARRANT NUMBER**

2010GS2600768

CDR: 2367 16-01-0057

DOA: 12/10/2009

**THE STATE**

vs.

Gary Allen Creamer  
W/M

Greenville, SC 29617  
DOB:  
SSN:

ACTION OF GRAND JURY  
**TRUE BILL**

*Martha Flom*

Foreperson of Grand Jury  
Date: **FEB 18 2010**

**ATTORNEY:**

**VERDICT**

Indictment for

Larceny  
(Third or Subsequent Offense)

J. Gregory Hembree, Solicitor

**CRIMINAL**

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF HORRY          )

## INDICTMENT


At a Court of General Sessions, convened on February 18, 2010, the Grand Jurors of Horry County present upon their oath:

LARCENY  
(THIRD OR SUBSEQUENT OFFENSE)

CDR: 2367 16-01-0057

That Gary Allen Creamer did in Horry County on or about November 26, 2009, take possession of, carry away, transfer to another, or cause to be carried away or transferred, property of , to wit: air conditioning units, in violation of Section 16-13-0030, S. C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense for which the penalty is contingent upon the value of the property involved, in violation of Section 16-01-0057, 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.

  
\_\_\_\_\_  
J. GREGORY PEMBREE  
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

J Thomas Myrtle Beach Police Department

DOCKET NO. 2010-GS-26- 00770

*C*  
**The State of South Carolina  
County of Horry**

George Debusk

09H04980

COURT OF GENERAL SESSIONS

February, 2010 TERM

ARREST WARRANT NUMBER

2010GS2600770

CDR: 2367 16-01-0057

DOA: 12/10/2009

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

Gary Allen Creamer  
W/ M

Greenville, SC 29617  
DOB:  
SSN:

*Myrtle Thom*  
Foreperson of Grand Jury  
Date: FEB 18 2010

ATTORNEY:

VERDICT

Indictment for

Larceny  
Third or Subsequent Offense

J. Gregory Hembree, Solicitor

*J. Gregory Hembree*

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

INDICTMENT


At a Court of General Sessions, convened on February 18, 2010, the Grand Jurors of Horry County present upon their oath:

LARCENY  
(THIRD OR SUBSEQUENT OFFENSE)

CDR: 2367 16-01-0057

That Gary Allen Creamer did in Horry County on or about December 9, 2009, take possession of, carry away, transfer to another, or cause to be carried away or transferred, property of Rick Rahner, to wit: tow truck, in violation of Section 16-13-0030, S. C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense for which the penalty is contingent upon the value of the property involved, in violation of Section 16-01-0057, 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.

  
\_\_\_\_\_  
J. GREGORY LAMBREE  
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

J Thomas Myrtle Beach Police Department

C

DOCKET NO. 2010-GS-26-00771

The State of South Carolina  
County of Horry

George Debusk

09H04980

COURT OF GENERAL SESSIONS

February, 2010 TERM

ARREST WARRANT NUMBER

2010GS2600771

CDR: 2367 16-01-0057

DOA: 12/10/2009

THE STATE

vs.

ACTION OF GRAND JURY  
TRUE BILL

Gary Allen Creamer  
W/ M

Greenville, SC 29617  
DOB:  
SSN:

*Maisha Thom*

Foreperson of Grand Jury  
Date: FEB 18 2010

ATTORNEY: Taylor, R. Paul

VERDICT

Indictment for

Malicious Injury to Personal Property  
Third or Subsequent Offense

J. Gregory Hembree, Solicitor

CRIMINAL

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

INDICTMENT

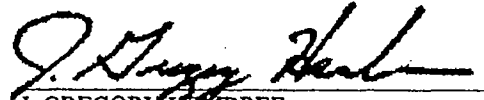
At a Court of General Sessions, convened on February 18, 2010, the Grand Jurors of Horry County present upon their oath:

MALICIOUS INJURY TO PERSONAL PROPERTY  
THIRD OR SUBSEQUENT OFFENSE

CDR: 2367 16-01-0057

That Gary Allen Creamer did in Horry County on or about December 9, 2009, willfully and maliciously cut, mutilate, deface, or otherwise injure the real property of Rick Rahner, to wit: damaged the victim's company fence, in violation of Section 16-11-510, S. C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense for which the penalty is contingent upon the value of the property involved, in violation of Section 16-01-0057, 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.

  
J. GREGORY HEMBREE  
FIFTEENTH CIRCUIT SOLICITOR