

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

RECEIVED

NOV - 7 2012

S.C. Supreme Court

DASHAWN A. CARTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-210191

APPENDIX

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STATE OF SOUTH CAROLINA)
County of Richland)

GENERAL SESSIONS
09-GS-40-12754
09-GS-40-12325
09-GS-40-12324

THE STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

DeSHAWN CARTER,)

DEFENDANT,)

April 30TH, 2009
Columbia, South Carolina

BEFORE:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

APPEARANCES:

DOLLY JUSTICE GARFIELD, ASSISTANT SOLICITOR
Attorney for the State

AUGUST SWARAT, ESQ.
Attorney for the Defendant

KAREN TRACY
Official Court Reporter

RECEIVED
 DATE: 10/10/10
 BY: [Signature]
 TITLE: [Signature]

1 DESHAWN CARTER, after being duly
2 sworn, testified as follows:

3 MS. GARFIELD: Thank you, Your Honor, may it please
4 the Court. Standing before you is Mr. Deshawn Carter. He
5 is present with his attorney, Mr. Tav Swarat of the
6 private bar.

7 Your Honor, Mr. Carter is charged with numerous
8 charges: Three counts of burglary second and one -- three
9 counts of grand larceny, as well as two counts of assault
10 with intent to kill and pointing and presenting.

11 Your Honor, he is pleading guilty today to three
12 counts of burglary second and three counts of grand
13 larceny, and the charges related to the assault with
14 intent to kills and pointing and presenting will be
15 dismissed in exchange for his plea.

16 He was originally charged on one of the warrants as a
17 burglary first. However, after reviewing that case, it
18 was incorrect and it should have been charged as a
19 burglary second. However, one of his charges was a
20 burg--- charged as a burglary second that could have been
21 indicted as a burglary first.

22 The State, however, in exchange for his cooperation
23 in pleading guilty has agreed to keep all the charges at
24 burglary second, and the State is making a recommendation
25 of 15 years.

1 Present in the courtroom seated on the front row to
2 your right, Your Honor, is Mr. Samuel Newcomber and his
3 wife Kathleen Newcomber. They are both victims of one of
4 the burglaries, and they would like to address the Court
5 at the appropriate time.

6 THE COURT: Okay. Mr. Swarat, do you represent
7 Mr. DeShawn Carter?

8 MR. SWARAT: I do, Your Honor. I was appointed to
9 represent Mr. Carter.

10 THE COURT: Okay. Have you explained to him the
11 nature of his charges, the maximum possible punishment, as
12 well as his Constitutional Rights?

13 MR. SWARAT: I have, Your Honor.

14 THE COURT: Do you believe that he has understood
15 your conversations with him?

16 MR. SWARAT: I do believe he has.

17 THE COURT: Are you aware of any mental or physical
18 issues affecting his ability to proceed today?

19 MR. SWARAT: No, Your Honor.

20 THE COURT: And with respect to the plea, as well, do
21 you believe that if the case were to go to trial, that a
22 conviction would be probable?

23 MR. SWARAT: Yes, Your Honor.

24 THE COURT: Okay. And then what is your client's
25 desire with respect to pleading today?

1 MR. SWARAT: He would like to take care of his
2 business today.

3 THE COURT: Okay. All right. Do you understand that
4 he may wish to plead guilty?

5 MR. SWARAT: Yes, Your Honor.

6 THE COURT: And do you agree with that decision?

7 MR. SWARAT: I do, Your Honor.

8 THE COURT: Okay. Mr. Carter, are you under the
9 influence of any alcohol, drugs or medication?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: And have you ever been evaluated for your
12 mental health, any type of psychological evaluations?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: Okay. Do you feel like you have had
15 enough time to speak with your attorney about the nature
16 of these charges and your maximum possible punishment?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Did you also discuss your Constitutional
19 Rights?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Did you understand your conversations
22 with him?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And did he address any issues, concerns,
25 questions or anything you needed to do to make an informed

1 and an intelligent decision about whether you should plead
2 guilty or go to trial?

3 (There was no response).

4 So in other words, did he address all of your
5 questions or concerns?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And so after consultation with him, do
8 you believe it's better to plead, or do you wish to go to
9 trial?

10 THE DEFENDANT: I think it's better to plead, ma'am.

11 THE COURT: Okay. All right. You do understand that
12 the Court has before it an indictment for burglary second,
13 and that indictment has not been presented to the grand
14 jury. Do you wish to waive that proceeding and instead go
15 forward here today with a plea?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: In other words, the grand jury would have
18 had the opportunity to determine if there was sufficient
19 evidence to even indict you. Do you wish to waive that
20 process but instead plead today?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Okay. All right. And then with respect
23 to your indictment for grand larceny, that one has also
24 not been presented to the grand jury. Do you want to
25 waive that proceeding, as well?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. All right. These indictments
3 indicate that these offenses occurred in Richland County
4 on or about August 26th, 2008, and with respect to grand
5 larceny, you feloniously took or attempted to take, carry
6 away, certain personal goods with the intent to deprive
7 the owner permanently of the property, basically, guns and
8 electronics for that date. How do you wish to plead?

9 (Pause).

10 THE DEFENDANT: Guilty.

11 THE COURT: And then in Richland County on or about
12 November 7th, 2008, you did the same thing with respect to
13 certain jewelry and/or electronics. How do you wish to
14 plead?

15 THE DEFENDANT: Guilty.

16 THE COURT: And then in Richland County on or about
17 August 26th, 2008 that you went into a dwelling at [REDACTED]
18 [REDACTED] without intent and -- without consent and the
19 intent to commit a crime; is that correct?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And also in Richland County on or about
22 November 7, 2008 you did the same with respect to a
23 dwelling at [REDACTED] without consent and the
24 intent to commit a crime; is that correct?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And then in Richland County on or about
2 August 4, 2008, you willfully and unlawfully entered a
3 building, [REDACTED] [REDACTED] without consent and with the
4 intent to commit a crime; is that correct?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And in Richland County on August 4, 2008
7 that you took away certain personal goods. Basically, an
8 H.P. computer, P.S. 2 and/or Sentry safe and certain U.S.
9 currency or miscellaneous items; is that correct?

10 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

11 THE COURT: How do you wish to plead with respect to
12 all of these offenses?

13 THE DEFENDANT: Guilty, ma'am.

14 THE COURT: Are you pleading guilty because you are,
15 in fact, guilty?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Has anyone threatened you or tried to
18 punish you in any way in exchange for your plea of guilty?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: Are you pleading guilty voluntarily and
21 of your own free will?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And this is after having enough time to
24 speak with your attorney about the nature of these charges
25 and your maximum possible punishment?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you have any complaints against any of
3 the arresting officers or the solicitor's office or any
4 governmental agency handling this case?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Okay. All right. And do you feel like
7 your attorney has addressed all of your questions and your
8 concerns?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Do you need any additional time to speak
11 with your attorney?

12 THE DEFENDANT: No, ma'am.

13 THE COURT: Do you realize that this is going to
14 create felonies on your record?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And that that will be a consequence of
17 the plea?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And that the felony could affect you in
20 terms of employment and doing other things? Are you aware
21 of that?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Okay. Do you have any questions of the
24 Court?

25 THE DEFENDANT: I...

1 THE COURT: Any just general questions about anything
2 I've asked you so far? .

3 (There was no response).

4 I'll give you a chance to speak in terms of the --

5 THE DEFENDANT: Oh no, ma'am.

6 THE COURT: -- statement. Okay. And have your
7 answers been truthful? .

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And have you understood all of my
10 questions?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: You do realize that you -- the Court will
13 accept your plea based on the factual circumstances within
14 the indictment, but I'll hear further from the State in
15 terms of any additional facts. You would have ten days to
16 appeal any guilty plea, okay?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Are you satisfied with your attorney's
19 representation?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: The Court would find that these pleas are
22 entered knowing, voluntarily and intelligently and that
23 you've indicated that you're satisfied with your attorney.
24 Please listen to the State as they give me additional
25 facts in support of the case.

1 MS. GARFIELD: Thank you, Your Honor. I'll address
2 the burglaries in chronological order as they occurred.
3 The first one occurred on August 4th at [REDACTED].
4 Your Honor, that is the home of Samuel and Kathleen
5 Newcomer who are present in the courtroom. This is their
6 home.

7 The defendant did go into their residence and took a
8 computer, a Playstation, and Sentry safe and other items.
9 Eventually, a crime scene was able to respond and recover
10 D.N.A. from the point of entry. That D.N.A. was later hit
11 to match the defendant, Mr. DeShawn Carter. These items
12 were valued at over \$1,000.

13 Your Honor, particularly, I'll just relay to you, as
14 I have met with the Newcomers at length, is one thing
15 that was very personal to them was inside that safe, some
16 dear letters that had been written to Mrs. Newcomer that
17 they were hoping to pass on to their future offspring.
18 Now those letters are gone, and they'll never have them
19 back. They feel very violated because of this entry into
20 their home and the taking of their property.

21 The next incident occurred just days later,
22 August 26th, 2008 at [REDACTED] -- I'm sorry, [REDACTED]
23 [REDACTED]. That would be the home of Mario Harper. The door
24 of his home was forced open, and guns and electronics were
25 taken from the home.

1 A witness, the next door neighbor, saw a codefendant,
2 later to be identified as Quinton Nicholson, leave in a
3 teal colored Grand Am car. She was able to get the tag
4 number.

5 Eventually, DeShawn Carter and Mr. Nicholson were
6 found in that car. However, Mr. Carter fled. Nicholson
7 was apprehended, and he later implicates his codefendant
8 in -- in his involvement in this crime.

9 The last incident occurred on November 7th, 2008 at
10 7503 Sunview Circle. This was during the hours of
11 daytime. This is the home of Mr. James and Sherry Moore.
12 Their front door was forced open, and electronics and
13 jewelry totaling almost \$15,000 was taken.

14 A fingerprint was recovered from a box that was
15 located in the victim's bedroom. That fingerprint did
16 eventually match Mr. DeShawn Carter. The victims did not
17 know Mr. Carter from any prior involvement. Their home
18 was completely ransacked, Your Honor.

19 His prior record consists of 2007 burglary second and
20 grand larceny where he was given a Y.O.A. sentence. He
21 was currently on Y.O.A. probation when these offenses
22 occurred.

23 Your Honor, because of the prior record, the fact
24 that he was on probation and the fact that he is
25 committing multiple burglaries, we do believe a 15-year

1 sentence, which would be a maximum for burglary second,
2 should be imposed.

3 I understand the defense attorney may ask for a
4 different sentence, but the State believes that is a just
5 and fair sentence, as well as I can say law enforcement is
6 behind that sentence, as well as the victims that I have
7 discussed this with this case.

8 There is a separate unrelated assault with intent to
9 kill and pointing and presenting case that will be
10 dismissed, and this involves a situation where the victim
11 in that case, Carolyn Porterfield, goes to the home of the
12 defendant's brother and takes his small child.

13 At that point, the defendant, along with his brother
14 go and chase this woman, and the defendant is alleged to
15 have produced a gun towards Ms. Carolyn Porterfield.

16 Your Honor, at the appropriate time the Newcombers
17 would like to address the Court. I also have a letter
18 from the Moores that I would like to read into the record.
19 Would you like to hear that at this time?

20 THE COURT: That would be fine.

21 MS. GARFIELD: This is from James and Sherry Moore
22 who reside at [REDACTED] in the city limits of
23 Columbia.

24 "Dear Judge, we are responding to the break-in that
25 happened in our home in November 2008. We thank God that

1 we were not home. However, we were and still are very
2 disturbed by this occurrence. This was very traumatic for
3 the entire family. This was our very first criminal
4 incident.

5 Very often, our children ask is the robber coming
6 back. We try to make sure they are safe and that are --
7 that we have a safe place for them. Unfortunately, it
8 will take us a long time to feel really safe, as we are
9 always kind of on guard.

10 We are very grateful to our lives and are more than
11 grateful that we were not at home at the time, as we do
12 not know what would have happened. Material things are
13 replaceable, but we lost many personal items that were in
14 our family for over four generations.

15 As a result, we want this person to get the maximum
16 sentence possible, as we want him to have time to think
17 about what he has done to us and to, as we pray, not to
18 raid other homes.

19 And we pray that he will choose to live a life where
20 he loves and respects life and the people who are in it.
21 Your consideration to this request is most appreciative.
22 Thank you. James and Sherry Moore."

23 Your Honor, the Moores had intended to be here. This
24 plea was originally scheduled for yesterday, but due to
25 scheduling difficulties, we could not have all parties

1 present. They had to attend a funeral out of town this
2 morning and are unable to be here. They just wanted you
3 to be aware that they would really like for the 15 years
4 to be imposed.

5 THE COURT: Okay.

6 MS. GARFIELD: If you would just hear from the
7 Newcombers at this time.

8 THE COURT: I'll be happy to.

9 MS. GARFIELD: If you'll just state your name first.

10 THE VICTIM: My name is Samuel Newcomer, Your Honor.
11 I reside at [REDACTED], Hopkins, South Carolina.

12 I am here today with my wife, Kathleen, to address
13 the Court as to what happened to us, Your Honor. We feel
14 that the defendant violated the sanctity of our home.

15 When the victim (sic) broke into our home, Your
16 Honor, he took a safe, and inside there was some letters
17 that wife's grandparents had written to her and she had
18 written to them.

19 Your Honor, those grandparents are deceased, and
20 those letters are literally the only memory that we have
21 of her grandparents. And when the defendant took the
22 safe, he took those memories. Those memories can never be
23 replaced, Your Honor.

24 The material things that were taken, the computer,
25 the P.S. 2, those things can be replaced, and we are very

1 grateful that neither my wife nor I were home because we,
2 too, do not know what would have happened if one of us or
3 both of us, were home.

4 We ask, Your Honor, that you would impose the maximum
5 sentence allowed by law, the 15 years. We would ask that
6 you would do that so that the defendant can have an
7 opportunity to think about what he's done, and that -- and
8 that he'll understand that what he did is not acceptable.
9 He ransacked our home. He went through our things.
10 That's all I have to say.

11 THE COURT: Thank you, sir.

12 MS. GARFIELD: That's all from the State, Judge.

13 THE COURT: Okay. All right. Mr. Swarat?

14 MR. SWARAT: Your Honor, in the courtroom to support
15 Mr. Carter is his mother, Melissa Scott, his stepfather,
16 Jerry Green.

17 Your Honor, Mr. Carter is a very young man. He's 19
18 years of age. He went to the ninth grade at L.R. High
19 School. He has since obtained his G.E.D.

20 Your Honor, back at this time in his life, he was, I
21 think, dealing with substance abuse, as well as the
22 influence of some of his peers. However, when I first was
23 appointed to represent him, he said immediately that he
24 felt very sorry for what he had done. He wanted to take
25 responsibility.

1 He did take issue with some of the charges the State
2 had, and upon my review, I determined they were extremely
3 weak charges. I believe Ms. Garfield agreed, and that's
4 why they are being dismissed.

5 He did always take responsibility for the charges
6 he's going forward on today. I'll let him address the
7 Court as to his feelings about the victims. He has been
8 very remorseful to me, and he wants to express it himself.

9 Your Honor, he is currently serving a Y.O.A.
10 revocation. I believe Ms. Garfield has no objection to
11 this running concurrent with the time he is now serving.
12 He has done 172 days, my calculations. We would ask for
13 credit for that time served.

14 Your Honor, all of the remaining pending charges -- I
15 believe Ms. Garfield enunciated all of them, but anything
16 else will be dismissed as a part of this plea.

17 Your Honor, he has asked me to request the Court
18 consider a ten-year sentence. Your Honor, I think
19 that's -- that's sufficient for him to have time to
20 reflect on his actions, to enroll in any programs for
21 substance abuse within the Department of Corrections in
22 order for him to address those issues to try to get his
23 life back on track.

24 He's a very young man, and I believe he has a future
25 if he'll choose to take advantage of this lesson and the

1 opportunity once he's released.

2 I'd ask if Ms. Scott or Mr. Green if they would care
3 to address the Court at this time.

4 THE MOTHER: Good morning, Your Honor. My name is
5 Melissa Scott. I'm DeShawn Carter's mother. I'd like to
6 apologize to the victims, for what my son did.

7 I know he is sitting here apologizing to y'all don't
8 excuse what he did, but I would like to apologize.
9 DeShawn has had a hard life. I mean, that's no excuse,
10 but he has had to grow up with me, with substance abuse,
11 me being almost killed by one of my ex-boyfriends, and
12 then watching the guy almost kill me.

13 I mean, he's been going through a lot. He has been
14 diagnosed with A.D.H.D., and they stopped getting his
15 medicine. So I think he hasn't been taking his medicine
16 for a while.

17 You know, he's not a bad child. He really -- he
18 really needs some psychological help. He needs
19 counseling. He needs to go through stuff, because he just
20 has a whole lot of anger built up in him, and he doesn't
21 know how to release it. He doesn't have anybody to talk
22 to about it.

23 I'm just asking you to please consider the sentence
24 for two years, and hopefully he'll learn a lesson and come
25 out and do right and learn to live a productive life,

1 thank you.

2 MR. SWARAT: Your Honor, before my client speaks, I
3 do want to put on the record that none of his issues with
4 A.D.H.D. affect what he's doing today.

5 THE COURT: I was going to ask you about that.

6 MR. SWARAT: He's fully aware of --

7 THE COURT: Okay.

8 MR. SWARAT: -- what we're doing today, and he's
9 ready to go forward and able to go forward.

10 THE COURT: Okay.

11 MR. SWARAT: DeShawn, did you want to speak?

12 THE DEFENDANT: I foremost wanted to apologize to the
13 victim for what I've done. I ain't got no excuse for what
14 I've done. I made a bad decision.

15 I -- I know I deserve to be punished for what I have
16 done, but I truly don't believe ten or 15 years out of my
17 life would -- I don't think it's worth -- Look, I didn't
18 intent to hurt no one. It wasn't intentional for me to
19 hurt no one.

20 I know that ain't no excuse, but it's not -- I wasn't
21 out there robbing people, hurting people, you know what
22 I'm saying, causing people any kind of harm. I didn't
23 intend -- I didn't intend to cause them no harm. It
24 really wasn't -- I made a bad decision at the time feeling
25 like it was what I had to do but I apologize.

1 I wanted to apologize to my mother. I've been put
2 through a lot in my whole life. I've made a lot of
3 mistakes, but -- and I don't know -- I can -- I know I
4 should be punished, but ten, 15 years out of my life is
5 something I can't get back.

6 I'll do whatever to get them back to -- whatever --
7 whatever they had missing out of their houses, but you
8 take ten, 15 years out of my life, I can't get that back,
9 never. I'll never be able to get that back.

10 I ain't trying -- I ain't trying to be like this. I
11 want to be better. I want to go back to school. I want
12 to do a lot of things, but it's going to take somebody
13 giving me a chance, taking a chance with me, try to see
14 some type of light in me.

15 All I -- Judge, the only thing I ask you is that you
16 have some type of mercy on me, any type of mercy on me,
17 and I just ask that the victims forgive me. I have made
18 peace with myself, made peace with my God or however it
19 goes. I'm ready to accept it.

20 MR. SWARAT: Thank you, Your Honor.

21 THE COURT: Okay. Now, tell me, even though the
22 A.D.H.D. may not affect his ability to proceed today, is
23 he on any type of medication or is he --

24 MR. SWARAT: Not at this time, Your Honor.

25 THE COURT: Okay. When's the last time you have been

1 treated for that issue?

2 THE DEFENDANT: In 2000 -- 2004, I believe, 2004.

3 THE COURT: Okay. And so you haven't been on any
4 medication for it since then?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Okay. And then what was the Y.O.A.
7 revocation?

8 MS. GARFIELD: Four years.

9 MR. SWARAT: I believe it was on the prior burglary
10 that the solicitor mentioned from 2007.

11 MS. GARFIELD: That was for the four years.

12 THE COURT: Four years.

13 MR. SWARAT: It's four years, that's correct.

14 THE COURT: Okay. And then there was a codefendant
15 involved or not?

16 MS. GARFIELD: There was a codefendant involved in
17 one of the cases.

18 THE COURT: Okay.

19 MS. GARFIELD: And his case is still pending.

20 THE COURT: Oh, still pending, okay.

21 MS. GARFIELD: And that's the only case, the only
22 charge he has.

23 THE COURT: And any restitution at issue?

24 MS. GARFIELD: Your Honor, there is -- all of the
25 victims have submitted that they were out of money and

1 they've asked for restitution, but I've explained to them
2 that we believe it's in the best interest to have
3 Mr. Carter go to the Department of Corrections and
4 obviously, can't make restitution while he's in the
5 Department of Corrections, so at this time, we'll decline
6 requesting for restitution.

7 May I respond at this time also to the defense?

8 THE COURT: Yes, you may.

9 MS. GARFIELD: We -- first of all, I forgot to
10 present the letter that the Moore family, that I read into
11 the record, I would like to give you a copy.

12 THE COURT: Okay.

13 MS. GARFIELD: Just for you.

14 MR. SWARAT: Thank you. I've seen it, Your Honor.

15 MS. GARFIELD: Just for purposes of the plea.

16 Judge Childs, I would just like for you to keep in
17 mind that we believe the State has been very generous in
18 sparing going forward on a burglary first charge against
19 Mr. Carter. We have spared him a strike. We have spared
20 him a violent offense, the most serious offense. We have
21 allowed him to plead to nonviolent offenses, so therefore,
22 we believe that is just in imposing the maximum 15 years.

23 THE COURT: Any response by defense?

24 MR. SWARAT: No, Your Honor.

25 THE COURT: Okay. Let me see the attorneys.

1 (Whereupon, there was a bench conference.)

2 THE COURT: All right. Anything else that needs to
3 be stated by anyone else?

4 MS. GARFIELD: Nothing from the State.

5 MR. SWARAT: None, Your Honor.

6 THE COURT: I'm going to fill out -- let me just --
7 there's a substantial amount of sheets, so let me fill out
8 the sentence sheets first.

9 (Pause).

10 Do you have substance abuse issues? I think I heard
11 that a little bit here.

12 THE DEFENDANT: Yeah.

13 MR. SWARAT: And he would like to address those in
14 the Department of Corrections, Your Honor.

15 THE COURT: Okay. I will put him in the A.T.U.
16 program, to the extent that it exists.

17 (Pause).

18 Okay. These sentences will run concurrent, which
19 means that you'll serve them together, and then this will
20 also run concurrent with your Y.O.A. revocation.

21 You're also given credit for 172 days for the time
22 that you have served. For the grand larcenies, you'll be
23 sentenced to the State Department of Corrections for four
24 years, and for the burglary second, you'll be sentenced to
25 the State Department of Corrections for 15 years. You'll

1 be given the ability to be treated with the A.T.U.
2 program.

3 MS. GARFIELD: Thank you, Judge.

4

5 (Whereupon, the proceedings were concluded.)

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20090 P4088040

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Dashawn A. Carter # 325509
Full name and prison number (if any) of Applicant.

vs.

Henry McMaster, South Carolina
Name of Respondent.

Attorney General

APPLICATION
POST-CONVICTION RELIEF

FILED
RICHLAND COUNTY
09 NOV 12 PM 12:53
JEANETTE M. BRIDE
C.O. PO. B.S.

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Turbeville Correctional Institution, Post Office Box 252
Turbeville, South Carolina 29162

2. Name and location of Court which imposed sentence Richland County General Sessions
Court Post Office Box 2766 Columbia, South Carolina 29202

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) Burglary 2nd Deg (After 1/20/85) Docket No: 2009-GS-40-325
- (b) Grand Larceny Ind.# 09-GS-40-324
- (c) Grand Larceny Ind # 09-GS-40-12754

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

- (a) April 30, 2009 - 15 years non violent, 192 days credit given; concurrent w/ VOA
- (b) April 30 2009 - 4 years non violent, 192 days credit given; concurrent w/ VOA
- (c) April 30, 2009 - 4 years non violent, 192 day credit given; concurrent w/ VOA
Revoca

28

Continuance of 6

D. Grand Larceny 11K - \$15K Ind # 09-GS-40-12753

E. Burglary 2nd Ind # 09-GS-40-12752

F. Burglary 2nd Non-V Ind # 09-GS-40-12751

~~G. Burglary 2nd Ind #~~

SHIS:29

Continuance of 4:

D. April 30, 2009, 4 years nonviolent; 192 days credit given; concurrent with YOA ~~revocation~~ revocation

E. April 30, 2009, 15 years nonviolent; 192 days credit given; concurrent with YOA revocation

F. April 30, 2009, 15 years nonviolent; 192 days credit given; concurrent with YOA revocation

5. Check whether a finding of guilty was made

(a) after a plea of guilty ✓

(b) after a plea of not guilty N/A

(c) after a plea of nolo contendere N/A

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

Was Not Advised of The Right To Appeal - NO

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. N/A Non-APPLICABLE

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) Was Not Advised of The Right To Appeal

(b) _____

(c) _____

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

(a) Ineffective Assistance of Trial Counsel

(b) Plea Was Not Knowingly, Voluntarily And Intelligently Entered

(c) Applicant Reserves The Right To Amend This Application

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) (SEE ATTACHMENT PAGE ON BACK)

(b) (SEE ATTACHMENT PAGE ON BACK)

(c) Applicant Reserves The Right To Amend This Application To Raise Additional Issues To Ensure His "FULL BITE AT THE APPLE" In This Proceeding

10a. Prior to entering my plea I met with my counsel only 2 times. Neither time ~~he~~ did he inform me of anything that I could use as a defense in my case. I informed him multiple times of discrepancies that I saw in my case and he did not look into. I recieved my motion of discovery the day before I went to court and was rushed into pleading by my attorney thinking that pleading was in my best interest when it was not. My attorney refuse to address the issue that the state used a charge from my juvenile record to enhance my current charges which is against the law.

10.B I was not informed by my attorney that I was not being charged and tried ~~to~~ fairly therefore I unintellegently went along with entering a plea of Guilty thinking it was the best thing for me to do.

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

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

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA

(b) the name and location of the Court in which each was filed:

- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA

(c) the disposition thereof:

- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA

(d) the date of each such disposition:

- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA

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

- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA

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

NO

(a) which grounds have been presented:

- i. NIA
- ii. NIA
- iii. NIA

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

- i. NIA
- ii. NIA
- iii. NIA

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) NIA
- (b) NIA
- (c) NIA

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

- (a) your arraignment and plea? August G. Swarat, II
- (b) your trial, if any? August G. Swarat, II
- (c) your sentencing? August G. Swarat, II
- (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? No

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

- (a) the name and address of each attorney who represented you
 - i. August G. Swarat, II, 601 Devine Street, Columbia, South Carolina 29201
 - ii. _____
 - iii. _____

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

- i. August G. Swarat, II Plea / Arraignment
- ii. " " Trial / Sentencing
- iii. _____

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

That The Sentence And Conviction Be Vacated And Set Aside, That The Plea Be Withdrawn And A New Trial Granted, Any other Relief Available

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

NO

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, Dashawn A. Carter # 325509, 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.

Dashawn Carter Nov. 10, 2009

SWORN to and subscribed before me this 10th day of November, 2009

Erulyn Halson (L.S.)
Notary Public

RICHLAND COUNTY
FILED
09 NOV 12 PM 12: 53
JEANETTE W. McBRIDE
C.C.P. & G.S.

My Commission Expires: April 27, 2016

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

I, Dashawn A. Carter # 325509, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Dashawn Carter Nov. 10, 2009
Applicant

SWORN or affirmed to and subscribed before me this 10th day of November, 2009

Erulyn Halson
Notary Public

My Commission Expires April 27, 2016

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
)	2009-CP-400-8044
CARTER DaShawn A, # 325509,)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	
_____)		

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 12, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by August G Swarat, Esquire. On April 30, 2009, the Applicant pled guilty and was sentenced by The Honorable J. Michelle Childs. The Applicant had been indicted and/or pled guilty to the following: Grand Larceny Over \$5000.00, Burglary (After 1/20/85), and Grand Larceny \$1000.00 To \$5000.00 - (2009-GS-40-12754;325;324). According to the South Carolina Department of Corrections, the Applicant is serving a 15 year sentence for "Burglary-2nd Deg/non-viol."

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

The Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Robert L. Brown, Esquire, Esquire regarding when the hearing should be set.¹

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

May 10, 2010

¹ See: <http://www.scattorneygeneral.com/inside/pcr.html> for current and archived PCR rosters.

1 STATE OF SOUTH CAROLINA) IN COMMON PLEAS
 2 COUNTY OF RICHLAND) COURT
 3)
 4 DASHAWN CARTER)
 5) TRANSCRIPT
 6 -V-) OF
 7) RECORD
 8 STATE OF SC,) 2009-CP-40-08044
 9 DEFENDANT.)

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FEBRUARY 28, 2011

RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:

HONORABLE CASEY L. MANNING, JUDGE;

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

FOR THE PLAINTIFF:

ROBERT BROWN, ESQ.

FOR THE DEFENDANT:

BRIAN PETRANO, ESQ.

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I-N-D-E-X

PCR:

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CERTIFICATE OF REPORTER:

25

E-X-H-B-I-T-S

(REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.)

1 (The following proceedings were
2 held on February file 28, 2011.)

3 THE DEFENSE: Thank you Your Honor. Please the
4 court. This is Mr. Dashawn Carter --

5 THE COURT: Quiet please.

6 Go ahead.

7 THE DEFENSE: Mr. Dashawn Carter, a Richland
8 County PCR, 2009-CP-40-008044. PCR application filed
9 November 12th, 2009. He plead guilty April 30 of 2009 in
10 front of Judge Childs. He was represented by Mr. Tad Swarat
11 which was -- we got the April 2009 term of the Richland
12 County Grand Jury Indictment for four charges it's a second
13 degree burglary, non violent; grand jury larceny, 1,000 to
14 5,000; another second degree burglary this one as well non
15 violent and a grand larceny of \$5,000 or more. The
16 January 2000 term indicted him for a pointing and presenting
17 and a ABWIK. Those two ended up being nol processed. I
18 just wanted to put them on the record. There was another
19 nol processed which was another weapon charge and then
20 ultimately he waived presentment and that was
21 2009-GS-40-00324 and 325 that was a grand larceny of one to
22 5,000 and another second degree burglary, non violent
23 respectfully. He received 15 for the burglaries and four
24 for the larcenies. It was a recommended 15 and as I said
25 some charges were dismissed ultimately received a 15 year

1 sentence. There was no direct appeal. I will turn it over
2 to Mr. Robert Brown the applicant's current counsel of
3 record for the record. Thank you, judge.

4 THE COURT: All right, Mr. Brown.

5 THE PLAINTIFF: Thank you, Your Honor. I call
6 Dashawn Carter.

7 THEREUPON,

8 DASHAWN CARTER,
9 after having been duly sworn, testified as follows:

10 THE COURT: Mr. Carter, please take a seat. Tell
11 us your full name and spell your last name for the record.

12 MR. CARTER: Dashawn Carter, C-A-R-T-E-R.

13 DIRECT EXAMINATION

14 BY THE PLAINTIFF:

15 Q All right. Mr. Carter, you and I have met and talked,
16 we've talked about what the results of today's
17 proceeding could, could, be. We talked about if you go
18 back and get a new hearing you could potentially face
19 more time than you ultimately got. You understand that
20 and understanding that you want to go forward, is that
21 correct?

22 A Yes, sir.

23 Q All right. Tell the judge about your original charges
24 in this case.

25 A I -- assault and battery intent to kill. I think two

1 pointing and presenting, three burglary first and three
2 grand larcenies.

3 Q All right. Let's talk about the burglary first
4 specific because that's the real crux of your case, all
5 right?

6 A Yes, sir.

7 Q Let's talk about the three different -- the evidence in
8 the three different cases, tell the court about those?

9 A On, well, originally from my warrants they said they
10 charged me with burglary first on the grounds that I --
11 on top of them on the grounds that I had two prior
12 convictions, one in 2002 and one in 2006. And on one
13 of them it was -- I -- they had a fingerprint that was
14 inside one of the houses and I got a codefendant on
15 that one, on that burglary first.

16 Q All right. So, you were charged with burglary first
17 simply off of an enhancement statute because of two
18 prior convictions?

19 A Yes, sir.

20 Q Not because you had a weapon or because they occurred
21 at night or anything like that they were --

22 A On two of them, on two of them, it been off of
23 enhancement. One of them -- on one of the burglary
24 first weapons was taken out the house.

25 Q Okay. And let's talk about the prior conviction, you

1 mentioned when they occurred. Tell the court about
2 those prior two convictions.

3 A Well, one of them in 2002. In 2002 I have 12 years
4 old. I was a juvenile. I was a child.

5 Q All right. Let's talk about, let's talk about, that
6 specific charge and everything. Tell the court about
7 the, the, background of that and what the ultimate
8 disposition of that.

9 A Well, me and, me and, my brother had we had caught a
10 attempt burglary charge and they gave me 12 to 18
11 months in DJJ. I did nine months and rolled out.

12 Q So, you did some time in the Department of Juvenile
13 Justice and it's your position is that that sentence
14 and that adjudication can't be used against you for
15 future enhancements because you were 12 years old and
16 it was under the children's code, is that correct?

17 A Yes, sir.

18 Q Okay. You're not, you're not, complaining about the
19 second one that was used but that first one when you
20 were 12 years old?

21 A Just the two, the two, that was used against me --
22 well, the enhancement and my charge of burglary first
23 off them grounds, yeah, them the ones I'm complaining
24 about.

25 Q Now, how about this third burglary first which the

1 weapons were stole out of the house?

2 A The three burglary first I, I, got a codefendant, I got
3 a codefendant. He made three statements. He made
4 three different statements about what happened. But I
5 ain't never told what really happened. I just kept my
6 mouth closed. I wasn't really going to say nothing
7 about what really happened but at one -- the house was
8 broken into at two different time. At one time I went
9 in the house, know what I'm saying, and stole a
10 Playstation 3 out the house. And then I went back to
11 my codefendant house and he left his house and went
12 back to the house and broke into the house, this a
13 witness statement that corroborates with this that
14 saying that she seen him that he was by hisself. She
15 watched him the whole time and she watched him leave by
16 hisself and all. And then she came and find the house.
17 And when they -- when the police came to his house I
18 jumped, I just, out his window and ran but I was
19 already on the run. I was already on the run from my
20 YOA parole. I was just running just to run. I ain't
21 -- I wasn't trying to go back to jail so I ran.

22 Q Okay. So, but the weapons were taken by your
23 codefendant in the second, in the second, break in of
24 the same house in the same day?

25 A Yes, sir.

- 1 Q You didn't take the weapons?
- 2 A No, sir.
- 3 Q All right. So, it's your position that that crime
4 wouldn't have been a burglary first, would it?
- 5 A Yes, sir.
- 6 Q You were never given the opportunity to present your
7 testimony at trial?
- 8 A I never -- I ain't -- at, at, first the main thing I
9 was really, I was really, talking to my attorney about
10 was, I was talking to Tab about was the, was the,
11 juvenile record. I had -- when I had went to
12 preliminary hearing I brought it up at preliminary
13 hearing and the judge that was presiding over my
14 preliminary hearing say he had no knowledge of it. He
15 been like he was going to let it go to the general
16 sessions. But when I brought it up it was, it was,
17 nothing said about it. It didn't matter, it didn't
18 matter. You know what I'm saying, but at the time when
19 I came to court, when I came to court, I had got my
20 motion of discovery like five, six hours before I came
21 to court from Turbeville. I was already down in
22 Turbeville on my YOA. I got pulled out of Turbeville
23 and put in the holding cell and they told me I was
24 going to court. I got my motion that morning. When I
25 came to the county Mr. Swarat came to see me. Tell me,

1 all right, you want to -- I had wrote him. I had wrote
2 him before that see what you can do. See what we can
3 do, you know what I'm saying, try to go ahead and get
4 everything the motion. He can and be like, well, the
5 best I can do is 15 years. He had wrote me a letter on
6 my motion saying he did the best he could do. They was
7 going to drop certain charges this and that and the
8 third. The best he can do is the 15 years. At the
9 time I had no knowledge of nothing to deal with the
10 law. I knew nothing about the law. I was ignorant to
11 the fact of anything. So, when he was first telling me
12 about the 15 years I told him, my first statement to
13 him was I did not want to plead to the 15 years, you
14 know what I'm saying. He tell me, well, they can give
15 you 30 years. They can give you life. So, it kind of
16 scared me at first, you know what I'm saying. But I
17 still told him that I didn't want to plead. But I came
18 to court the next day and I had asked him. I been like
19 if you asked them for ten I will plead to ten. I'll
20 just go ahead and plead and just get it out the way,
21 you know. So, my momma she was playing a big part in
22 it. She, she, was on the same thing telling me she
23 didn't want me to caught the 30 years. She didn't want
24 me to catch life, if I go ahead and plead at least I
25 will come home. So, at the time I was really -- I was

1 just ready to get it out the way, you know what saying.
2 But I didn't want to plead to the 15. But when we came
3 down here to the courthouse he tell me he going to ask
4 for the ten. We go up there he going to ask for the
5 ten, you know what I'm saying. We was going in front
6 of Childs she was a, she was a -- said she was a
7 reasonable judge. So, I went on my best faith of what
8 my attorney tell me.

9 Q Now, but your attorney is telling you that you're going
10 to get 30 because of all of these burglary firsts that
11 are hanging over your head, did that play into your
12 decision to plead guilty to the 15 year sentence?

13 A That that and he telling me that my codefendant going
14 to testify on me if I went to trial and all, all, of
15 the bad things that could happen but he, he, never made
16 me aware of that my codefendant made two to three
17 different statements about what happened. He never
18 made me aware of anything, any discrepancies in my case
19 that I could have fought to put myself in a better
20 position later on down the line. I was never aware of
21 any of those discrepancies.

22 Q You said you got your motion for discovery that was
23 provided by the state four or five hours before --

24 A Before I --

25 Q Your plea. So, you never even had a chance to look at

1 them? How many times did you meet with Mr. Swarat
2 before your plea?

3 A Let's see, maybe, two, three times at the most no more
4 than that.

5 Q Do you feel like y'all's lack of meeting and lack of
6 communication lead to you felling like you had no
7 choice but to plead guilty?

8 A In a way, yeah, because I didn't even -- I didn't know
9 where he stood as my attorney. I -- me going in to
10 pled was going off of faith in what he telling me. I
11 thought, okay, what he telling me it got to be -- he
12 got the law degree. I ain't got no law degree. So,
13 I'm feeling what he telling me got to be right. But
14 after I, after I, took my plea agreement and I really
15 got the time to sit down and, and, look at my motion
16 and look through my motion to see everything that was
17 going on within my case I realize that it wasn't, it
18 wasn't, in my best interest to plead to 15 years. That
19 was the max I could have got on the burglary second.
20 It wasn't in my best interest to plea to it.

21 Q You felt like he gave you inaccurate advice on the
22 enhancement issue on those burglary first?

23 A Yes, sir.

24 Q And you felt like that what's lead you to plead guilty
25 to the burglary second on those -- burglary first in

1 fear of that sentence?

2 A Yes, sir.

3 Q Other than the issues on the burglary first and on the
4 enhancement, are there any other issues that you want
5 to raise today that you feel are grounds for in
6 effective assistance for an involuntary guilty plea and
7 that you and I focus mainly on these burglary first
8 issues?

9 A Well, basically, basically, that's really all it was.

10 I felt like, if what -- if he did be he was suppose to
11 do which was got familiar with my case with everything
12 that I had to protect myself he suppose to work in my
13 best interest, you know what I'm saying. So, I feel
14 like if he told me something that wasn't in my best
15 interest he was ineffective. It wasn't in my best
16 interest to go plead to 15 when from the first
17 beginning I shouldn't have never been charged with
18 burglary first. I should have been charged with
19 burglary second so if they going to -- if I was going
20 to get a plea agreement to a lesser offense or anything
21 or, however, it would have went, maybe, it wouldn't
22 have turned out the same way if he would have put in
23 the motion to get the charges amend to what they should
24 have been from the beginning then, maybe, I was --
25 maybe, I would be home now. Who knows. I can't say

1 what would have happened if that would have happened.
2 All I know is that I pled and I don't -- now, I don't
3 feel like I should have pled after I got familiar with
4 my case.

5 Q If you had known that he was giving you inaccurate
6 information you would not have pled guilty?

7 A No.

8 Q You're asking the court now to wipe away your sentences
9 and let you start over?

10 A I just want, I just want, to start over from the
11 beginning.

12 Q All right.

13 A Do it again.

14 Q Thank you, that's all my questions.

15 THE COURT: Mr. Petrano.

16 THE DEFENSE: Yes, sir.

17 CROSS-EXAMINATION

18 BY THE DEFENSE:

19 Q You said you were charged with first degree burglary?

20 A Yes, sir.

21 Q That's not no indictment or anything, right? That was
22 just when they arrested you?

23 A See, but I had, I had, no knowledge of none of this. I
24 didn't, I didn't, have knowledge on what an indictment
25 and what a warrant was at this time. I just -- I

1 thought it was they charged you, they charge you, they
2 lock you up. They put you in the county jail, you
3 charged. I have no -- I didn't know what none of the
4 indictment or none of that was.

5 Q But you do now?

6 A Yeah, I know now.

7 Q Is there an indictment for burglary first?

8 A No. I got indictment for two burglary seconds. One,
9 one, of the burglary I plead to I was never incited on.

10 Q You were never ever indicted for first degree burglary,
11 were you?

12 A No, sir.

13 Q No further questions.

14 THE COURT: Mr. Brown?

15 THE PLAINTIFF: No, your Honor.

16 THE COURT: You may step down, Mr. Carter.
17 Anything further witnesses?

18 THE PLAINTIFF: No, Your Honor.

19 THE COURT: All right, Mr., Petrano.

20 THE DEFENSE: I call Mr. Swarat.

21 THEREUPON,

22 AUGUST G. SWARAT, II

23 after having been duly sworn, testified as follows:

24 THE COURT: Please tell us your full name and
25 spell your last name for the record.

1 THE WITNESS: It's August G. Swarat, S-W-A-R-A-T.

2 DIRECT EXAMINATION

3 BY THE DEFENSE:

4 Q Sir, do you recall your representation of this
5 applicant?

6 A I do.

7 Q I'm going to ask you a couple of background questions
8 and then we'll jump right to it.

9 A Yes, sir.

10 Q Have you been present throughout the allegations here
11 this morning?

12 A I have.

13 Q All right. And how long have you been practicing law?

14 A Let's see, I was sworn in November of 1994.

15 Q And in criminal or civil or?

16 A A little of both, yes, sir.

17 Q All right. And were you retained or appointed?

18 A I was appointed.

19 Q Okay. And as a PD or just a conflict?

20 A Conflict case.

21 Q All right.

22 A Yes, sir.

23 Q Would you walk us through what you got when you met
24 with him. What you reviewed and what he said.

25 A Okay. I believe I was appointed in January of 2009. I

1 don't believe I was able to met with him initially. He
2 had a pending parole revocation which I think went down
3 during the time I represented him. At some point he
4 was transported from the county jail down to Turbeville
5 Correctional. He was down there for a period of time
6 and then he returned. I think we met three or four
7 times to discuss this case.

8 Q My records show that -- well, I'm sorry, what was he
9 charged with?

10 A There were a number of crimes. He was charged with
11 three or four burglaries, grand larcenies that
12 accompanied those burglaries. He was also charged with
13 an assault and battery with intent to kill and two
14 counts of pointing and presenting a firearm. And I
15 want to say that those were probably six or seven
16 different crimes together. It wasn't all put together
17 in the same, in the same, crime spree. These were
18 different allegations over different periods of time.

19 Q Did he indicate that he wanted to go to trial or on
20 some of these, or all, plead to everyone altogether?

21 A Actually, the first time I met with him he said I know
22 I'm in whole a lot of trouble. Try to get the best
23 deal you can possibly get for me and we'll see where we
24 can go from there.

25 He did have some issues about the pointing and

1 presents also the assault and battery with intent to
2 kill and I was able to get both of those charges
3 dismissed. They were weak cases.

4 The strongest case against him was the burglary
5 that was brought by the City of Columbia. It's the one
6 where the guns were stolen from the household. There
7 was a fingerprint at the point of entry at the house
8 that matched him. I believe it was one, one, finger.
9 Also there was a codefendant that was involved in that
10 case that gave a complete statement about his
11 involvement and it was actually two break ins in the
12 same house on the same day. At one time I think some
13 electronics, maybe, a Placestation was stolen. Then
14 the second, the second, time they went back to the
15 house with the codefendant driving they took some guns
16 and that would have been a basis for burglary first and
17 that was part of the discussion I had with the
18 prosecutor when I was negating his case.

19 Q And the way I read it in the transcript the City of
20 Columbia was involved and concern because of the way
21 the weapons were left in the woods, for kids to find
22 and that type of thing?

23 A I don't recall where they found the weapons.

24 Q Okay. Was -- how did your negotiations go? Was the state
25 willing to cooperate? Were they kind of just hard core

1 on a high sentence? Walk us through it.

2 A His prosecutor was Dolly Garfield and having worked
3 with her in the past had a good relationship with her.
4 I explained to her that Mr. Carter was very young. I
5 was trying to get him out of 85 percent time. Also
6 trying to get him out of violent time and I was able to
7 negotiate both of those. Because she had so many
8 victims involved in these cases she was adamant she had
9 to be tough on it. I tried to get her to agree to a
10 ten year sentence non violent. She wasn't able to do
11 that. She recommended a 15 year sentence on all of his
12 charges, dismiss the ones I was able to negotiation with
13 her to dismiss and she asked for 15 years. I asked for
14 ten. Mr. Carter was well aware that that was how it
15 was going to go down when we got to court. And kind of
16 like he said earlier we were just going to hope for the
17 best and hope that Judge Childs would give him the
18 lesser of those two recommendations.

19 Q Thank you, sir. No thing further.

20 THE COURT: Anything further?

21 THE PLAINTIFF: Yes, sir.

22 THE COURT: I'm sorry. You got to go first. This
23 is your cross.

24 CROSS-EXAMINATION

25 BY THE PLAINTIFF:

1 Q Let's talk about the enhancement issue that was brought
2 up. What's, what's, your understanding of what can be
3 used on the enhancement to make it burglary, a burglary
4 first?

5 A If he had had two or more burglaries that could have
6 been used. And in his wrap sheet it's indicated that
7 he plead to two counts of burglary as an adult. I was
8 concerned about that but that was not my first concern.
9 I knew the one that was as a juvenile could not be used
10 and I talked to Ms. Garfield about that.

11 The other enhancement was the stealing of the
12 weapons during the one burglary that could have been
13 used as an enhancement against him. Also, if any of
14 the burglaries would have occurred at night which I
15 don't believe any of them were.

16 Q Now, as far as the two burglaries that he pled to as an
17 adult, he was never actually indicted for burglary
18 first on any of these, they were all -- he waived
19 presentment, is that right?

20 A He waived presentment at court with I believe the one
21 that could have been enhanced as a burglary first.

22 Q But in your discussions with Ms. Garfield it was always
23 the intent if he had not waived presentment and plead
24 guilty they intended to seek an indictment for burglary
25 first, is that fair to say?

1 A If we had gone to trial it would have been a burglary
2 first degree on the City of Columbia case where the
3 guns were stolen.

4 Q Did y'all ever discuss the fact that there were two
5 break ins or that he was uninvolved with the second
6 break in?

7 A Did I discuss with Mr. Carter?

8 Q Yes.

9 A I did.

10 Q Okay. And what was your understanding, did y'all talk
11 about the possibility of him testifying at trial or
12 being able to present that theory to a jury?

13 A I did. And there were certainly a number of hurdles we
14 would have -- had gone over. Number one, there was a
15 fingerprint at the scene. Number two, he's got a
16 codefendant that known him most of his life that had
17 given a statement again him and also picked him out of
18 a photo line up. The next door neighbor had gotten a
19 license tag to the vehicle that they were in. And it
20 was my understanding that when the police found this
21 vehicle he jumped out of the vehicle and ran. At least
22 that was the statement that was given be the
23 codefendant and that's what was indicated in the police
24 report.

25 Q Beg the Court's indulgence.

1 BY THE PLAINTIFF:

2 Q Now, Mr. Carter's codefendant, he actually gave three
3 statements, didn't he?

4 A I know he gave more than one. I don't know if he gave
5 three.

6 Q Do you recall one of them where actually he said that
7 Mr. Carter was uninvolved with this at all?

8 A I believe his first statement he said some guy named
9 Mike G was involved in it and then later he gave the
10 statement that it was Mr. Carter.

11 Q Now, the codefendant ultimately got a little bit better
12 deal than Mr. Carter, didn't he?

13 A I don't know what he received.

14 Q Okay. Then how about the witness statement that
15 identified the license plate, did it identify
16 Mr. Carter specifically?

17 A No, it just talked about individuals getting into that
18 court.

19 Q All right. So, we have a fingerprint at the scene and
20 then a codefendant that gives multiple statements that
21 are all a little bit different ultimately implicating
22 him in the second burglary where the guns were taken,
23 if we take just the burglary of the electronics that's
24 not -- that doesn't rise to burglary first though, does
25 it?

1 A It would have been burglary second degree.

2 Q Okay.

3 THE PLAINTIFF: That's all the questions I have,
4 Your Honor.

5 THE COURT: Anything further?

6 RECROSS-EXAMINATION

7 BY THE DEFENSE:

8 Q Did he tell you that he was in the car when they went
9 back to get the weapons?

10 A I don't recall if he did or not.

11 Q Did he deny he was in there?

12 A I don't recall.

13 Q Thank you.

14 THE COURT: You may step down, Mr. Swarat.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: May this witness leave?

17 THE PLAINTIFF: He may, Your Honor.

18 THE COURT: Anything further?

19 THE DEFENSE: Nothing by way of evidence but I do
20 have a bit of argument I would like to put on the record at
21 this time after the applicant.

22 THE COURT: Yes, sir. Mr. Brown.

23 THE PLAINTIFF: I have nothing to add, Your Honor.

24 THE COURT: All right.

25 THE DEFENSE: Just very briefly, obviously the

1 juvenile adjudication could not serve as enhancements for
2 burglary first but the weapons that certainly can be. It's
3 the state's case. It was the state's case that he was
4 involved in the return to get the weapons which makes it
5 burglary second and turns it into a burglary first.

6 Now, whether that's a continuation of the prior
7 conspiracy even if he was not actually in the car the second
8 time that could have be enough or whether he was actually
9 there.

10 THE COURT: Or the bottom line he pled to a
11 second?

12 THE DEFENSE: That was my second --

13 THE COURT: I'm sorry. I don't want to preempt
14 you but go ahead, continue.

15 THE DEFENSE: And ultimately, Your Honor, he only
16 got a second degree and these were favorable terms although
17 was denied he ultimately wanted ten. The state wouldn't go
18 any -- was steadfast 15. The judge gave him 15. He knew
19 that going in. That's what he got. There's no real
20 prejudice here, Your Honor. And I just want to point out
21 that technically the threat of this being a burglary first
22 is not incorrect.

23 THE COURT: All right.

24 THE PLAINTIFF: Your Honor, it would be our
25 position that the -- threat of being a burglary first is

1 incorrect, an improper enhancement that made it a burglary
2 first. The fact is, he plead guilty because he had a fear
3 of this excessive sentence that actually he could no have
4 faced had he gone forward on those charges or the state
5 likely couldn't convicted him on those. Given all of that
6 information and counsel his failure to have the discovery --
7 to review exactly what evidence was being able to review
8 five hours before his plea, his guilty plea was ultimately
9 rendered involuntary based on this threat of the excess
10 sentence.

11 THE DEFENSE: And, Your Honor, very briefly.
12 You're got the prior adult burglary one of them there's no
13 debate about that. All the state had to do if he wanted to
14 go to trial was get a conviction for one of the other
15 burglaries and then the one that could be the burglary first
16 would clearly be a burglary first even if he dumped the
17 weapons. Your Honor, there's no prejudice here. Thank you,
18 Your Honor.

19 THE COURT: Thank you for your lively
20 presentation, gentleman. I'll let you know my decision in
21 due course.

22 END OF PROCEEDINGS

23

24

25

1 COUNTY OF RICHLAND)

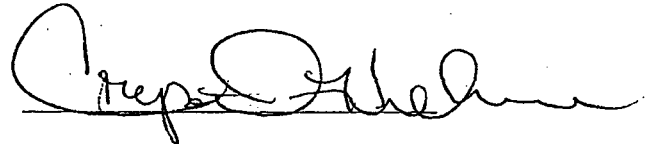
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Dashawn Carter V. State of SC
5 Case No. 2009-CP-40-08044, at the Richland County
6 Courthouse, February 28, 2011.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 25 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 5th day of September,
15 2012.



Crystal Holmes, Court Reporter
and Notary Public for the
State of South Carolina my
Commission Expires:
April 21 2014

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The Applicant is presently incarcerated following an April 30, 2009 guilty plea before the Honorable J. Michelle Childs to the following:

4-09	2009GS4012752	0080 16-11-0313 * 15 * Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree	<input checked="" type="checkbox"/>	15	No
4-09	2009GS4012753	0478 16-13-0030(B)(1) * 5 * Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000	<input checked="" type="checkbox"/>	4	No
4-09	2009GS4012751	0080 16-11-0313 * 15 * Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree	<input checked="" type="checkbox"/>	15	No
4-09	2009GS4012754	0479 16-13-0030(B)(2) * 10 * Larceny / Grand Larceny, value \$5,000 or more	<input checked="" type="checkbox"/>	4	No
1-09	2009GS4000186	0122 16-23-0410 * 5 * Weapons / Pointing and presenting firearms at a person	<input checked="" type="checkbox"/>	not pros	No
1-09	2009GS4000185	0014 16-03-0620 * 20 * Assault / Assault and battery with intent to Kill (ABWIK)	<input checked="" type="checkbox"/>	not pros	No
waive	2009GS4000324	0478 16-13-0030(B)(1) * 5 * Larceny / Grand Larceny, value more than \$1,000 but less than \$5,000	<input checked="" type="checkbox"/>	4	No
waive	2009GS4000325	0080 16-11-0313 * 15 * Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree	<input checked="" type="checkbox"/>	15	No
1-09	2009GS4000187	0122 16-23-0410 * 5 * Weapons / Pointing and presenting firearms at a person	<input checked="" type="checkbox"/>	not pros	No

The Applicant did not appeal his plea.

In the PCR application, the Applicant made the following allegations:

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

(a) Ineffective Assistance of Trial Counsel

(b) Plea Was Not Knowledgeably, Voluntarily And Intelligently Entered

(c) Applicant Reserves The Right To Amend This Application

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) (SEE ATTACHMENT PAGE ON BACK)

(b) (SEE ATTACHMENT PAGE ON BACK)

(c) Applicant Reserves The Right To Amend This Application To Raise Additional Issues To Ensure HIS "FULL BITE AT THE APPLE" In This Proceeding -

10a. Prior to entering my plea I met with my counsel only 2 times. Neither time ~~did~~ he inform me of anything that I could use as a defense in my case. I informed him multiple times of discrepancies that I saw in my case and he did not look into. I received my motion of discovery the day before I went to court and was rushed into pleading by my attorney thinking that pleading was in my best interest when it wasn't. My attorney refuse to address the issue that the state used a charge from my juvenile record to enhance my current charges which is against the law.

10B I was not informed by my attorney that I was not being charged and tried ~~so~~ fairly therefore I unintellegently went along with entering a plea of Guilty thinking it was the best thing for me to do.

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

That The Sentence And Conviction Be Vacated And Set Aside That The Plea Be Withdrawn And A New Trial Granted, Any Other Relief Available

At the evidentiary hearing, Applicant proceeded on the allegations stated in the application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

The Applicant testified and explained that he did not take any weapons from the dwelling, that it was the co-defendant who entered differently. The Applicant explained that he did not want to plea to fifteen (15) years, but that he told plea counsel that he would plea to ten (10) years. The Applicant explained that he was not indicted for burglary first degree.

Plea counsel testified that he was appointed because there was a conflict within the public defender's office. Plea counsel explained that he met with the Applicant three (3) or (4) times. Counsel explained that because "they" (the Applicant and the co-defendant) went back to the house (presence of weapon), that is why it became a potential first degree.¹ Plea counsel testified that he was aware that the prior juvenile adjudications for burglary/housebreaking could not be the requisite for burglary first degree, but that returning for the weapon did satisfy the element. Plea counsel explained that he attempted to talk the State down to ten (10) years, but that the Solicitor was not agreeable. Plea counsel explained that he clearly told the Applicant that he would still ask for ten (10) but that State would recommend fifteen (15).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

¹ See, Guilty plea transcript, p. 11 - 12.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed above, the Applicant has failed to

carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. There is no credible testimony to support the Applicant's contention that he was not involved in the burglary, including the guns – which validates the fact that at least one of these charges could have been a burglary first degree.² Similarly, there is no credible testimony to support the Applicant's claim that he thought he was pleading guilty to a ten (10) year sentence.³ Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

² S.C. Code § 16-11-311(A)(1)(a).

³ See, Guilty plea transcript, p. 3 L. 24 – 25; p. 20 L. 4; L. 8.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

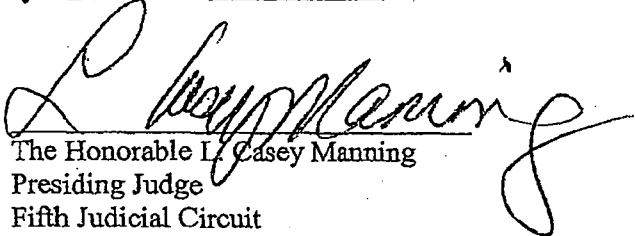
This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the

appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief 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 23 day of Feb, 2012.


 The Honorable L. Casey Manning
 Presiding Judge
 Fifth Judicial Circuit

Cole, South Carolina.

71

WITNESSES

DOCKET NO. 2009-GS-40-324

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2009

87

ARREST WARRANT NUMBER

1900176

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

THE STATE

vs.

DASHAWN CARTER

Indictment for

GRAND LARCENY \$1000.00 TO \$5000.00

SC Code: 16-13-30(B)(1)

CDR Code:0478

Class: FEL/F

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

Defendant

DASHAWN CARTER

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

GL 7 1,000

Defendant

Witness:

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

CERTIFIED TRUE COPY OF ORIGINAL FILED IN C.C.C. & G.S. RICHLAND COUNTY

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on _____, the Jurors of Richland County present upon their oath:

GRAND LARCENY \$1000.00 TO \$5000.00

That Dashawn Carter did in Richland County on or about August 4, 2008, feloniously take or attempt to take and carry away the personal goods of the victim, of the value of more than one thousand dollars but less than five thousand dollars, with intent to deprive the owner permanently of such property. To wit; a HP computer and/or PS2 and/or Sentury Safe and/or US Currency and/or other miscellaneous items. All in violation of S.C. Code of Laws 16-13-30.

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

W. Bay Giese

Warren B. Giese, SOLICITOR

WITNESSES

DOCKET NO. 2009-GS-40-325

The State of South Carolina

County of

RICHLAND

COURT OF GENERAL SESSIONS

APRIL TERM 2009

87

THE STATE

vs.

DASHAWN CARTER

Indictment for

BURGLARY(AFTER 1/20/85)

2ND DEG

SC Code: 16-11-312(A)

CDR Code: 0080

Class FEL-D

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

[Signature]
Defendant

I, DASHAWN CARTER hereby appear in my own proper person and plead guilty to the within indictment by to

BURGL 2ND DEG

[Signature]
Defendant

Witness: *[Signature]*
C.C.C. PLS. AND G.S.

COPIED TRUE COPY
ORIGINAL FILED
JUL 1 2009
S.C. P. & C.S.
RICHLAND COUNTY
SOUTH CAROLINA

ARREST WARRANT NUMBER

1900177

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

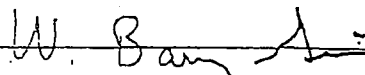
INDICTMENT

At a Court of General Sessions, convened on _____, the Jurors of Richland County present upon their oath:

BURGLARY/(NON-VIOL)(AFTER 1/20/85) - 2ND DEG

That Dashawn Carter did in Richland County on or about August 4, 2008 willfully and unlawfully enter the building, [REDACTED], without consent and with intent to commit a crime therein, all in violation of §16-11-312 of the Code of Laws of South Carolina (1976, as amended).

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


WARREN B. GIESE, SOLICITOR

WITNESSES

(S) F. BRYANT - CPD

ARREST WARRANT NUMBER

K358956

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 16 2009

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2009

87

THE STATE

vs.

DASHAWN CARTER

Indictment for

GRAND LARCENY OVER \$5000.00

SC Code: 16-13-30(B)(2)

CDR Code:0479

Class: FEL/E

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

Defendant

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

Defendant

Witness

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

FILED TRUE COPY ORIGINAL FILED
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

DASHAWN CARTER
GL 7 5,000

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

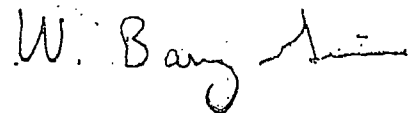
INDICTMENT

At a Court of General Sessions, convened on April 15, 2009 the Grand Jurors of Richland County present upon their oath:

GRAND LARCENY OVER \$5000.00

That Dashawn Carter did in Richland County on or about November 7, 2008, feloniously take and carry away the personal goods of the victim, of the value of more than Five Thousand Dollars, with the intent to deprive the owner permanently of such property. To wit; jewelry and/or electronics, all in violation of § 16-13-30 (1976, As amended).

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



Warren B. Giese, SOLICITOR