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STATE OF SOUTH CAROLINA

S.C. Supreme Court

IN THE SUPREME COURT

Appeal from Lexington County

R. Knox McMahon, Circuit Court Judge

LINWOOD CARSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000512

A P P E N D I X

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA	)	
-vs-	)	TRANSCRIPT OF RECORD
LINWOOD CARSON, JR.,	)	06-GS-32-249, et al
Defendant.	)	

January 30, 2006
Lexington, South Carolina

B E F O R E:

HONORABLE LARRY R. PATTERSON, Judge.

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

ANGELA AVENGER, Asst. Solicitor
Attorney for the State

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Attorney for the Defendant

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses).

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings were reported on
2 January 30, 2006).

3 (After the jury was duly qualified and
4 impaneled, the following proceedings were reported).

5 THE COURT: Mr. Carson has something. Do you
6 want to take it up with the Court?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I will hear from you, Mr. Linwood
9 Carson.

10 THE DEFENDANT: Yes, sir, I would like to put
11 in a motion for dismissal of counsel. I would like it
12 noted for the record just as well that a whole lot of
13 illegal stuff is going on in my case.

14 The public defender I had before, Ms. Lisa
15 McPherson, she got me a plea deal of 15 years
16 nonviolent, but now from what I been told that wasn't
17 the deal.

18 I am more or less being -- if I didn't take
19 that offer, if I didn't take that offer, I am being told
20 they are going to offer me life without parole. That is
21 not too much leverage for me at all.

22 If I knew what I know now, I would have take
23 the 15 nonviolent. But from what my attorney is telling
24 me now, he is saying that there never was such an offer,
25 in which I have in her writing where she told me this

1 was the offer.

2 If that wasn't the case, that tells me that's
3 another part of the crookedness and illegal stuff that
4 has been going on in my case. I asked him could
5 something be done about this because I felt like this
6 has tainted my case with the chance of getting a decent
7 plea or a trial as far as that matter.

8 THE COURT: Okay. That's his motion. What
9 does the State have to say? Thank you, Mr. Carson.

10 MS. AVENGER: Yes, sir, Your Honor. Solicitor
11 Myers actually first had this case. He did make some
12 type of offer to Ms. McPherson. It was a straight-up
13 plea to the six burglaries.

14 Then later in the case I made an offer to
15 Ms. McPherson in the Public Defender's Office. It was
16 for a negotiated 15 years, and I believe it was violent.
17 I do not believe it was ever offered nonviolent.

18 Mr. Carson made several allegations against
19 Ms. McPherson, I believe even something reported to the
20 bar. There was a hearing in open court, and
21 Ms. McPherson was released.

22 At that point in November -- I believe it was
23 November 17th -- Mr. Stockholm was appointed, and
24 Mr. Stockholm and I have been working on this case
25 knowing it was ready for trial in January.

1 THE COURT: Okay.

2 MS. AVENGER: Your Honor, I'm sorry.

3 Mr. Stockholm also had an opportunity to plead this case
4 for the 15 years violent on the burglaries, and that
5 never happened. So at that point at the last term of
6 court, we served him with the life without parole at
7 that point, Your Honor.

8 THE COURT: I will tell you the problem with
9 all that, and I will tell you the reason I am taking the
10 position I have for the last four or five or six years,
11 however long I have been on the bench, ten years maybe,
12 but maybe not at the very beginning.

13 I do not accept negotiated pleas. All this
14 poses a problem like this one for instance. I mean, you
15 can make recommendations to me, and I will listen to
16 those recommendations. I listen. I think it's a duty
17 of the State to present their case.

18 I have been all over the State. I know what
19 goes on. There are a lot of assistant solicitors, 32 in
20 Greenville. We have had assistant solicitors and we
21 have had defense attorneys charged with serious crimes:
22 D.U.I.s, trafficking in drugs in Charleston. These are
23 public records.

24 So I do the sentencing. I am the judge. I
25 have been screened. I do all the sentencing. I don't

1 go along with recommendations. I think I know what to
2 sentence somebody to based on the crime, the past
3 record, and what the victims have to say.

4 And whatever you want to tell me about a
5 sentence, you need to do it right here in open court. I
6 will not be having any agreements back in the office
7 anywhere. We do all criminal work in open court, and I
8 do the sentencing.

9 They can make recommendations to me,
10 Mr. Carson, but I am not bound by anything. If they
11 have a negotiated plea, don't bring it in here in front
12 of me.

13 I do not need the practice of going through
14 the litany of all these questions that we have to ask if
15 I am not going to do the sentencing. If I am just going
16 to rubber stamp what y'all give me, my clerk can read
17 the litany and rubber stamp the sentence y'all give.
18 You don't need a judge out here for that.

19 I have been to the judicial college, and I
20 have been to numerous classes with Mr. McIntosh, to the
21 University of Minnesota for three or four weekends on
22 sentencing with judges from all around the country.

23 I am aware of the problems we have in the
24 criminal court and in the prison system. The prisoners
25 know more about how the system works than the citizens

1 do and a lot of the lawyers.

2 I get P.C.R.s all the time because they didn't
3 get to plead in front of this judge or that judge. I
4 don't care what my fellow judges do. They have
5 different sentencing philosophies than I do.

6 As long as I am here in Lexington and I do
7 criminal court, that's what I do. I carefully listen to
8 the recommendations. I am fully aware of the docket
9 problems, and I know why defendants plead guilty.

10 I think I know as much about the system. I
11 worked for two solicitors and I have worked for defense
12 lawyers. I know how the system works. But be that as
13 it may, that's my position.

14 Mr. Carson, you had a lawyer. You make it or
15 play it, but you chose not to do that with your
16 attorney. Your case has been -- these allegations were
17 over a year ago.

18 So I am not -- on the last day when your case
19 is called for trial, these motions come up regularly
20 where they want to relieve a lawyer just to put the case
21 over for a little longer. I don't know what your
22 reasons are.

23 But you have not given me sufficient legal
24 reason for removing Mr. Stockholm, and I deny that
25 motion. That's all I have got to say. I am ready to go

1 to trial if y'all are or whatever you want to do.

2 MS. AVENGER: The State is ready, Your Honor.

3 MR. STOCKHOLM: Your Honor, may I have just
4 five minutes to talk to my client?

5 THE COURT: I will give you five minutes. You
6 have got to remember, I am the judge. These citizens
7 don't necessarily want to be here. When they get here,
8 they do a good job. I don't like to impose on jurors.
9 I like to keep court moving. Go ahead.

10 (Whereupon there was a recess).

11 THE COURT: Mr. Stockholm, are you ready?

12 MR. STOCKHOLM: Yes, Your Honor.

13 CLERK: Raise your right hand, please, sir.

14 LINWOOD CARSON, JR. is first
15 duly sworn.

16 THE COURT: Mr. Carson, we have selected your
17 jury, and you understand that you can have a jury trial
18 this morning; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I just noticed that in the
21 indictments -- I don't know whether they are true or
22 not -- but they allege that you have had a couple of
23 burglaries before, at least have been convicted of at
24 least two; and they have served a notice on you that
25 they were seeking life without parole. Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I say that just because it makes
4 me think that you probably have been in court before, in
5 circuit court; is that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You need to speak up so that we
8 can get down everything you say, all right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: You might need to pull over there
11 and get in front of that microphone. Mr. Carson, I go
12 through this because I have to be convinced that you are
13 pleading guilty freely, voluntarily, knowingly, and
14 intelligently. That's the reason I ask you these
15 questions.

16 Now, if there is any question in your mind
17 before I start going into these things, you understand
18 the reason I am asking you these questions, and you have
19 to give me truthful answers today. Do you understand
20 that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You are under oath?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, Mr. Carson, I know that these
25 are separate indictments. I better go over them. You

1 are pleading guilty to the burglaries on January 30th of
2 2005 which was at a strip mall, I'm told. And on the
3 same date that you knowingly and intentionally possessed
4 a controlled substance. Was it crack cocaine?

5 MS. AVENGER: Yes, Your Honor.

6 THE COURT: Is it a first offense or a second
7 offense?

8 MS. AVENGER: Your Honor, we are going to
9 treat it as a first offense.

10 THE COURT: I'm sorry?

11 MS. AVENGER: First offense.

12 THE COURT: First offense. That carries up to
13 two years now. Do y'all agree with that, the State?

14 MS. AVENGER: Your Honor, I thought it was
15 three.

16 (Pause).

17 MS. AVENGER: I thought the old law was five,
18 and the new law was three. So he gets the benefit of
19 the new law, which is three.

20 THE COURT: Do you agree with that,
21 Mr. Stockholm?

22 MR. STOCKHOLM: I believe he would take
23 benefit under the new law.

24 THE COURT: The benefit under the new law
25 would be three years. It used to be five years.

1 MR. STOCKHOLM: Correct.

2 THE COURT: In addition to that, they have
3 charged you with burglary in the second degree on all of
4 these charges. The allegations were that you entered
5 knowingly and willfully, without consent with the intent
6 to commit a crime, a building at 205-L Columbia Avenue
7 in Lexington, South Carolina, and that you had two or
8 more convictions for burglary or housebreaking or a
9 combination of both. I believe that carries a maximum
10 sentence of 15 years.

11 MS. AVENGER: That's correct, Your Honor. The
12 L., that is the Mediterranean Cafe. I can identify the
13 letters for you to the businesses.

14 THE COURT: Mediterranean Cafe. It's the same
15 allegations for burglary at 205-P Columbia Avenue in
16 Lexington, South Carolina.

17 MS. AVENGER: That's Ritz Camera.

18 THE COURT: And it's the same allegations for
19 burglary second as I went over initially at 205-O
20 Columbia Avenue.

21 MS. AVENGER: Beautiful Nails.

22 THE COURT: Beautiful Nails. And it's the
23 same allegations at 205-N Columbia Avenue.

24 MS. AVENGER: First Franklin Financial.

25 THE COURT: First Franklin. And it is the

1 same allegations for 205-M on Columbia Avenue in
2 Lexington.

3 MS. AVENGER: Next Generation Wireless.

4 THE COURT: And it's the same allegations for
5 205-K on Columbia Avenue.

6 MS. AVENGER: Citifinancial.

7 THE COURT: Citifinancial. And then the last
8 allegation is possession of burglary tools on that date,
9 that you possessed knowingly and willfully, an engine,
10 machine, tool, false key, picklock, bit, nippers,
11 nitroglycerine, dynamite cap, coil or fuse -- did he
12 posses all these?

13 MS. AVENGER: No, Your Honor. It was a
14 hammer, and it carries up to five years.

15 THE COURT: They claim that you possessed a
16 hammer, not all of these. They just printed the statute
17 here. The allegations are you knowingly and willfully
18 possessed burglary tools, a hammer, on that date and
19 time. That carries a sentence of up to five years.

20 Mr. Carson, do you understand the charges the
21 State has brought against you here on these allegations,
22 and do you understand the sentence you could get for
23 each one of these?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have any questions about

1 the crimes that they allege or say that you committed
2 and what the sentences are on each? Each indictment
3 would be a separate sentence. Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, if I totaled the 15 up -- and
6 I haven't totaled them up. Have you totaled them?

7 MS. AVENGER: No, Your Honor. Is it 93?

8 THE COURT: She says about 93 years would be
9 the total sentence if all of them ran consecutive, which
10 he is pleading guilty. I understand that.

11 MR. STOCKHOLM: Yes, Your Honor. We would
12 respectfully point to the Court that we believe under
13 Code Section 17-25-50, the burglaries would all
14 constitute one offense for sentencing purposes.

15 THE COURT: The State may differ with you. I
16 will hear you on that.

17 Mr. Carson, Mr. Stockholm represents you.
18 Have you fully discussed this case with him? Have you
19 told him everything you know about this case and what
20 happened from the time, January 30th when you were
21 arrested, up until today or when they say these offenses
22 occurred, have you told him and been truthful with him
23 so he could provide you with a defense if you had one?

24 (Pause).

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, Mr. Stockholm, does your
2 client understand the charges, the possible punishment,
3 and his constitutional rights?

4 MR. STOCKHOLM: Yes, sir, he does.

5 THE COURT: Has he indicated to you how he
6 wishes to plead to these charges?

7 MR. STOCKHOLM: Yes, sir, he has.

8 THE COURT: And is he going to plead guilty?

9 MR. STOCKHOLM: Yes, sir, he has indicated he
10 will.

11 THE COURT: Based on your investigation of the
12 facts and circumstances surrounding this case, in your
13 opinion do you believe that the State could convince a
14 jury of 12 people that we have back here in the jury
15 room, all 12, that he is guilty of these charges beyond
16 a reasonable doubt?

17 MR. STOCKHOLM: Yes, sir, I do.

18 THE COURT: Is there any question about
19 Mr. Carson's ability to stand trial?

20 MR. STOCKHOLM: None from me, Your Honor.

21 THE COURT: Mr. Carson, as I told you, I have
22 to make sure you are pleading guilty freely,
23 voluntarily, knowingly, and intelligently. If you have
24 any questions about anything I ask you, you stop me and
25 I will let you talk with your attorney. How old are

1 you, Mr. Carson?

2 THE DEFENDANT: Forty-two.

3 THE COURT: Forty-two?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: How far did you go in school?

6 THE DEFENDANT: Ninth grade.

7 THE COURT: What kind of work have you been
8 doing?

9 THE DEFENDANT: Painting.

10 THE COURT: Have you been painting all your
11 life?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you always lived here in
14 Lexington?

15 THE DEFENDANT: No, sir, I don't live here. I
16 came over to meet someone.

17 THE COURT: Where do you live?

18 THE DEFENDANT: Richland County.

19 THE COURT: Richland County. Have you always
20 lived in Richland County?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you ever been treated for the
23 abuse of alcohol, drugs or for any mental illnesses?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: When were you treated?

1 THE DEFENDANT: Back in '92.

2 THE COURT: '92. What were you treated for?

3 THE DEFENDANT: Drugs.

4 THE COURT: What type drugs?

5 THE DEFENDANT: Crack cocaine.

6 THE COURT: Did you finish that treatment?

7 THE DEFENDANT: No, sir.

8 THE COURT: You didn't successfully complete
9 it?

10 THE DEFENDANT: No, sir.

11 THE COURT: Have you been treated for anything
12 since '92?

13 THE DEFENDANT: No, sir.

14 THE COURT: Are you under the influence of any
15 medication, drugs or alcohol today?

16 THE DEFENDANT: No, sir.

17 THE COURT: How long have you been
18 incarcerated?

19 THE DEFENDANT: About a year now.

20 THE COURT: You have been in jail ever since
21 this charge?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So you haven't had any medication,
24 drugs or alcohol down at the jail or anything?

25 THE DEFENDANT: No, sir.

1 THE COURT: Now, Mr. Stockholm tells me he has
2 explained to you the charges, the possible punishment,
3 and your constitutional rights. I have been over
4 everything with you here today. You are pleading guilty
5 to these charges that I have been over with you. Do you
6 understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you understand that if I deny
9 the motion and consider these consecutive on the
10 burglaries, you could get up to 93 years?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If we chose to do that. That
13 would be the absolute maximum you could get. When you
14 plead guilty -- of course, you know after this if you
15 got convicted of burglary again, the State could seek
16 life without parole.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: They are dropping that today; is
19 that right?

20 MS. AVENGER: That's correct, Your Honor.

21 THE COURT: They are going to drop the notice
22 that they are seeking life without parole as part of the
23 negotiations for the plea. That is correct and the
24 State can do that.

25 MS. AVENGER: Yes, sir.

1 THE COURT: Do you understand they are
2 dropping it today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, are you on probation or
5 parole here today?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You are. You are on parole?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand this would be a
10 violation of any parole if you are on parole?

11 (Pause).

12 THE COURT: Sir?

13 MR. STOCKHOLM: Yes, Your Honor. He said yes,
14 Your Honor. He understands it would be a violation.

15 THE COURT: Were you aware that he was on
16 parole?

17 MS. AVENGER: Your Honor, it's hard to tell
18 from his rap sheet. I was not aware, but it does not
19 surprise me.

20 THE COURT: Okay. Now, when you plead guilty,
21 Mr. Carson, you give up some very important
22 constitutional rights. You have a constitutional right
23 to remain silent. You cannot be compelled to testify in
24 court in any way.

25 It is your constitutional right to take the

1 witness stand in front of the jury and testify or you
2 don't have to testify. You have a constitutional right
3 to remain silent.

4 The burden of proof is always on the State to
5 prove you guilty beyond a reasonable doubt for each one
6 of these charges: The burglary tools charge, the
7 burglary charges, and the possession of the drug charge.

8 As I said, you could either testify or not
9 testify. If you did not testify, the jury couldn't even
10 consider that against you. I would explain to them that
11 was your constitutional right.

12 They couldn't even bring it up in the jury
13 room. The burden of proof is always on the State to
14 prove you guilty of each one of these charges beyond a
15 reasonable doubt. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You have the right to be
18 confronted by the witnesses against you. These
19 witnesses, whose names I have called, a long list, would
20 have to come into court and testify in your presence
21 under oath, and your lawyer could cross examine them,
22 ask them questions. Do you understand your right to be
23 confronted by your accusers?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You understand your right to have

1 a jury trial? We've got a jury back here and you have
2 every right to be tried by that jury. The State would
3 have to convince all 12 that you were guilty beyond a
4 reasonable doubt.

5 You would be presumed to be innocent until
6 the jury found you guilty beyond a reasonable doubt. Do
7 you understand your right to a jury trial and the
8 presumption of innocence as far as you go? Do you
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you giving up your right to
12 remain silent, your right to have a jury trial, and your
13 right to be confronted by the witnesses against you?
14 Are you waiving those rights and pleading guilty here
15 today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: When you plead guilty, do you
18 understand you admit the truth of the charges against
19 you?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you give up any defenses to
22 these charges that you may have.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did you commit these charges that
25 are contained in these indictments? You committed these

1 crimes?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Right now the only negotiations
4 between the State and the Defendant is that you are
5 dropping the life without parole?

6 MS. AVENGER: That is correct, Your Honor.

7 THE COURT: Is that your understanding,
8 Mr. Stockholm?

9 MR. STOCKHOLM: Yes, Your Honor.

10 THE COURT: Any conversations, you have got to
11 have them on the record.

12 MR. STOCKHOLM: Yes, sir, they were dropping
13 life without parole.

14 THE COURT: No one has promised you anything
15 for pleading guilty, Mr. Carson? Do you understand
16 that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And no one has threatened you or
19 forced you to do anything to plead guilty?

20 THE DEFENDANT: No, sir.

21 THE COURT: They haven't forced you to plead
22 guilty or threatened you?

23 THE DEFENDANT: No, sir.

24 THE COURT: I don't want you to plead guilty
25 unless you are guilty of these charges. Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you are pleading guilty of
4 your own free will and accord?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you have fully discussed this
7 with Mr. Stockholm, and you are satisfied with his
8 services?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you understood everything we
11 have been over here today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: If you want to appeal this
14 sentence, you must do that within ten days after today.
15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I am convinced that he is pleading
18 guilty freely, voluntarily, knowingly, and
19 intelligently; and I would accept his plea if the State
20 gives me a substantial factual basis for it.

21 MS. AVENGER: Thank you, Your Honor. May it
22 please the Court. Your Honor, it was exactly one year
23 ago today here in Lexington County. It was at the
24 Lexington Village strip mall. It was about 4:00 o'clock
25 in the afternoon.

1 Your Honor, Officer Whitlock with the
2 Lexington County Police Department was in the
3 drive-through at Rush's. He heard an alarm coming, he
4 believed, from over towards that strip mall.

5 He went in his car that way. He saw a black
6 male carrying a garbage bag come around from behind the
7 business. Officer Whitlock, because the alarm was going
8 off, told this person: Hey, may I talk to you for a
9 minute. He was going to do a field interview, see what
10 was going on there at the business.

11 The person made eye contact with Officer
12 Whitlock. Officer Whitlock kept approaching this
13 person. This person was walking to an abandoned car
14 behind the Doctor's Care which is also right in the area
15 by the strip mall. The person did not stop, picked up
16 his pace, kept walking towards the car.

17 Officer Whitlock asked him again: Sir, you
18 need to stop. I need to speak with you about the alarm
19 that is going off. At that point the person looked at
20 him in the face, turned and ran.

21 Officer Whitlock pursued this person. This
22 person jumped a fence, dropped the garbage bag, kept on
23 running. Whitlock pursued. This person then went over
24 another fence in an area conditioning unit and he
25 tripped and then turned back towards Officer Whitlock.

1 At that moment Officer Whitlock didn't know if
2 the person was going to reach for a gun or whatever. He
3 stopped pursuing, looked at him, had another good view
4 of him, and the person ran away.

5 Whitlock had called for help. He had left his
6 car open and running in the strip mall parking lot. He
7 knew that some type of evidence had been dropped in a
8 bag. He wanted to go secure that.

9 He called for backup to come. A perimeter was
10 set up. Bloodhounds came out. The person was never
11 found at that moment. They collected the garbage bag.
12 The detectives came out.

13 They found that the back door to Citifinancial
14 had been pried open, and then from there someone had
15 kicked and pushed through the Sheetrock and had gone
16 business to business to business, the six businesses we
17 mentioned in the indictment.

18 They all had property damage. They all had
19 change stolen or money stolen. It was approximately
20 probably about \$500 money wise that was taken from these
21 different businesses.

22 In that garbage bag that was dropped, there
23 were cell phone accessories that were sold at Next
24 Generation Wireless from that strip mall. There was a
25 hammer, which is where the burglary tool comes into

1 play, Your Honor. That was also collected at the scene.

2 Detectives Ray Hill and Mike Ford photographed
3 the whole area, processed the scene. Then, Your Honor,
4 they started thinking about that car that the person was
5 trying to get to when Officer Whitlock approached him.
6 They ran a check on that car.

7 After they documented everything there at the
8 scene, they decided to pull back, move law enforcement
9 out of the area, and they left. Sergeant Bledsoe stayed
10 in a parking lot to watch that car to see if someone was
11 going to come back and pick up this car.

12 All of this happened around 4, 4:30. At
13 around 10, 10:30 that same night, a car pulled by,
14 coincidentally by Sergeant Bledsoe in the Rush's parking
15 lot. It had several people in the car. One of the
16 people was Mr. Carson and two other ladies, who would be
17 potential State's witnesses.

18 They stood there at the car, stayed in that
19 car, looking at the abandoned car for a little while.
20 Then they drove into the parking lot, dropped the lady
21 off. She went to get in the car, and that car that was
22 in movement drove away with Mr. Carson driving.

23 At that point the Lexington Police Department
24 made a traffic stop on that car. Mr. Carson was
25 driving. The lady that jumped out of the car with

1 Mr. Carson at that time, Sharon Denise Johnson,
2 indicated: You are looking for Linwood Carson. He is
3 the one who did it. You need to talk to him.

4 Your Honor, law enforcement also, of course,
5 talked to the lady that was left at the abandoned car,
6 brought everybody back down to the station, found out
7 that Mr. Carson had, in fact, used Sharon Denise's car,
8 who had been left in the parking lot. That was her car.

9 Your Honor, he told different stories to these
10 two women, his friends, Tracey Furtick and Sharon
11 Johnson, about why he had been gone so long, why he
12 left. When he left, he didn't have money. When he came
13 back that night, he had a lot of money. He changed
14 clothes. He wouldn't talk to them about what had
15 happened.

16 Ms. Furtick, in fact, had given the Defendant
17 a ride supposedly to go back to pick up the car about
18 6:30 or 7. But when she went to the parking lot, all
19 the police were still there. The car was near the
20 police tape, and Mr. Carson told Ms. Furtick: Keep
21 driving. Keep driving. Don't stop. So, Your Honor, we
22 would have had all of that.

23 When they brought him back to the station, he
24 was under suspension for driving -- he was driving that
25 car, so he was under arrest for driving under

1 suspension.

2 At the time they were doing paperwork on that.
3 The detectives asked Officer Whitlock, who had chased
4 the person from the strip mall, to come see if possibly
5 this was the person that he had chased.

6 They did a show-up identification through a
7 one-way mirror, and Officer Whitlock was 100 percent
8 positive, that although the clothes were different, that
9 that was definitely the person he had chased. It was
10 the person who had dropped the bag with the merchandise
11 and the hammer.

12 Your Honor, at the time of his arrest, he had
13 left in Patrol Hazewinkle's car two pieces of crack
14 cocaine. It was .51-grams. That was analyzed by
15 S.L.E.D.

16 Also, Your Honor, during this investigation,
17 once they had him identified as the suspect, they used
18 his card from S.L.E.D. to see if it matched any of the
19 latents Detective Hill had lifted from all the different
20 businesses. There was a positive match on the inside of
21 a file cabinet at the Mediterranean Cafe.

22 I believe that's all the facts of the case.
23 Oh, there was also a footprint done, Your Honor. He had
24 left -- the Sheetrock where he kicked through on one of
25 the floor mats at First Franklin Financial, there was a

1 pretty good footwear impression.

2 Law enforcement had taken that floor mat,
3 photographed it, got measurements. After meeting with
4 the ladies, Ms. Johnson and Ms. Furtick, at the police
5 station, once the detectives knew that, in fact, he had
6 come and changed clothes, they went to his place, which
7 it was actually Ms. Johnson's house, with her permission
8 and collected all of his clothes, including his
9 Timberland boots.

10 Then Detective Hill took the boots and did a
11 footprint analysis and did an overlay that showed that
12 Mr. Carson's Timberland boot prints were consistent with
13 the footprint at First Franklin Financial. Those are
14 all the facts, Your Honor. He does have quite a lengthy
15 rap sheet whenever you are ready to hear it.

16 THE COURT: What is his prior record?

17 MS. AVENGER: Your Honor, I will give you the
18 whole record. From 1981, Your Honor, he started with a
19 grand larceny, where he got a Y.O.A. In April of '83 in
20 Richland County, he had a receiving stolen goods and a
21 trespassing. Also in April of '83, a shoplifting and
22 they violated his probation at that time.

23 August of '84 out of Richland County, he was
24 convicted of housebreaking, grand larceny, malicious
25 injury to personal property, and burglary tools. He has

1 an assault and battery, two counts, from '86. Burglary
2 third in '86. Two D.U.S.s in 1990.

3 In '91 a trespass. In '91 also a burglary
4 third. 1995, simple assault and battery and petty
5 larceny. In March of '97, unlawful carrying of a
6 pistol. In October of '99, Your Honor, he pled, it
7 looks like, to four counts of burglary second violent.
8 That was here in Lexington County.

9 We used and served on Mr. Carson and his
10 attorney certified convictions. I would ask you to
11 note; although those convictions were from October of
12 '99, it's important to note the incident dates of
13 those convictions are from '99, '98 and -- from '97,
14 '98, and '99. So although he pled to four or five in
15 October, it was a continuing course of conduct
16 throughout the '90s.

17 Your Honor, he was also revoked again in 1998.
18 He has six counts of criminal conspiracy from March of
19 2000. It looks like there was one more burglary from
20 January of 2000.

21 Your Honor, based on his prior record, we do
22 feel that a significant and substantial sentence would
23 be appropriate, and we are asking for consecutive
24 sentences.

25 THE COURT: Is there anything the victims or

1 officers would like to add before I hear from the
2 defense?

3 MS. AVENGER: Nothing from law enforcement,
4 Your Honor. When we spoke with the victims in
5 preparation of the trial, they all had money damage and
6 property damage, but they knew we were looking at that
7 time at life without parole, and they knew they would
8 get no restitution.

9 THE COURT: You have heard what the State had
10 to say. I will hear from Mr. Stockholm and Mr. Carson,
11 either one.

12 MR. STOCKHOLM: Your Honor, my client informs
13 me that he has a disagreement with the burglary in 2000
14 on that particular charge. He indicates he did not have
15 one.

16 Further, Your Honor, regarding the situation
17 we have, as you know, Mr. Carson has already been in
18 jail a year on this. In our pretrial, Your Honor, as
19 you were aware, this case was set to take three days.

20 I really ask the Court to consider the fact
21 that Mr. Carson has come up, he has admitted his guilt,
22 and he has saved valuable court time. This Court needs
23 to move many important cases.

24 Your Honor, I respectfully submit under Code
25 Section 17-25-50, the burglary seconds must be run

1 concurrent. Specifically, Your Honor, with the case of
2 LeGuard (phonetic) v. State, it states specifically if
3 the elements are the same on the continuous conduct,
4 they must be run concurrent.

5 That being said, Your Honor, given the fact
6 that this is a violent crime and he will be going away
7 for 85 percent of the time imposed, we would ask that
8 all charges be run concurrent, Your Honor.

9 THE COURT: I think the State's position was
10 it was not 85 percent; is that right?

11 MS. AVENGER: I don't believe it is, Your
12 Honor. It's serious and it's violent, but I don't
13 believe it's 85 percent because it only carries 15.
14 It's my understanding that only crimes that carry a
15 possible penalty of 20 can be 85 percent.

16 Based on his prior record, I don't know that
17 we could every say how long he would have to serve
18 before he would be parole eligible.

19 THE COURT: We can't think about that. It's
20 16-11-312 (b) is up to 15 years. It's violent. It's
21 serious. No Y.O.A., D.N.A. database, no P.T.I. It does
22 not say no parole. That's all I can tell you about what
23 the statute says.

24 MR. STOCKHOLM: Your Honor, if your
25 interpretation is more generous than what I found, I

1 would certainly go with your interpretation.

2 (Pause).

3 MR. STOCKHOLM: Your Honor, my client has
4 indicated he would, with his family, be able to pay some
5 restitution if that would help with the Court.

6 THE COURT: Anything else, Mr. Stockholm?

7 MR. STOCKHOLM: No, Your Honor.

8 THE COURT: Mr. Carson, what do you want to
9 say? You have heard what the State's position is on
10 this thing.

11 THE DEFENDANT: Nothing else I want to say,
12 Your Honor.

13 THE COURT: Okay. We did say that the
14 burglary tools carried five years?

15 MR. STOCKHOLM: Yes, sir.

16 (Pause).

17 THE COURT: For the burglary, 2006-249, 15
18 years; 06-250, 15 years; 251, 15 years; 252, 15 years;
19 253, 15 years; 254, 15 years.

20 Then on the possession of burglary tools, so
21 there won't be any question or any disputes on the
22 statute, it will be 15 years concurrent on the
23 burglaries, five years on the burglary tools,
24 consecutive to the burglary, and three years on the
25 possession of crack, consecutive to the other charges.

1 MS. AVENGER: Thank you, Your Honor.

2 THE COURT: That's a total of 23. Thank you.

3 We will start back at one o'clock.

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh 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 \ and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 30th day of January, 2006.

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

January 31, 2007

L Coconut Pantsari

Court Reporter

ORIGINAL

FILED

STATE OF SOUTH CAROLINA

County of Lexington 2006 DEC 28 2:49

In the Court of Common Pleas

A TRUE COPY

LINWOOD CARSON JR. BETH A. CARRIGG
 Full name and prison number (if any) of Applicant, CLERK OF COURT
 LEXINGTON SC

Lex. Co. C.C.O.P., G.S. & E.C.

APPLICATION FOR

POST-CONVICTION RELIEF

vs.
State of S.C.
 Name of Respondent.

2006-CP32-4563

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention Broad River Correctional Institution
Columbia, South Carolina
2. Name and location of Court which imposed sentence LEXINGTON County Court of
GENERAL SESSIONS
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a)	<u>2006-GS-32-249</u>	<u>Burglary 2nd</u>	<u>D. Burg 2nd - 2006-GS-32-249</u>
(b)	<u>2006-GS-32-250</u>	<u>Burglary 2nd</u>	<u>E. Burg 2nd - 2006-GS-32-252</u>
(c)	<u>2006-GS-32-251</u>	<u>Burglary 2nd</u>	<u>F. Poss. of Burg. Tools - 2006-GS-32-29</u>
	<u>G. 2005-GS-32-4184</u>	<u>POSS. CRIM</u>	
4. The date upon which sentence was imposed and the terms of the sentence:

(a)	<u>Jan. 30, 2006</u>	<u>- 15 yrs -</u>	<u>D. Jan 30, 2006 - 15 yrs</u>
(b)	<u>Jan 30, 2006</u>	<u>- 15 yrs -</u>	<u>E. Jan 30, 2006 - 15 yrs</u>
(c)	<u>Jan. 30, 2006</u>	<u>- 15 yrs.</u>	<u>F. Jan 30, 2006 - 5 yrs</u>
	<u>G. Jan 30, 2006 - 3 yrs</u>		

5. Check whether a finding of guilty was made
- (a) after a plea of guilty ☒ _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Y400571A NO
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) Attorney has failed to file a notice of appeal, even though
 - (b) I requested that he do so, I file a notice of appeal
 - (c) myself on Feb 9, 2006, but the Clerk of Court has failed to respond.
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) _____
 - (c) _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) Attorney has failed to file notice of appeal, to investigate, failed to object.
 - (b) _____
 - (c) _____

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

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

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

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

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

(a) INVESTIGATIVE ASSISTANCE OF TRIAL COUNSEL, THIS MY FIRST P.C.R. APPLICATION.

(b) _____

(c) _____

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

(a) your arraignment and plea? YES

(b) your trial, if any? _____

(c) your sentencing? YES

(d) your appeal, if any; from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? 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. GENE STOCKHOLM, PLEA AND SENTENCING
POST OFFICE BOX 4052, 1031 CENTER ST. W. COLA, S.C. 29171

ii. _____

iii. _____

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

i. PLEA AND SENTENCING

ii. _____

iii. _____

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

REDUCTION IN THE NUMBER OF INDICTMENTS, BECAUSE MOST ARE DEFECTIVE
AND FOR A COMPLETE DISMISSAL.

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

NO

STATE OF SOUTH CAROLINA

County of

LEXINGTON

2006-CP32-4563 VERIFICATION

I, LINWOOD CARSON JR., 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.

LINWOOD CARSON JR.

SWORN to and subscribed before me this 14thday of December, 19 2006

Donella Stearns
Notary Public

(L.S.)

My Commission Expires: MARCH 17 2016

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2006 DEC 28 2:49

FILED

2006 CP32-4563
APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, LINWOOD CARSON JR., 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.

LINWOOD CARSON JR.
Applicant

SWORN or affirmed to and subscribed before me this

14th day of December, 19 2006

Donella Stearns
Notary Public

My Commission Expires MARCH 17 2016

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

2006 DEC 28 2:49

FILED

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

2006-CP-32-4563

Linwood Carson, Jr.,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

Paul A. Young
 Clerk of Court
 Lexington, SC

2007 APR -2 AM 11:42

FILED

NKE

Respondent, making its Return to the application for post conviction relief (PCR) filed December 28, 2006, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the November 2005 term of the Lexington County Grand Jury for possession of less than one gram of ice, crank, or crack cocaine- 1st offense (05-GS-32-4184), burglary- 2nd degree (06-GS-32-249), burglary- 2nd degree (06-GS-32-250), burglary- 2nd degree (06-GS-32-251), burglary- 2nd degree (06-GS-32-252), burglary- 2nd degree (06-GS-32-253), burglary- 2nd degree (06-GS-32-254) and possession of burglary tools (06-GS-32-255). Gene Stockholm, Esquire, represented him. On January 30, 2006, Applicant pled guilty as indicted. He was sentenced by the Honorable Larry R. Patterson to confinement for three (3) years for possession of crack, five (5) years for possession of burglary tools and fifteen (15) years for each of the burglary convictions. The burglary convictions are to run concurrent to each other. The possession of burglary tools

conviction and the possession of crack conviction are to run consecutive to the burglary convictions. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any of the above not so attached will be forwarded upon receipt.

II.

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

1. Attorney failed to file appeal;
2. Attorney failed to investigate; and
3. Attorney failed to make certain objections.

III.

Respondent interprets each of Applicant's allegations to be claims that he received ineffective assistance of counsel. In a post-conviction relief action, 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, 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, Id.

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, Id. 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, 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 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, 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).

Respondent submits that 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, 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.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State 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.

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

VI.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DANIEL E. GRIGG
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

March 29, 2007.

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE 11TH JUDICIAL CIRCUIT
Case No.: 2006-CP-32-4563

Linwood Carson, # 263672,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

ORDER OF CONTINUANCE

RETHA C. HIGGS
CLERK OF COURT
LEXINGTON, SC

2009 FEB 17 P 1:39

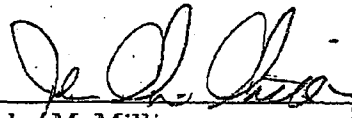
FILED

This is a post-conviction relief action that was scheduled for an evidentiary hearing on February 4, 2009. Before the term convened, Counsel of Applicant requested that this Court continue the hearing. One of the Applicant's witnesses, Shanon Denise Johnson, moved and was not contacted for the hearing. Respondent did not oppose the continuance request. This Court granted the continuance upon good cause shown.

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief hearing is **CONTINUED** to the next term of post-conviction relief court.
2. The Applicant is remanded to the custody of the Respondent during the pendency of this case.

IT IS SO ORDERED.


John M. Milling
Presiding Eleventh Circuit Judge

February 13, 2009

Douglas, South Carolina

COPY

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Linwood Carson,
Applicant,FIRST AMENDED
APPLICATION FOR POST-
CONVICTION RELIEF

v.

The State of South Carolina,
Respondent.FILED
JUN SEP -2 P 1:17
JETH A. CAMPBELL
CLERK OF COURT
LEXINGTON, SC

The Applicant above-named, through undersigned counsel, hereby files his First Amended Application for Post-Conviction Relief, showing this Court the following:

1. In the underlying criminal proceeding, Applicant was represented by *inter alia* Gene Stockholm, Esq. in connection with certain charges arising out of an incident occurring on January 30, 2005, including six counts of burglary, one count of possession of burglary tools and one count of possession of crack cocaine.
2. In early January 2006, the prosecution offered to allow Applicant to "plead this case for the 15 years violent on the burglaries." At that time, defense counsel Stockholm was under the belief that a conviction of a "violent" offense obligated the defendant to serve 85% of his sentence. For this reason, Applicant rejected the proffered plea agreement.
3. Thereafter, the prosecution served Applicant with notice that the State would seek a sentence of life without parole under the recidivist statute. On the day of trial, the State offered and Applicant accepted a plea agreement under which the "life without parole" charge would be dropped in exchange for Applicant's plea of guilty to each of the six burglary charges, as well as the other charges for possession of burglary tools and crack cocaine. As a result of this plea, the Court sentenced Applicant to 15 years on each of the six burglary counts to be served concurrently, plus another 5 years for the possession of burglary tools and another 3 years for the

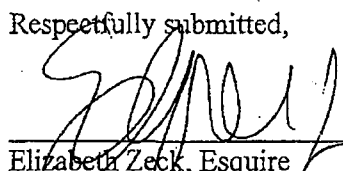
possession of crack cocaine to be served consecutive to the burglary charges for a total of 23 years.

4. Defense counsel's advice concerning the offer of "15 years violent on the burglary charges" was deficient because it was premised on the mistaken belief that Applicant would be required to serve 85% of the 15 year sentence before he became parole eligible. Had Applicant been correctly advised that the 85% rule applied only to sentences of at least 20 years, Applicant would have accepted the "15 years violent" offer. Applicant was prejudiced because had he accepted this offer, he would have received a significantly lower sentence than the 23 year sentence that was ultimately imposed.

5. Applicant requests that his current sentence be vacated and that this case be remanded for a re-sentencing hearing. Pursuant to the instructions of the South Carolina Supreme Court in Davie v. State, 381 S.C. 601, 617, 675 S.E.2d 416, 424 (2009), the sentencing court should be instructed to "take into consideration the State's prior fifteen-year plea offer" and "direct[ed] that any sentence [Applicant] receives should not exceed the original twenty-[three]-year sentence."

Respectfully submitted,

By:


Elizabeth Zeck, Esquire
Willoughby & Hoefer, P. A.
930 Richland Street
P.O. Box 8416
Columbia, SC 29202-8416
(803) 252-3300
ezeck@willoughbyhoefer.com

Attorney for Linwood Carson

Columbia, South Carolina
August 31, 2009

COPY

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Linwood Carson,
Applicant,

CERTIFICATE OF SERVICE

v.

The State of South Carolina,
Respondent.

This is to certify that I have caused to be served this day one (1) copy of Applicant's
First Amended Application for Post Conviction Relief by placing same in the care and
 custody of the United States Postal Service with first class postage affixed thereto and addressed
 as follows:

A. West Lee, Esquire
 SC Attorney General's Office
 Post Office Box 11549
 Columbia, SC 29211

Clark Fancher
 Clark Fancher

Columbia, South Carolina
 September 1, 2009

BETH A. CARRIGG
 CLERK OF COURT
 LEXINGTON, SC

2009 SEP -2 P 1:17

FILED

1 STATE OF SOUTH CAROLINA
2 COUNTY OF LEXINGTON

IN THE CIVIL COURT

3
4
5 LINWOOD CARSON, JR.,)

6 Plaintiff,)

7 -vs-)

8 STATE OF SOUTH CAROLINA,)

9 Defendant.)

TRANSCRIPT OF RECORD

06-CP-32-4563

10
11 September 3, 2009
12 Lexington, South Carolina

13
14 B E F O R E:

15 HONORABLE R. KNOX MCMAHON, Judge.
16
17

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

19 ELIZABETH ANN ZECK, Esquire
20 Attorney for the Plaintiff

21 ADAM WEST LEE, Esquire
22 Attorney for the State

23 L. COCONUT PANTSARI, R.P.R.
24 Circuit Court Reporter
25

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(Court Reporter's Note: No exhibits were marked or received into evidence).

1 (The following proceedings are reported on
2 September 3, 2009.)

3 THE COURT: Mr. Lee.

4 MR. LEE: Yes, Your Honor. . This is Linwood
5 Carson, Jr. versus the State of South Carolina, CP
6 Number 2006-CP-32-4563. It comes to the Court by way of
7 application for post conviction relief dated
8 December 28, 2006.

9 The applicant was indicted at the
10 November 2005 term of the Lexington County grand jury
11 for possession of less than one gram of ice, crank or
12 crack cocaine first offense, 05-GS-32-4184, and six
13 counts of burglary second degree. Those are
14 06-GS-32-249, 250, 251, 252, 253, and 254, and one count
15 of possession of burglary tools, in this case being a
16 hammer, 06-GS-32-255.

17 The applicant was represented by Gene
18 Stockholm, and on January 30, 2006, the applicant pled
19 guilty as indicted. He was sentenced by the Honorable
20 Larry R. Patterson to confinement for a period of three
21 years for possession of crack, five years for possession
22 burglary tools, and 15 years for each of the burglary
23 convictions.

24 Each of the burglary convictions were to run
25 currently with one another. The possession of crack and

1 possession of burglary tools, the three years and five
2 years for those two, were tacked on consecutively to the
3 burglary convictions.

4 The applicant's current application alleges
5 that he is being held in custody unlawfully for the
6 following reasons. His application alleges that the
7 attorney failed to file an appeal, failed to
8 investigate, and failed to make certain objections.

9 However, the applicant's attorney, Elizabeth
10 Zeck, subsequently sent us by letter dated September 1,
11 2007, with an amended application for post conviction
12 relief.

13 In that amended application, it alleged the
14 following. The applicant's trial attorney,
15 Mr. Stockholm, misinformed the applicant regarding the
16 burglary second sentence, the possible sentence
17 associated with burglary second.

18 He informed him that -- the applicant alleges
19 that Mr. Stockholm informed him that it was an
20 85 percent sentence. As a result of that advice, the
21 applicant elected to turn down that offer and proceeded
22 to trial.

23 The applicant alleges had he not been
24 misinformed regarding the 85 percent rule, he would have
25 taken the original plea offer. I believes that sums up

1 his allegations at this time. I will turn it over to
2 the applicant's attorney, Mr. Elizabeth Zeck, to further
3 elaborate. Thank you.

4 THE COURT: Thank you, Lee. Ms. Zeck.

5 MS. ZECK: Elizabeth Zeck, Willoughby and
6 Hoefer, on behalf of the applicant, Linwood Carson. We
7 would pretty much agree with the statement that has been
8 made by the State regarding the procedural background of
9 this case.

10 Basically to summarize the position of the
11 applicant, although we recognize that parole eligibility
12 is a collateral consequence of sentencing, which
13 typically there is no problem in terms of failing to
14 advise before entering a guilty plea, but when you have
15 a situation, as we say here, where you had erroneous
16 information given to the defendant from his counsel
17 concerning the collateral effects of a guilty plea,
18 which in this case would have been the fact that the
19 85 percent rule should have applied to an earlier
20 offer -- well, let me back up a minute.

21 One of the things that is a little confusing
22 in this case is sort of a history of multiple plea
23 offers. Mr. Stockholm was actually the second attorney
24 to get involved in this case.

25 If we start at that point in the case in

1 November of 2005, there are the three different types of
2 charges, the six burglary counts, the possession of
3 burglary tools, and the crack cocaine that are pending
4 at that time.

5 There is, according to the record as
6 articulated by the solicitor who handled the case, there
7 was at some point in that period an offer made to plead
8 the case for 15 years violent on the burglaries.

9 Mr. Carson will testify that in consultation
10 with his lawyer, he was under the impression that if he
11 accepted that plea, to take the 15-year violent on the
12 burglaries for the case, that he was, because of the
13 violent issue, he was going to be having to serve
14 85 percent of a 15-year sentence or 12 and three
15 quarters years. That was unacceptable to him because of
16 the 85 percent rule.

17 Subsequent to those plea discussions, notice
18 of intent to seek life without parole was filed and
19 served by the State based on Mr. Carson's prior record.
20 Then at trial, after a jury was selected, the parties
21 ultimately came to the plea deal which resulted in the
22 sentence that the State has articulated, namely that
23 Mr. Carson pled guilty to all charges.

24 The issue of concurrent versus consecutive was
25 to determined by the Court, and Judge Patterson ruled

1 that the burglaries would be concurrent and that the
2 other two sentences would be served consecutively.

3 So the problem we have here is inaccurate
4 advice being given to the applicant regarding the effect
5 of an earlier plea bargain, which caused him to reject
6 that earlier plea bargain.

7 We are here today to say that had he been
8 properly advised that there was no -- that this was not
9 an 85 percent situation, it's a 15-year rather than a
10 20-year sentence, a fact which was stated on the record
11 by the prosecution at the sentencing hearing, that he
12 would have accepted that earlier 15 years violent on the
13 burglaries for the case.

14 He would have taken that, and he would have
15 been sentenced to 15 years violent and would have got
16 whatever he got, which would not have been 85 percent.
17 The reason he rejected that was because of the
18 85 percent.

19 We would argue that the legal impact of that
20 85 percent issue, the erroneous advice on that, is the
21 same as the situation that was recently addressed by our
22 Supreme Court in the Davie versus State case. I have a
23 copy for the Court. May I approach, Your Honor?

24 THE COURT: Thank you. Yes, ma'am.

25 (Hands to Court.)

1 MS. ZECK: This is a very recent case,
2 March 9, 2009, decided basically by a unanimous Court.
3 I believe Justice Pleicones may have reduced himself for
4 some reason.

5 Basically what happened in that case was that
6 there was basically a technical screw up, and the
7 defense lawyer in the case didn't even get the plea
8 offer. He was moving. It got lost in the transition,
9 so he didn't get the plea offer. So obviously since he
10 didn't get it, he didn't inform his client about it.

11 Then to compound that problem, when the
12 solicitor recited to the Court, oh, yes, there had been
13 this offer of -- oddly enough 15 years violent for a
14 burglary -- the defense lawyer did not at that point
15 jump up and say, wait a minute. I don't know anything
16 about that offer. I never had an opportunity to present
17 that to my client.

18 So the Supreme Court held that the P.C.R.
19 Court had erred in failing to recognize that as being
20 inadequate assistance of counsel. What is more
21 important is the relief that they granted.

22 The relief they granted in that case was
23 rather than to send the whole case back to start over
24 again, which is your typical P.C.R. situation, what they
25 held was that since you had a situation where the plea

1 was never communicated to the client, it's not really
2 appropriate to enforce it.

3 But, on the other hand, it's also not
4 appropriate to potentially penalize the applicant for
5 exercising his constitutional rights in the P.C.R.
6 proceeding.

7 So what the Court ordered to happen in that
8 case was that the case would be remanded to the
9 sentencing Court and resentencing. So the question
10 would be to consider the case, given the fact that there
11 had been a prior offer, which had it been communicated
12 in a timely fashion to the Defendant, it would have been
13 accepted.

14 We would argue this case is, while obviously
15 not 100 percent factually similar, although the
16 sentences are kind of eerily reminiscent because the
17 offer that didn't get through was 15 years violent for
18 burglary, what the guy ended up with was 27 years
19 because he had some other charges that they would have
20 dropped in the original plea.

21 But what we have here is a sentence that was
22 potentially -- a plea agreement that was communicated,
23 but it was communicated erroneously. It was
24 communicated with this wrong information about the
25 85 percent rule. Because of the erroneous information,

GENE STOCKHOLM -- DIRECT -- MS. ZECK

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1 the Defendant made the decision to reject it.

2 Had the offer been properly communicated
3 without that error, he would have accepted it and been
4 sentenced 15 years violent on the case, and he would
5 have been better off than the 23 years he ended up
6 getting.

7 THE COURT: So Mr. Carson wants a
8 resentencing?

9 MS. ZECK: That is correct, Your Honor.

10 THE COURT: If he were to get a resentencing,
11 he couldn't get greater than 15 years concurrent on the
12 burglaries, plus three, plus five consecutive?

13 MS. ZECK: Correct. There would also be
14 instructions to the trial Court and the solicitor to
15 consider that there was that original plea that was made
16 and improperly communicated. They were supposed to
17 consider that in the sentencing.

18 THE COURT: All right. I would be glad to
19 hear your testimony. You may call your first witness.

20 MS. ZECK: The applicant would call
21 Mr. Stockholm.

22 THE COURT: Mr. Stockholm, if you would come
23 around and be sworn, please.

24 GENE STOCKHOLM, being
25 first duly sworn, testifies as follows:

1 CLERK: State your name for the record,
2 please.

3 THE WITNESS: My name is Gene Stockholm. I'm
4 an attorney with the Oswald law firm.

5 DIRECT EXAMINATION

6 BY MS. ZECK:

7 Q Mr. Stockholm, when were you appointed as defense
8 counsel for Mr. Carson?

9 A I believe it was in November of 2005.

10 Q And you were the defense attorney for Mr. Carson.
11 When were you appointed?

12 A I was appointed, I believe, in November of 2005.

13 Q What charges was Mr. Carson facing at that time?

14 A He was facing six burglary second charges violent,
15 he was facing a possession of a burglary tool, and
16 possession, I think, of crack cocaine less than a
17 gram, if I remember correctly.

18 Q Did you subsequently have some plea discussions
19 with the assistant solicitor who was handling the
20 case, who I believe was Angela Avinger?

21 A Yes, I did.

22 Q She subsequently informed the Court of the nature
23 of those plea discussions, and what she told the
24 Court -- and I believe you have a copy of the
25 transcript there.

GENE STOCKHOLM -- DIRECT -- MS. ZECK

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1 MS. ZECK: May I approach and provide the
2 Court with a copy of the transcript?

3 THE COURT: I have a copy.

4 MS. ZECK: If you would turn to page 5, Your
5 Honor.

6 THE COURT: Transcript of January 30, 2006?

7 MS. ZECK: That's correct.

8 THE COURT: Page 5.

9 BY MS. ZECK:

10 Q If you would turn to page 5. Ms. Avinger is
11 representing to the Court that she had some
12 discussions with you. What she said was that
13 Mr. Stockholm also had an opportunity to plead this
14 case for 15 years violent on the burglaries, and
15 that never happened. Is that the discussion that
16 you were referring to?

17 A Well, as I have told you, I had several discussions
18 with Ms. Avinger. I was the second attorney on the
19 case.

20 Q I understand that, sir.

21 A We did have a discussion about doing a plea
22 nonviolent, which was the original offer. When
23 Lisa McPherson was the attorney, that offer had
24 been put forth. I was not involved. Apparently it
25 was turned down.

1 As the case kept going on, I had had several
2 discussions with Mr. Carson, who was now willing to
3 accept that offer. I had gone to Ms. Avinger at
4 least twice, and I think I mentioned to you,
5 Ms. Zeck, I had said, look, bring him over
6 tomorrow. We can have this case done in 30
7 minutes.

8 The solicitor was adamant. They were not
9 going to offer the nonviolent. They finally said,
10 we will do violent on all six burglaries, and the
11 judge will decide on the other two charges. That
12 is pretty much where we left it, and then we wound
13 up getting served with life without parole.

14 Q Mr. Stockholm, let me back up and if I can direct
15 your attention to the question. What Ms. Avinger
16 is telling the Court in January of '06 is that you
17 had an opportunity to plead this case for the 15
18 years violent on the burglaries. Is that what she
19 told the Court?

20 A Yes, that's what she told the Court.

21 Q Do you have any reason to believe that she would be
22 leaving -- why she would leave things out of that
23 description, that it's not a complete description.

24 A No. I think she is referring to the burglaries.
25 They were always the main concern in the case,

1 except for the fact that once we were served with
2 life without parole, that became a real priority
3 trying to deal with that.

4 Q I understand that, sir. Let me ask you this. In
5 your handling of criminal cases, when somebody says
6 they want to settle a case, are they typically
7 referring to all the charges pending against the
8 defendant at that time?

9 A It can be. I mean, in this case the main concern
10 we had were the burglary violents because of the
11 fact that Mr. Carson had a prior string of burglary
12 convictions from 1999.

13 I will say I had to refresh my memory from
14 this transcript. I did not remember that. We were
15 really concerned that, you know, if we went to
16 trial, there was an excellent chance he could wind
17 up with life without parole.

18 Q That was at the point when the State had served you
19 with the life without parole notice, correct?

20 A Right. They had made the offer that Ms. Avinger
21 was talking about. They had offered that before we
22 were served with life without parole.

23 Q Correct.

24 A They were basically holding that over Mr. Carson.
25 If you don't this, we are going to hit you with

1 life without parole. Unfortunately due to his
2 prior record, they had the legal basis to do that,
3 and they were trying to pressure him to then -- you
4 know, to plead.

5 Q Let's talk about that 15 years violent. Did you
6 have a discussion with -- let me turn your
7 attention to page 31 of the transcript. This is
8 obviously a little bit later in the hearing. If
9 you turn back to page 30, you will agree that at
10 the top of page 31, that is you speaking; is it
11 not, sir?

12 A From the bottom of page 30, yes, that was the
13 discussion we had about the sentencing of the
14 burglary seconds.

15 Q What you told the Court is you were arguing to the
16 Court, what you said: That being said, Your Honor,
17 given the fact that this is a violent crime and
18 he -- meaning Mr. Carson -- will be going away for
19 85 percent of the time imposed, we would ask that
20 all charges be run concurrent?

21 A That's correct.

22 Q That's what you told the Court?

23 A Yes.

24 Q That's what you were telling Mr. Carson when you
25 were considering the offers of violent was that he

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1 was looking at serving 85 percent of whatever he
2 pled to?

3 A Yes.

4 Q As it turns out, that is incorrect; is it not?

5 A Yes, that is incorrect.

6 Q So to the extent that that was advice you gave
7 Mr. Carson and he relied on it, that was erroneous
8 advice; correct, sir?

9 A Yes, that was incorrect. I think I had mentioned
10 to you, back in 2005, 2006, there was a statute in
11 place under violent offenses that if you had
12 already been convicted of a violent offense and
13 subsequently were convicted of it again or pled
14 guilty, whether the statute in question allowed for
15 parole or not, you would not be eligible for
16 parole. This was back in 2005, 2006.

17 At some point I interpreted that to mean he
18 would have to do -- because he would not be
19 eligible for more time -- but that is correct, I
20 did tell him 85 percent.

21 Q And that was something that you previously told me
22 that in your discussions with him about whether or
23 not to accept the 15 years violent that was
24 discussed prior to the service of the life without
25 parole, that that was an important factor for him.

1 He didn't want to serve the 85 percent?

2 A He didn't want to serve anymore time, as we had
3 discussed. He had three main contentions when I
4 was appointed to him. He wanted back the plea for
5 the nonviolent that had been offered with
6 Ms. McPherson.

7 He was convinced there was a conspiracy
8 against him. The Town of Lexington had filed
9 complaints to that effect, but those complaints had
10 been investigated and nothing had happened.

11 Finally, he was consistent to me that the two
12 women who were with him in the car, Ms. Johnson and
13 Ms. Furtick -- once again, I will tell you I did
14 not remember their names until I read the
15 transcript again -- would support him in a trial.

16 He was adamant on all three points, and he was
17 extremely upset, and I never really discussed with
18 him about the prior plea offer of nonviolent. I
19 kept telling him, you know, that offer is gone.
20 There is nothing we can do about that.

21 Q I understand that. The point is that the reason he
22 wanted the nonviolent back was because he was
23 concerned about the 85 -- what you and he both
24 believed to be the case with regard to the
25 85 percent rule on violent?

1 A Yes. He was concerned about doing anymore time
2 than he would have gotten under the original offer.
3 I can tell you, normally I do quite a bit of
4 criminal work. Normally, the solicitor does not
5 always make their bottom line offer when they make
6 a plea offer. There is a give and take back and
7 forth as you investigate the case.

8 For whatever reason the Solicitor's Office in
9 this case, they apparently made what they thought
10 was their best offer at the beginning, and they
11 would not budge after that.

12 Q Just so we are clear on this though, it is true
13 that Mr. Carson was concerned that the 15 years
14 violent on the burglaries would require him -- if
15 he plead guilty to that, when Ms. Avinger had
16 offered that prior to the service of the life
17 without parole notice, that he was concerned that
18 he was going to have to serve 85 percent of that
19 15-year violent; correct?

20 A Well, yes.

21 Q You also agree, I believe, without belaboring this
22 point too much that that was advice that turned out
23 to be wrong, he wasn't going to have serve
24 85 percent for pleading to violent?

25 A No. Again, it's related, as we have talked about,

1 relative to parole status. The statute that I
2 looked at back at that time seemed to indicate that
3 not only would he not be eligible for parole, but
4 he would have to do more time because of the prior
5 convictions.

6 Q So you had a reason for your interpretation, but
7 that reason was wrong?

8 A As far as the 85 percent, yes.

9 Q If you had been able to -- let me say this right.
10 In your mind and thus in Mr. Carson's mind, the
11 difference between -- let me back up. I believe
12 you stated that what he wanted was the 15-year
13 nonviolent, correct?

14 A Yes.

15 Q And the reason he wanted the nonviolent is because
16 the nonviolent would definitely not have any of the
17 85 percent service requirement, correct?

18 A Correct.

19 Q So if you had been able to get him a sentence which
20 was 15 years and he didn't have 85 percent, do you
21 have any reason to believe he would not have
22 accepted that?

23 A I think if I could have gotten the original
24 offer -- I talked to Mr. Carson several times -- if
25 I could have gotten the original offer back, he

1 would have accepted it. He told me that several
2 times.

3 Q So if he could have gotten 15 years and he wouldn't
4 have to serve 85 percent of that, that would have
5 made him happy?

6 A If it was the original offer, yes. He said he
7 would -- and I have already testified -- he and I
8 had agreed if I could get the original offer, he'd
9 come over from the jail, and we would take care of
10 it in a half hour.

11 Q That's fine.

12 MS. ZECK: That's all we have from
13 Mr. Stockholm.

14 THE COURT: Thank you, Ms. Zeck. Mr. Lee.

15 MR. LEE: Yes, Your Honor.

16 CROSS EXAMINATION

17 BY MR. LEE:

18 Q Mr. Stockholm, you weren't the first lawyer on this
19 case; were you?

20 A No, sir, I was not.

21 Q In fact, Lisa McPherson was the first lawyer?

22 A Yes, sir, she was.

23 Q Was she also involved in the plea negotiations on
24 behalf of the applicant?

25 A She had some involvement with the first plea that

1 was offered. That plea had already been proffered
2 and rejected before I was brought into the case.

3 Q What was that plea offer?

4 A It was a 15-year nonviolent plea on the burglaries.

5 Q And that plea offer had been rejected?

6 A Yes, sir.

7 MR. LEE: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, sir.

10 BY MR. LEE:

11 Q May I refer you to page 4. You actually have a
12 copy. May I refer you to page 4, line 14, and
13 please acknowledge who it was that is speaking in
14 this instance.

15 A Line 14 is Ms. Avinger is speaking to the Court.
16 She was the prosecutor.

17 Q And she is speaking regarding the plea offer that
18 was made, the second plea offer, in fact, that was
19 made to Ms. McPherson. Would you read that
20 paragraph, please.

21 A It says: Then later in the case I made an offer to
22 Ms. McPherson in the Public Defender's Office. It
23 was for a negotiated 15 years. I believe it was
24 violent. I don't believe it was ever offered
25 nonviolent.

- 1 Q Just for clarification would you read the paragraph
2 above that to state the first plea offer that was
3 made.
- 4 A Starting at line 10, Ms. Avinger: Yes, sir, Your
5 Honor. Solicitor Myers actually first had this
6 case. He did make some type of offer to
7 Ms. McPherson. It was a straight-up plea to the
8 six burglaries.
- 9 Q Then later in the case, she made the negotiated 15
10 years violent. She said it was violent. She said
11 that she didn't believe it was ever nonviolent,
12 correct?
- 13 A Yes, sir.
- 14 Q To your recollection the original offer was 15
15 years nonviolent, but when Ms. Avinger had it, she
16 said it was 15 years violent?
- 17 A Right. She offered me -- or I should say
18 Mr. Carson to me as his attorney -- 15 years
19 violent.
- 20 Q That's addressed on page 5. The reason I bring
21 this up is that is either a mistake on her part,
22 Ms. Avenger's part, which would, would it not, in
23 your opinion make it also possible that she would
24 have made a mistake in reading off that he was
25 offered to plead the whole case?

- 1 A That's certainly an interpretation you could have,
2 sir.
- 3 Q Another interpretation of that sentence, would it
4 not be, when she said: I'm sorry. Mr. Stockholm
5 also had an opportunity to plead this case for 15
6 years violent on the burglaries. Would not another
7 interpretation of that sentence put the focus on
8 the phrase, on the burglaries?
- 9 A Yes, sir.
- 10 Q So it is entirely possible then that the initial
11 plea offer that was made to you was on the
12 burglaries alone, correct?
- 13 A Well, it could be.
- 14 Q Is that your understanding of the initial plea
15 offer that was made to you?
- 16 A The plea offer that was made to me was 15 years
17 nonviolent on the burglaries and that the judge
18 would decide what would happen on the possession of
19 the hammer.
- 20 Q You just said nonviolent.
- 21 A Violent.
- 22 Q Violent was the plea offer that was made to you.
23 You said it was just on the burglaries?
- 24 A The burglaries would all be violent, and the offer
25 was they would all run nonviolent -- excuse me --

1 they would all be violent, run concurrent, and the
2 judge would decide on the possession of the crack
3 less than one gram, I believe, and also on the
4 burglary weapon.

5 Q So the judge was not obligated to run all of the
6 charges, including possession, concurrent; correct?

7 A No.

8 Q Okay.

9 A But as I said, our concern was the burglary
10 seconds. There was a big argument going on with
11 the solicitor and myself about whether the
12 burglaries could be sentenced consecutively or
13 concurrently.

14 I took the position that they had to -- it
15 didn't matter. They had to be sentenced concurrent
16 under the statute. Fortunately Judge Patterson
17 agreed with me on that.

18 Q Actually you led me perfectly into my next
19 question. What was the sentence that the applicant
20 ended up getting on the burglaries?

21 A He got a concurrent sentence on all six burglaries
22 under the statute, 17-25-50 maybe. I think that
23 might have been the statute.

24 Q What was the number of years he received?

25 A He received 15.

1 Q Am I correct in thinking that that's the exact same
2 ultimate sentence on the burglaries that he was
3 offered by you in the plea?

4 A Yes, sir.

5 Q And while it is possible that if the applicant
6 would have pled to the burglaries initially, the
7 initial offer that was made to you, the judge could
8 have opted to run those two other charges
9 concurrently with the burglary charges, but he
10 could have also opted to run them consecutively as
11 he did. Is that not possible?

12 A Yes, that would have been the judge's discretion.

13 Q Right. So it's purely speculative to assume that
14 he would have received a lesser sentence if he had
15 taken the plea?

16 A I can't really answer that, sir. I can't tell you
17 what the judge would do. I mean, the judge had the
18 discretion on what they offered. The judge could
19 have run them concurrent or the judge could have
20 run them consecutive, at the judge's discretion.

21 Q Right. So if you were to take a stance on that,
22 you would be speculating?

23 A Yes.

24 MR. LEE: May I beg the Court's indulgence for
25 a moment?

GENE STOCKHOLM -- CROSS -- MR. LEE

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1 THE COURT: Yes, sir.

2 (Pause).

3 BY MR. LEE:

4 Q So when you were advising the applicant -- well,
5 let me ask you this first. When you were involved
6 in plea negotiations, did you keep the applicant
7 informed of the negotiations?

8 A Yes, I did.

9 Q When you were advising him of the 15 years violent,
10 you did admit that you advised him that it was
11 85 percent?

12 A That is correct.

13 Q However, is he current serving 85 percent?

14 A No, sir.

15 Q Now, who ultimately made the decision to take the
16 plea offer?

17 A Mr. Carson did.

18 Q Did you influence or coerce him in any way to take
19 that plea offer?

20 A No, sir. I told him I was absolutely sure under
21 the sentencing statute that Judge Patterson would
22 have to run it concurrent on those sentences and
23 that if I was wrong, he could P.C.R. me on that,
24 but I was absolutely sure I was right.

25 Q I don't want to belabor this point too much, but,

1 again, he was offered 15 years violent on the
2 burglaries to the best of your recollection?

3 A Yes, sir.

4 Q The other two were to be taken for consideration in
5 sentencing?

6 A Yes, sir.

7 Q Ultimately what did he get for the burglaries?

8 A Fifteen years concurrent on all charges, on
9 burglary second.

10 MR. LEE: Thank you, Your Honor. No further
11 questions at this time.

12 THE COURT: Redirect, Ms. Zeck?

13 MS. ZECK: I don't have any.

14 THE COURT: Thank you, Mr. Stockholm. You may
15 step down.

16 (Witness leaves the witness stand.)

17 MS. ZECK: We would call the applicant,
18 Linwood Carson.

19 THE COURT: If you would come around, please,
20 Mr. Carson, to be sworn.

21 MR. LEE: Your Honor, may we excuse
22 Mr. Stockholm?

23 THE COURT: Any objection, Ms. Zeck?

24 MS. ZECK: That's fine with me.

25 THE COURT: You may be excused, Mr. Stockholm.

1 LINWOOD CARSON, JR., being
2 first duly sworn, testifies as follows:

3 THE COURT: Mr. Stockholm, I think I take that
4 back. How about stay until after Mr. Carson testifies
5 for me, please. It shouldn't be but a few more minutes.

6 DIRECT EXAMINATION

7 BY MS. ZECK:

8 Q Mr. Carson, would you please state your name for
9 the record.

10 A Linwood Carson, Jr.

11 Q How is Linwood spelled? I have seen it a number of
12 different ways?

13 A L-I-N-W-O-O-D.

14 Q Mr. Carson, you were the Defendant in the
15 underlying case, and at the time that Mr. Stockholm
16 was representing you, do you recall what charges
17 you were facing?

18 A Six counts of burglary, one count of burglary
19 tools, and possession of crack.

20 Q And do you have a recollection of having a
21 discussion with Mr. Stockholm regarding a plea
22 offer that was made before the State served the
23 life without parole notice?

24 A Yes, ma'am.

25 Q And tell me what you remember about that.

- 1 A He said -- I kept telling him to try to go back and
2 get the same plea that I initially had. He said
3 no, the only thing he could get me was the 15
4 violent, which would be 85 percent.
- 5 Q And were you -- tell me how you felt about the 15
6 violent, the 85 percent?
- 7 A I didn't want the 85 percent.
- 8 Q Did you have an understanding what that plea
9 offer -- what the nature of the plea offer was with
10 respect to the other charges that were pending, the
11 possession of the burglary tools and the cocaine?
- 12 A My understanding was it supposed to have been 15
13 for the whole case, for the plea.
- 14 Q If you pled 15 violent for the burglaries, that's
15 all they would present to the Court?
- 16 A Yes, ma'am.
- 17 Q And did you later learn that the 85 percent advice
18 was incorrect?
- 19 A Yes, ma'am.
- 20 Q And do you know currently what your parole
21 eligibility is?
- 22 A 2010, somewhere up in there.
- 23 Q Which is a lot less than 85 percent of 15?
- 24 A Yes, ma'am.
- 25 Q And 85 percent of 15 would have meant you would

1 serve 12 and three quarter years; is that correct?

2 A Somewhere up in there.

3 Q Had you known that the 15 years violent, if you
4 pled -- let me back up a second. If you had not
5 been concerned about the 85 percent rule applying
6 to the 15-year violent for the burglaries to settle
7 this case, would you have accepted that plea?

8 A Yes, ma'am, I would have accepted it all along.
9 That's why I kept telling him to go back and see if
10 he could get the original, 15 without 85.

11 Q What was in your mind -- the difference between the
12 original plea, the 15 years nonviolent and the
13 later plea the 15 years violent for the whole
14 case -- was 85 percent?

15 A Yes, ma'am.

16 Q And if it hadn't been for the 85 percent, you would
17 have taken the 15 years violent for the case?

18 A And ran with it, yes, ma'am.

19 MS. ZECK: I don't believe we have anything
20 further.

21 THE COURT: Thank you. Mr. Lee.

22 CROSS EXAMINATION

23 BY MR. LEE:

24 Q A couple of questions. Mr. Carson, do you recall
25 at the plea hearing admitting that you were

1 pleading guilty because you were guilty of the
2 crimes?

3 A Yes, sir.

4 Q Do you recall being informed at the plea hearing
5 that the sentence for burglary second was not, in
6 fact, 85 percent?

7 A That was after -- I mean, during the course of the
8 hearing?

9 Q Could you have not made a comment regarding your
10 misunderstanding or your lawyer not informing you
11 properly at that time?

12 A Yes, I did. They allowed me to put in a motion
13 earlier. I was trying to tell them that there was
14 a whole bunch of crooked stuff going on. That's
15 why I spoke then, that I would have taken the 15
16 then. I think it was on page 3.

17 Q I believe you said you would have taken the 15
18 nonviolent?

19 A Nonviolent, right.

20 Q The deal was for 15 years nonviolent?

21 A It wasn't 85, which would have been nonviolent.

22 Q But you could have actually said something at the
23 time when the Court read out, this is not an
24 85 percent charge. Did you say anything at that
25 time?

LINWOOD CARSON -- CROSS -- MR. LEE

32

1 A You say when the Court said it was not 85 percent?

2 Q On page 31 of the transcript what Ms. Avinger read
3 out that the charge would not actually be
4 85 percent, did you say anything to the Court at
5 that time?

6 A I think I might have said something to him because
7 when I first came back out, he was supposed to be
8 going out there to dismiss himself, but the next
9 thing I know they was picking a jury.

10 Q Do you recall at the plea hearing stating that you
11 were satisfied with the services of your attorney?

12 A It looked like I didn't have much choice. Like I
13 said earlier with the motion, that if I felt that
14 they was going to railroad me anyway, I would have
15 went ahead and took the 15.

16 Q But you did say you were satisfied though?

17 A I didn't have much choice being that I was looking
18 at a life sentence.

19 MR. LEE: Nothing further, Your Honor. Thank
20 you.

21 MS. ZECK: That's all we have.

22 THE COURT: You said the 15-year offer on the
23 nonviolent, you would have taken that all along. Why
24 didn't you take it?

25 THE WITNESS: During the time I was offered to

1 take it, I had some issues that I was trying to get
2 Ms. McPherson to argue about saying the illegal search
3 and the money I had on me at the time. They took some
4 money from me and they were saying one thing. It was
5 more than what they were saying that I had on me.

6 THE COURT: But you never accepted the offer
7 at the time?

8 THE WITNESS: No, sir.

9 THE COURT: What Mr. Lee asked you about here,
10 during the plea the Court said -- it looks like
11 Mr. Stockholm is talking. He says, I respectfully
12 submit under Code Section 17-25-50, which he talked
13 about earlier, the burglary seconds must be run
14 concurrent.

15 He goes on to say: That being said, Your
16 Honor, given the fact that this is a violent crime, and
17 he will be going away for 85 percent of the time
18 imposed, we would ask that all the charges be run
19 concurrent.

20 The Court then said, I think the State's
21 position is that it was not 85 percent. Do you remember
22 hearing that?

23 THE WITNESS: Yes, sir.

24 THE COURT: Then the solicitor, Ms. Avinger,
25 said, I don't believe it is, Your Honor. It's serious

1 and it's violent, but I don't believe it's 85 percent
2 because it only carries 15 years.

3 It's my understanding that only crimes that
4 carry a possible penalty of 20 years or 20 can be
5 85 percent. Based on his prior record, I don't know
6 that we could ever say how long he would have to serve
7 before he would be parole eligible.

8 Why didn't you say something then, I think was
9 Mr. Lee's question?

10 THE WITNESS: Being that he was my lawyer, I
11 felt like -- I didn't know any better as far as that
12 matter, and I didn't know that I could say anything
13 after I done spoke. He allowed me to speak. I figure
14 if anything should have been said, he should have
15 objected to it because the fact is I was led to believe
16 it was 85. I didn't know I could speak.

17 THE COURT: Well, you said you didn't know you
18 could speak. The next page Judge Patterson says,
19 Mr. Carson, what do you want to say? You have heard
20 what the State's position on this thing is. And your
21 response is, nothing else I want to say. Why didn't you
22 say something when the judge asked you that?

23 THE WITNESS: Being that I was just being
24 brought up there and I was led to believe, okay, I am
25 either going to plea or they are giving to give me a

1 life sentence, at the time I was really just lost, the
2 whole thing.

3 When he initially left me from the back, he
4 said he was going out there to put in a motion to
5 dismiss himself. But when I gets out there, they are
6 picking a jury.

7 I am lost. I tapped him on the leg and I
8 asked him. He said, they are going to pick a jury.
9 When he said they are going to pick a jury, I said, are
10 they going to allow you to pick a jury and then dismiss
11 yourself? He just told me to be quiet.

12 THE COURT: Thank you. Thank you very much,
13 Mr. Carson.

14 Any follow-up, Ms. Zeck or Mr. Lee?

15 MS. ZECK: No, Your Honor.

16 THE COURT: Mr. Lee?

17 MR. LEE: Nothing further.

18 THE COURT: Thank you. Thank you very much.

19 (Witness leaves the witness stand.)

20 THE COURT: I believe Mr. Stockholm can be
21 excused now unless you want him again, Ms. Zeck or
22 Mr. Lee.

23 MS. ZECK: No, sir.

24 THE COURT: Thank you, Mr. Stockholm, for
25 remaining with us.

1 Ms. Zeck, you may call your next witness.

2 MS. ZECK: That's all we have, Your Honor.

3 THE COURT: Mr. Lee?

4 MR. LEE: We have no witnesses at this point,
5 Your Honor.

6 THE COURT: I thought plea offers were in
7 writing.

8 MR. LEE: I don't think that is always the
9 case.

10 MS. ZECK: I have reviewed the solicitor's
11 file and the Defendant's file in the case, and there is
12 nothing, no writing.

13 THE COURT: I thought that's why we had
14 appearances, first appearance, second appearance. I
15 thought it was second appearance that they were supposed
16 to give them discovery and plea offers in writing.
17 That's not correct. You haven't found anything?

18 MS. ZECK: I think what happened in this case
19 is as the case proceeded, there were a number of offers
20 made and considered and rejected and made different
21 offers. So there is a lot of stuff going on.

22 I didn't see any of it in writing, and
23 certainly not -- the only writing you really have is
24 Ms. Avenger's virtually contemporaneous statement of
25 what happened in the transcript.

1 THE COURT: Thank you. Ms. Zeck, I would be
2 glad to hear from you.

3 MS. ZECK: As I stated in my opening, we
4 believe that this case falls within the situation as
5 articulated in Smith v. State, which is 329 S.C. 80. I
6 have a copy of that as well.

7 (Hands to Court).

8 THE COURT: Thank you.

9 MS. ZECK: That case dealt with the failure to
10 inform a client of the effect of an 85 percent rule.
11 What the Court stated there on the very last page, the
12 issue isn't -- if incorrect information is actually
13 given to the defendant, and that defendant takes the
14 information into consideration in determining whether or
15 not to accept or reject a plea, that can potentially be
16 ineffective assistance of counsel.

17 In the Smith case, there was no evidence that
18 the attorney actually advised the defendant about his
19 incorrect belief. So since the only information that
20 the defendant did receive was correct information, then
21 he can't get P.C.R. relief. The Smith case has
22 subsequently been cited by our Supreme Court in the
23 Randall case.

24 (Hands to Court).

25 THE COURT: Thank you.

1 MS. ZECK: For the proposition that failure to
2 advise about parole eligibility is collateral, and there
3 is no obligation to specifically advise a client. But
4 if counsel gives erroneous advice, that can potentially
5 be the basis for P.C.R. relief.

6 That's the situation we have here. We have a
7 situation where a 15-year violent, if he plead to 15
8 years violent to burglaries, that would resolve the
9 case. That's what Ms. Avinger said. That's what
10 Mr. Carson remembers, and the reason he didn't take that
11 was because of the 85 percent, which everybody agrees
12 was incorrect.

13 So we have a situation where there is an
14 offer. It's made and it's communicated to the client,
15 but unfortunately it's communicated to the client with
16 sort of an overlay of erroneous interpretation. It's
17 the overlay of erroneous interpretation that causes the
18 client to reject the offer.

19 So we believe that because you had a situation
20 where the offer, the correct offer, is not being
21 communicated to the client, we have essentially the same
22 situation as our Supreme Court saw in the Davie case.
23 In that case the client didn't get any offer. In our
24 case what we get is an offer that's wrong.

25 We also know that the wrong information can be

1 the basis of P.C.R. relief. When you put those two
2 pieces together, what you end up with is this case where
3 you have a defendant that is given an offer to plead the
4 case, but it's accompanied with this wrapper of
5 erroneous parole eligibility advice that causes the
6 client to reject the advice.

7 So as a practical matter he didn't get the
8 actual offer, which puts us right into the Davie
9 situation. Under Davie when you get an offer that was
10 made and it wasn't communicated to the client -- in our
11 case correctly so he has an opportunity to correctly
12 evaluate the actual offer that was made -- the
13 appropriate thing to do is to remand for resentencing.

14 That gets us away from this whole specter of
15 we don't know what the judge would have down, blah,
16 blah, blah. That's why the Court said, look, this is
17 not the sort of situation -- we agree with that, it is
18 speculative.

19 That's why our Supreme Court said in Davie, we
20 are not going to remand for specific performance because
21 it's too speculative. What we are going to do is we are
22 going to remand for sentencing, but we are going to
23 instruct both the solicitor and the trial judge to
24 consider the fact that there was this -- in that case --
25 completely uncommunicated offer.

1 In our case it's an incorrectly communicated
2 offer, and to consider that when the sentencing is done
3 on remand. That's the advice we believe would be
4 appropriate in this case, and that is what we request of
5 the Court.

6 THE COURT: Most of this is discussing, of
7 course, the collateral issue. Since that is what most
8 of it discusses, I will ask a collateral issue also.
9 Why is he eligible for parole if he has a prior violent
10 conviction under 24-21-640?

11 MS. ZECK: I don't know, Your Honor.

12 MR. LEE: We were never able to figure that
13 out either.

14 MS. ZECK: I have, just for the Court's
15 information, this. He is clearly eligible.

16 MR. LEE: He is clearly eligible.

17 THE COURT: He is not clearly eligible under
18 the law. He may be clearly eligible --

19 MS. ZECK: The D.O.C. is certainly considering
20 him to be eligible.

21 THE COURT: He may be eligible on the
22 incarcerated inmate website and on this printout that
23 y'all hand up, the classification summary report dated
24 1/11/07, but if read 24-21-640, to me that would mean
25 that he would have to max out his sentence, that he

1 would not be eligible for parole, and his max-out date
2 is May 7th of 2017.

3 MR. LEE: Yes, sir, that was our
4 interpretation as well, but all of our S.C.D.C. records
5 and so forth reflect the fact that he is coming up for
6 parole. I don't know why.

7 MS. ZECK: I talked to the parole board. They
8 said they go on whatever it says in the S.C.D.C.
9 records.

10 THE COURT: That shows you what our sentencing
11 sheets, what weight and value they have in the system.
12 Thank you for that response, Ms. Zeck.

13 Mr. Lee.

14 MR. LEE: May it please the Court, Your Honor.

15 THE COURT: Let me make sure I am straight
16 now. He is not 85 percent?

17 MR. LEE: No, he's not 85 percent.

18 THE COURT: You have got to be 20 or above to
19 get 85 percent.

20 MR. LEE: Well, there are certain drug
21 offenses where the 20 is in effect, but that is not
22 eligible.

23 THE COURT: That's right. All right.

24 MR. LEE: Your Honor, it's the State's
25 position that -- and as Mr. Stockholm admitted -- he did

1 misinform the applicant regarding the 85 percent,
2 regarding the plea offer.

3 However, even if the applicant is able to
4 prove the first prong of Strickland v. Washington, the
5 applicant is unsuccessful, completely unsuccessful, in
6 proving the second, which is resulting prejudice.

7 If I may, the applicant was initially offered,
8 if we are to believe Mr. Stockholm's testimony and the
9 applicant's testimony, he was offered 15 years
10 nonviolent. He never took that. That was on the table.

11 But because of some problems that weren't
12 really expounded on that he had with the initial
13 attorney, he didn't take that. He knew that one didn't
14 have 85 percent. If it was that big of an issue to him,
15 then he would have taken that one all along. Why didn't
16 he take it?

17 Secondly, the deal that the applicant was
18 offered, according to Mr. Stockholm's testimony, was 15
19 years violent for the burglaries and the other two
20 charges would be considered by the judge in sentencing.

21 Well, what the applicant ended up getting for
22 the burglaries was exactly what he was offered, 15 years
23 to be run currently for all six burglaries. There is no
24 way to tell what the judge would have done with the
25 other two charges. The only thing that we know is what

1 he did do with the eventual plea.

2 Again, as already pointed out by the State,
3 even when it was brought up in the plea hearing that the
4 applicant did not have to serve 85 percent, that it was,
5 in fact, not an 85 percent charge and the applicant was
6 given another opportunity to address his concerns to the
7 Court at that time, the applicant chose to say nothing
8 and in fact said he had nothing more to say.

9 As a result based on the fact that the
10 applicant had that initial 15-year nonviolent offer and
11 chose not to take it and based on the fact that the
12 sentence he ended up getting was the same as the one as
13 he was offered and based on the fact he ignored his
14 opportunity to address his concerns with the Court
15 contemporaneously as it was happening, the State submits
16 the applicant is unable to prove resulting prejudice,
17 even if he was able to prove ineffective assistance of
18 counsel, and as a result, his application should be
19 denied and dismissed. Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. LEE: May I add something else? I
22 apologize.

23 THE COURT: Yes, sir.

24 MR. LEE: The State would also submit that the
25 Davie case is not on all fours with this particular

1 case. Davie, as Ms. Zeck appropriately pointed out,
2 involved the situation where the applicant was not
3 informed of the plea offer, never had an opportunity to
4 make a decision, which although the difference is a
5 subtle one, here the applicant was informed of the plea
6 offer as testified to by Mr. Stockholm and as is
7 reflected on page 22 of the record, line 3.

8 The applicant made his decision to plea
9 ultimately freely and voluntarily and of his own
10 volition. Basically it was the applicant's choice to
11 plead. So it's not all fours with Davie. The applicant
12 did have an opportunity to make a decision.

13 Furthermore, the applicant was ultimately
14 informed of 85 percent not being accurate and again said
15 nothing. As a result, the State submits this is not on
16 all fours with Davie, and Davie should not be applicable
17 in this case. Thank you.

18 MS. ZECK: May I have one little point on that
19 last statement?

20 THE COURT: Certainly, yes, ma'am.

21 MS. ZECK: What that actually does is it
22 highlights just how alike this case is to Davie with
23 respect to the fact that the error in Davie came out in
24 the same way that our error did, on the record.

25 What happened in Davie was the solicitor says,

1 oh, yes, I made this 15-year violent burglary offer --
2 I'm sorry. She didn't articulate what it was. She said
3 an offer was made in September, whenever, and it wasn't
4 responded to and it expired.

5 It was found to be ineffective assistance of
6 counsel because the lawyer didn't jump up and say, wait
7 a minute. I didn't get that. Similarly, the client
8 would have been sitting in the hearing there, and the
9 client -- we don't have a complete transcript from that
10 hearing.

11 But I'm sure that the trial judge in that case
12 would have given the defendant in that case the same
13 kind of opportunity to speak that Judge Patterson gave
14 Mr. Carson, which is basically to say, okay, you heard
15 what we said here today. Do you have any other
16 concerns? Do you want to say anything else? He said,
17 no, I'm going to plead, whatever.

18 That's actually the same kind of situation we
19 have here, where you have a mistake, in their case one
20 of omission, in our case one of commission, but it's
21 kind of, sort of touched upon at the hearing, but it
22 sort of gets pushed under the rug.

23 Later on the appropriate time to resolve that
24 problem is in the P.C.R. hearing and with the
25 appropriate result being the resentencing. That's what.

1 happened in Davie. That is what should happen here.

2 MR. LEE: May I respond, Your Honor?

3 THE COURT: Yes, sir.

4 MR. LEE: Ms. Zeck is correct in pointing out
5 that the difference, the big difference, between that
6 case and this one is the fact that there was a mistake
7 of omission such that the Defendant in that case was
8 never able to make the decision.

9 Here there was a mistake of commission, which
10 the attorney acknowledged on the record once the State
11 brought it up and said, oh, well -- I believe what he
12 actually said, if you are going to be more favorable to
13 us, Your Honor, we will accept that.

14 But then the applicant was given the
15 opportunity to say something. He said, do you have
16 anything you want to say about this, knowing the State's
17 position, which was that it was not 85 percent. The
18 applicant said nothing. In fact, he said he didn't want
19 to say anything. That is not in any way comparable to
20 Davie.

21 (Pause).

22 THE COURT: How was he prejudiced in what he
23 agreed to plead to, given the erroneous advice of his
24 attorney was an 85 percent crime? It ends up better for
25 him when he enters his plea.

1 MS. ZECK: It's our interpretation of what
2 Ms. Avinger said and Mr. Carson's testimony as well,
3 that if he had pled at that point to the 15 years
4 violent, that would have been for the case.

5 Those other charges would have been dropped.
6 They would have gone away. So he would have been
7 looking at just 15 years violent on burglary, period,
8 the end. That would have been better off than what he
9 ended up with.

10 THE COURT: As I read this record, he had --
11 where did I just read it? He had Ms. McPherson.

12 MR. LEE: Page 4, Your Honor.

13 THE COURT: He had Ms. McPherson, and the
14 Court relieved Ms. McPherson and appointed Mr. Stockholm
15 after Mr. Carson made several allegations against
16 Ms. McPherson after a hearing in open court.

17 If that plea offer was made through
18 Ms. McPherson to Mr. Carson, he still rejected it. He
19 rejected that offer. He is appointed another attorney
20 in November of '07 -- excuse me -- November 17 of what
21 year was it?

22 MS. ZECK: '05 and '06.

23 THE COURT: '05. If that offer was made and
24 Ms. Avinger in this record says he had the
25 opportunity -- Mr. Stockholm had the opportunity to

1 plead his case for the 15-year violent on the burglary
2 and that never happened.

3 So she talks about the entire case. Then they
4 serve him with life without parole. How is he
5 prejudiced when the system gives him a better deal than
6 he thought he was getting anyway?

7 MS. ZECK: I guess the point is -- there are
8 sort of two pieces to it. Piece number one is the 15
9 years nonviolent that was made early on in the case.
10 That was made and that was rejected. As Mr. Carson told
11 you, the reason that was rejected had to do with some
12 other arcane issues --

13 THE COURT: But he made those choices.

14 MS. ZECK: Right, I understand that. What we
15 are talking about -- there is no question that that was
16 properly communicated, and he is not claiming P.C.R.
17 with respect to that.

18 What we are doing is we are looking at this
19 time period later on in the case. At that point he has
20 got an opportunity, we say, to plead guilty to 15 years
21 violent for the whole case.

22 He would have taken that, save for the
23 erroneous 85 percent advice. And had he taken that, he
24 would be better off today because we would have gotten
25 15 years on the burglary and the other charges would

1 gone away, and he wouldn't have to deal with them at
2 all.

3 I understand there is a dispute in the
4 testimony. That is certainly Mr. Carson's
5 understanding, and we believe that is supported by the
6 record as stated by the solicitor.

7 THE COURT: Thank you, Ms. Zeck. Yes, sir,
8 Mr. Lee.

9 MR. LEE: My understanding, just to clarify,
10 because I'm not sure, but if the applicant was granted a
11 resentencing hearing, isn't it possible that the new
12 sentencing sheet would correct this mistake that allows
13 the applicant to be eligible for parole next year?

14 THE COURT: I think it's -- that's why I asked
15 that about 24-21-640. I don't think he is eligible for
16 parole based on the records that I see and the statute
17 that I looked at. I don't think he is eligible for
18 parole.

19 So if he goes back, that is what it is. I
20 think somebody has a duty or responsibility to correct
21 those records quite frankly. I could be giving
22 erroneous advice in that regard. I am just reading the
23 statute.

24 MR. LEE: That was our interpretation, too,
25 for what it's worth.

1 THE COURT: Because they would have to have
2 the prior most serious to seek the two-strike life
3 without parole to put the notice out. It appears there
4 is an old housebreaking and grand larceny from Richland
5 County. I guess it's be careful for what you wish for.

6 Let me read these cases. How about submit to
7 me proposed orders, both sides. I will read these cases
8 and look a little bit more at this transcript. Is ten
9 days sufficient?

10 MS. ZECK: That should be fine.

11 THE COURT: Mr. Lee?

12 MR. LEE: Yes, Your Honor.

13 THE COURT: Thank you very much. Good luck to
14 you, Mr. Carson.

15 THE DEFENDANT: Thank you.

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Lexington County, South Carolina on the 3rd day of September, 2009.

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

April 6, 2011

S. Coronut Pantari

Court Reporter

C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Lexington County, South Carolina on the 3rd day of September, 2009.

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L Coconut Pantsari

Court Reporter

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April 6, 2011

L Coconut Pantsari

Court Reporter

aggregate of twenty-three years' imprisonment. Carson did not directly appeal his plea or sentence.

EVIDENCE AT THE PCR HEARING

At the PCR hearing, Carson testified that although his plea counsel Gene Stockholm had informed him that all charges could have been resolved by his agreement to plead guilty to the "fifteen years violent on the burglaries," Stockholm also advised him that the "violent" characterization of the charge meant that he would be required to serve 85% of the sentence imposed. Carson's rejection of this 15 year offer was based on this advice, which he now understood to be erroneous. Carson stated he would have accepted the fifteen-year deal had he been aware that the 85% service of sentence requirement did not apply to sentences less than 20 years.

Plea counsel testified at the time of their discussions concerning this earlier plea deal, he had told Carson that in his opinion a guilty plea to violent burglaries would have required the service of 85% of the imposed sentence and further testified that he now believed this understanding was erroneous.

During the PCR hearing, the State agreed that the advice concerning the 85% service of sentence requirement was erroneous, but contended that Applicant was not prejudiced thereby.

At the conclusion of the PCR hearing, Applicant's counsel argued that plea counsel's erroneous advice to applicant concerning the "15 year violent" plea offer constituted ineffective assistance of counsel. In terms of relief, counsel requested the PCR court remand the case for a re-sentencing hearing with the directive that the new sentence could not exceed the twenty-three-year sentence that was previously imposed.

ANALYSIS

STANDARD OF REVIEW

A defendant has the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). This rights applies during the plea bargaining process. Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996), *overruled on other grounds by* Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000).

In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). "In the context of a guilty plea, the court must determine whether 1) counsel's advice was within the range of competence demanded of attorneys in criminal cases, i.e. was counsel's performance deficient, and 2) if there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty." Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (citing Hill v. Lockhart, 474 U.S. 52, 56-58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)). "The defendant's undisputed testimony that he would not have pled guilty to the charges but for trial counsel's advice is sufficient to prove that defendant would not have pled guilty." *Id.* at 138, 631 S.E.2d 260, 631 S.E.2d at 261. "In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing." Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

DEFICIENT PERFORMANCE

Our Supreme Court has recently held that plea counsel's failure to communicate a plea offer constitutes performance falling below the prevailing professional norms and, thus,

constituted deficient performance. Davie v. State, 381 S.C. 601, 617, 675 S.E.2d 416, 424 (2009). Moreover, although parole eligibility is a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea, any information provided about such consequences must be accurate. See Randall v. State, 356 S.C. 639, 591 S.E.2d 608, 609-10 (2004), citing Smith v. State, 329 S.C. 280, 494 S.E.2d 626, 629-30 (1997) (“unless counsel gives erroneous advice, parole information is not a ground for collateral attack of a guilty plea”). Thus, the provision of a plea offer combined with erroneous advice concerning parole eligibility is the effective equivalent of not communicating the actual plea offer.

PREJUDICE

In Davie, the Supreme Court also adopted a case-by-case approach to determining whether a PCR applicant was prejudiced by the deficient performance of plea counsel. This Court must therefore determine whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefitted from the offer. However, it is not necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice. Davie, 675 S.E.2d at 612-13.

Applying these principles here, the Court concludes that Applicant has proven he was prejudiced by plea counsel's deficient performance. Initially, the eight year difference in the sentence Carson received and the plea offer is proof of prejudice. Firstly, the solicitor's on-the-record statement of the plea offer is an acknowledgement that the State originally offered a

fifteen-year sentence in exchange for Applicant's guilty plea. Secondly, plea counsel admitted that although he communicated this offer to Carson, the plea offer was coupled with the erroneous advice concerning the applicability of the 85% service of sentence requirement. Thirdly, Applicant testified that had this offer been communicated without the erroneous advice concerning the 85% rule, Applicant would have accepted the plea agreement. This testimony was not contradicted by plea counsel. Finally, had Applicant accepted the original offer, he would have received a significantly lower sentence than the twenty-three-year sentence that was imposed.

REMEDY

Again, following Davie, 675 S.E.2d at 614-15, the appropriate remedy here is the remand of the case for a new sentencing hearing with the limitation that Applicant's sentence should not exceed the original sentence of twenty-three years' imprisonment. Upon remand, the State and the circuit court judge should take into consideration the prior fifteen-year plea offer.

CONCLUSION

In conclusion, the Court finds that plea counsel was deficient in providing erroneous advice to applicant concerning the State's fifteen-year plea offer. Given Applicant's uncontradicted testimony that he would have accepted the fifteen-year offer, an offer that was eight years less than what Applicant ultimately received, the Court concludes Applicant has proven that he was prejudiced by counsel's deficient performance.

NOW, THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that the application of Linwood Carson, Jr. for post-conviction relief is hereby GRANTED:

1. Applicant's sentence is vacated.
2. The matter is remanded for a re-sentencing hearing. In re-sentencing Petitioner, the circuit court judge shall take into consideration the State's prior fifteen-year plea offer. Moreover, no sentence that Applicant receives should exceed the original twenty-three-year sentence.

AND IT IS SO ORDERED.

The Honorable R. Knox McMahon
Presiding Judge

September ____, 2009
Sumter, South Carolina



HENRY MCMASTER
ATTORNEY GENERAL

RECEIVED

JAN 13 2010

Willoughby & Hoefler, P.A.

January 12, 2010

The Honorable R. Knox McMahon
205 East Main Street
Lexington, South Carolina 29072-3456

Re: Linwood Carson v. State of South Carolina
Case#2006-CP-32-04563

Dear Judge McMahon:

Enclosed please find the proposed original Order in the above-captioned case. If this Order meets with your approval, please sign same and forward to the County Clerk of Court to be filed and served.

Sincerely,

A. West Lee
Assistant Attorney General

AWL/las

Enclosure: noted

cc: Elizabeth Zeck, Esquire w/enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

CASE NO. 2006-CP-32-04563

Linwood Carson #263672,

☐ Plaintiff,

v.

MOTION INFORMATION FORM
AND COVER SHEET

State of South Carolina,

☐ Defendant.

check box above indicating submitting party

Plaintiff's Attorney: Elizabeth Zeck, Esquire
Address: Post Office Box 8416
Columbia, South Carolina 29202-8416

Defendant's Attorney A. West Lee
Address: Post Office Box 11549
Columbia, South Carolina 29202

Phone: Fax:
E-mail: Other:

Phone: 803 734-3737 Fax: 803 734-4113
E-Mail: Other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

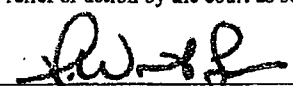
Estimated Time Needed:

Court Reporter Needed: YES/NO

SECTION II: Motion Type

- ☐ Written motion attached
☐ Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff/Defendant Date Submitted: 1/12/10

SECTION III: Motion Fee

- ☐ PAID-AMOUNT:
☐ EXEMPT: (check reason)
☐ Rule To Show Case in Child or Spousal Support
☐ Domestic Abuse of Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court, or,
 reduced to writ from motion made in open court per judge's instructions
 Name of court reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Linwood Carson, # 263672,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT
Case No.: 2006-CP-35-4563

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 28, 2006. The State submitted its Return on or about March 29, 2007. An evidentiary hearing into the matter was convened on September 3, 2009, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Elizabeth Zeck, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Applicant's counsel also presented testimony from the Applicant's Plea Counsel, Gene Stockholm, Esquire. This Court also had before it a copy of the transcript from the Applicant's guilty plea proceedings, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Application for Post-Conviction Relief, the State's Return, and evidence presented at the hearing.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the

November 2005 term of the Lexington County Grand Jury for possession of less than one gram of ice, crack, or crack cocaine- 1st offense (05-GS-32-4184), burglary- 2nd degree (06-GS-32-249), burglary- 2nd degree (06-GS-32-250), burglary- 2nd degree (06-GS-32-251), burglary- 2nd degree (06-GS-32-252), burglary- 2nd degree (06-GS-32-253), burglary- 2nd degree (06-GS-32-254) and possession of burglary tools (06-GS-32-255). Gene Stockholm, Esquire, represented him. On January 30, 2006, Applicant pled guilty as indicted. He was sentenced by the Honorable Larry R. Patterson to confinement for three (3) years for possession of crack, five (5) years for possession of burglary tools and fifteen (15) years for each of the burglary convictions. The burglary convictions are to run concurrent to each other. The possession of burglary tools conviction and the possession of crack conviction are to run consecutive to the burglary convictions. Applicant did not appeal his conviction or sentence.

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

- 1) "Ineffective Assistance of Counsel"
 - a. Attorney failed to file appeal;
 - b. Attorney failed to investigate; and
 - c. Attorney failed to make certain objections.

Applicant's PCR counsel subsequently filed an Amended Applicant for Post-Conviction Relief, which raised the following additional allegations:

- 1) Ineffective Assistance of Counsel
 - a. Applicant turned down alleged original plea offer based on Counsel's advice that Applicant would have to serve 85% of the sentence before he could be released.

The Applicant stated that the issue raised in the Amended Application was the only issue on which he wished to proceed.

APPLICABLE LAW

Ineffective Assistance of Counsel

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the Applicant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leake, 282 S.C. 131, 318 S.E.2d 360 (1984).

An Applicant who enters a plea on the advice of Counsel may only attack the voluntary and intelligent character of the plea by showing that trial Counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for trial Counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial, Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of Counsel, and it will be treated as such.

SUMMARY OF TESTIMONY PRESENTED AT THE PCR HEARING

Testimony of Gene Stockholm

Mr. Stockholm testified that he was the Applicant's second lawyer, and that he was appointed to represent the Applicant in November of 2005. He recalled that the Applicant was facing six charges of burglary—2nd degree, which was a violent offense, as well as charges of possession of burglary tools and possession of crack cocaine weighing less than one gram. He also recalled that a plea offer was made to the Applicant's first attorney, which was for a non-violent, fifteen (15) year plea. He testified that this plea offer was rejected by the Applicant.

Mr. Stockholm testified that he had several meetings with the Angela Avenger, the

solicitor trying the case, during which the two engaged in plea negotiations on the Applicant's behalf. He stated that he tried to get the original plea offer back on the table, but that the solicitor would only discuss a violent plea on the burglary charges and wanted to leave the sentence on the remaining charges within the judge's discretion. Mr. Stockholm testified that it was his belief that the solicitor's remarks referring to pleading the 'case' for fifteen (15) years, violent, were referring only to the burglary charges, and not the remaining charges.

Mr. Stockholm testified that his biggest concern was the burglary charges, given that his previous convictions for burglary left him facing life without parole. He recalled that this fear was substantiated because at some point he was served with notice that the State intended to seek a sentence of life without parole against the Applicant.

Mr. Stockholm testified that during his negotiations, the best offer he was given was a negotiated sentence of fifteen (15) years, violent, on the burglary charges with the sentence for the remaining charges to be left to the judge's discretion. He testified that he advised the Applicant of the offer, but admitted that he incorrectly told the Applicant that he would have to serve eighty-five (85%) percent of the sentence before he could be released. Stockholm stated that the Applicant refused this plea offer, and testified that Applicant wanted a non-violent plea offer.

Stockholm testified that after the Applicant was served with the life without parole papers, the State offered to allow the Applicant to plead straight up to all charges. He testified that the Applicant ultimately pled, and was given concurrent sentences of fifteen (15) years on the burglary charges, which was the best offer he received anyway. Counsel also testified that the Applicant did not have to serve eighty-five (85%) of his sentence, which is actually better for

the Applicant than what he advised him of. Finally, Counsel testified that it was purely speculation to assume that the Applicant would have gotten a better sentence if he had taken an earlier plea offer, because it was the judge's practice not to accept plea negotiations.

Testimony of Linwood Carson

Applicant testified that he was first given a plea offer of fifteen (15) years, non-violent, when he was represented by Lisa McPherson. Applicant admitted that he refused this plea offer. Applicant stated that once Stockholm took over as Counsel, he told the Applicant the best offer he could get was for fifteen (15) years, violent, of which Applicant would have to serve eighty-five (85%) percent before he could be considered for release. Applicant testified that he believed this offer to be for the entire case, not just the burglary charges. Applicant stated that he would have accepted the plea if he had not been incorrectly informed that he would have to serve eighty-five (85%) percent of the sentence.

Applicant admitted on cross-examination that he pled guilty to the crimes because he was, in fact, guilty. He also testified that he was informed at the guilty plea hearing that the would not have to serve eighty-five (85%) percent of the sentence for the burglary charges, but admitted that he did not say anything at the time about how this knowledge would have affected his decision to take an earlier plea offer.

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 (2003).

Failure to Properly Inform Applicant Regarding Plea Offers

It was the Applicant's contention that he was not properly informed regarding his plea offers, and that if he had been properly informed, he would have accepted an earlier offer than the one ultimately accepted. It was Applicant's testimony that had he not been incorrectly informed that he would have to serve eighty-five (85%) percent of the fifteen-year, violent sentence, he would have accepted the first plea offer given to Counsel. Applicant argued that this offer was for all the charges against him, and would have resulted in a shorter sentence than the offer he ultimately accepted. Applicant admitted, however, that he had previously turned down a plea offer of fifteen (15) years, non-violent, which he knew did not require him to serve eighty-five (85%) percent prior to release.

Counsel admitted that he incorrectly informed the Applicant regarding the length of time he would have to serve on his sentence before he could be released, but testified that the plea offer the Applicant ended up taking was the same as the first offer made to him, which was for concurrent fifteen (15) year sentences for Burglary—2nd Degree, violent. Counsel testified that the first offer made to him was for fifteen (15) years, violent, on the two burglary charges only, with the remaining two charges to be left to the court's discretion. Counsel also testified that the Applicant had previously turned down an offer of fifteen (15) years non-violent, and that it was purely speculative to assume that the Applicant would have gotten a better sentence regardless of which offer he accepted, given the judge's stance against accepting negotiated pleas.

With respect to this claim, this Court finds that the Applicant has failed to satisfy his burden of proof. Despite Counsel's admission that he gave Applicant erroneous information regarding his plea offer, this Court finds that the Applicant is unable to prove resulting prejudice. This Court finds that Counsel's testimony that the fifteen-year violent offer was for the burglary charges only to be credible, while simultaneously finding that Applicant's testimony on the issue is not credible. As such, it is impossible to say how the Applicant would have been sentenced with relation to his remaining charges. The only thing that is known is that he received concurrent sentences of fifteen (15) years for the burglary charges, which is the same deal the Applicant was originally offered. Thus Court further notes that the Applicant previously rejected a prior, better offer, so there is no way to know that he would have accepted the earlier plea deal had he been given different information. This Court finally notes that the Guilty Plea Transcript reflects that the judge made it very clear that it was not his practice to accept negotiated pleas, and that he alone was responsible for sentencing. (Tr. p. 5, line 8 – p. 8, line 1). Therefore, this Court finds that it is impossible to prove that the Applicant would have gotten a better sentence if he had accepted an earlier plea offer. Accordingly, this claim is denied and dismissed.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. 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.

CONCLUSION

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

This Court advises 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. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this ____ day of _____, 2010.

R. Knox McMahon
Presiding Judge
Eleventh Judicial Circuit

_____, South Carolina.

COPY

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

2010 MAR -2 P 3:34 No.: 2006-CP-35-4563

Linwood Carson, # 263672,

Applicant,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 28, 2006. The State submitted its Return on or about March 29, 2007. An evidentiary hearing into the matter was convened on September 3, 2009, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Elizabeth Zeck, Esquire. The Respondent was represented by A. West Lee of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Applicant's counsel also presented testimony from the Applicant's Plea Counsel, Gene Stockholm, Esquire. This Court also had before it a copy of the transcript from the Applicant's guilty plea proceedings, the records of the Lexington County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Application for Post-Conviction Relief, the State's Return, and evidence presented at the hearing.

PROCEDURAL HISTORY

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orders of commitment of the Lexington County Clerk of Court. Applicant was indicted at the November 2005 term of the Lexington County Grand Jury for possession of less than one gram of ice, crack, or crack cocaine- 1st offense (05-GS-32-4184), burglary- 2nd degree (06-GS-32-249), burglary- 2nd degree (06-GS-32-250), burglary- 2nd degree (06-GS-32-251), burglary- 2nd degree (06-GS-32-252), burglary- 2nd degree (06-GS-32-253), burglary- 2nd degree (06-GS-32-254) and possession of burglary tools (06-GS-32-255). Gene Stockholm, Esquire, represented him. On January 30, 2006, Applicant pled guilty as indicted. He was sentenced by the Honorable Larry R. Patterson to confinement for three (3) years for possession of crack, five (5) years for possession of burglary tools and fifteen (15) years for each of the burglary convictions. The burglary convictions are to run concurrent to each other. The possession of burglary tools conviction and the possession of crack conviction are to run consecutive to the burglary convictions. Applicant did not appeal his conviction or sentence.

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APPLICABLE LAW

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SUMMARY OF TESTIMONY PRESENTED AT THE PCR HEARING

Testimony of Gene Stockholm

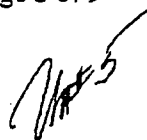
Mr. Stockholm testified that he was the Applicant's second lawyer, and that he was appointed to represent the Applicant in November of 2005. He recalled that the Applicant was facing six charges of burglary—2nd degree, which was a violent offense, as well as charges of possession of burglary tools and possession of crack cocaine weighing less than one gram. He also recalled that a plea offer was made to the Applicant's first attorney, which was for a non-violent, fifteen (15) year plea. He testified that this plea offer was rejected by the Applicant.

Mr. Stockholm testified that he had several meetings with Angela Avenger, the solicitor trying the case, during which the two engaged in plea negotiations on the Applicant's behalf. He stated that he tried to get the original plea offer back on the table, but that the solicitor would only discuss a violent plea on the burglary charges and wanted to leave the sentence on the remaining charges within the judge's discretion. Mr. Stockholm testified that it was his belief that the solicitor's remarks referring to pleading the 'case' for fifteen (15) years, violent, were referring only to the burglary charges, and not the remaining charges.

Mr. Stockholm testified that his biggest concern was the burglary charges, given that the Applicant's previous convictions for burglary left him facing life without parole. He recalled that this fear was substantiated because at some point he was served with notice that the State intended to seek a sentence of life without parole against the Applicant.

Mr. Stockholm testified that during his negotiations, the best offer he was given was a negotiated sentence of fifteen (15) years, violent, on the burglary charges with the sentence for the remaining charges to be left to the judge's discretion. He testified that he advised the Applicant of the offer, but admitted that he incorrectly told the Applicant that he would have to serve eighty-five (85%) percent of the sentence before he could be released. Stockholm stated that the Applicant refused this plea offer, and testified that Applicant wanted a non-violent plea offer.

Stockholm testified that after the Applicant was served with the life without parole papers, the State offered to allow the Applicant to plead straight up to all charges. He testified that the Applicant ultimately pled, and was given concurrent sentences of fifteen (15) years on the burglary charges, which was the best offer he received anyway. Counsel also testified that



the Applicant did not have to serve eighty-five percent (85%) of his sentence, which is actually better for the Applicant than what he advised him of. Finally, Counsel testified that it was purely speculation to assume that the Applicant would have gotten a better sentence if he had taken an earlier plea offer, because it was the judge's practice not to accept plea negotiations.

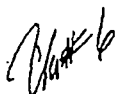
Testimony of Linwood Carson

Applicant testified that he was first given a plea offer of fifteen (15) years, non-violent, when he was represented by Lisa McPherson. Applicant admitted that he refused this plea offer. Applicant stated that once Stockholm took over as Counsel, he told the Applicant the best offer he could get was for fifteen (15) years, violent, of which Applicant would have to serve eighty-five (85%) percent before he could be considered for release. Applicant testified that he believed this offer to be for the entire case, not just the burglary charges. Applicant stated that he would have accepted the plea if he had not been incorrectly informed that he would have to serve eighty-five (85%) percent of the sentence.

Applicant admitted on cross-examination that he pled guilty to the crimes because he was, in fact, guilty. He also testified that he was informed at the guilty plea hearing that he would not have to serve eighty-five (85%) percent of the sentence for the burglary charges, but admitted that he did not say anything at the time about how this knowledge would have affected his decision to take an earlier plea offer.

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 (2003).

Failure to Properly Inform Applicant Regarding Plea Offers

It was the Applicant's contention that he was not properly informed regarding his plea offers, and that if he had been properly informed, he would have accepted an earlier offer than the one ultimately accepted. It was Applicant's testimony that had he not been incorrectly informed that he would have to serve eighty-five (85%) percent of the fifteen-year, violent sentence, he would have accepted the first plea offer given to Counsel. Applicant argued that this offer was for all the charges against him, and would have resulted in a shorter sentence than the offer he ultimately accepted. Applicant admitted, however, that he had previously turned down a plea offer of fifteen (15) years, non-violent, which he knew did not require him to serve eighty-five (85%) percent prior to release.

Counsel admitted that he incorrectly informed the Applicant regarding the length of time he would have to serve on his sentence before he could be released, but testified that the plea offer the Applicant ended up taking was the same as the first offer made to him, which was for concurrent fifteen (15) year sentences for Burglary—2nd Degree, violent. Counsel testified that the first offer made to him was for fifteen (15) years, violent, on the two burglary charges only, with the remaining two charges to be left to the court's discretion. Counsel also testified that the Applicant had previously turned down an offer of fifteen (15) years non-violent, and that it was purely speculative to assume that the Applicant would have gotten a better sentence regardless of which offer he accepted, given the judge's stance against accepting negotiated pleas.

With respect to this claim, this Court finds that the Applicant has failed to satisfy his burden of proof. Despite Counsel's admission that he gave Applicant erroneous information regarding his plea offer, this Court finds that the Applicant is unable to prove resulting prejudice. This Court finds credible Counsel's testimony that the fifteen-year violent offer was intended solely for the burglary charges, while simultaneously finding that Applicant's testimony on the issue is not credible. As such, it is impossible to say how the Applicant would have been sentenced with relation to his remaining charges. The only thing known is that he received concurrent sentences of fifteen (15) years for the burglary charges, which equates to the same deal the Applicant was originally offered. Thus Court further notes that the Applicant previously rejected a prior, better offer, so there is no way to know that he would have accepted the earlier plea deal had he been given different information. This Court finally notes that the Guilty Plea Transcript reflects that the judge made it very clear that it was not his practice to accept negotiated pleas, and that he alone was responsible for sentencing. (Tr. p. 5, line 8 – p. 8, line 1). Therefore, this Court finds that it is impossible to prove that the Applicant would have gotten a better sentence if he had accepted an earlier plea offer. Accordingly, this claim is denied and dismissed.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. 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 issues 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.

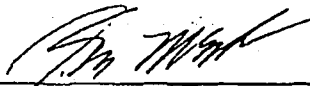
CONCLUSION

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

This Court advises 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), SCRPC, 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's attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED that the Application for Post-Conviction Relief is denied and dismissed with prejudice; and that the Applicant is remanded to the custody of the Respondent.

IT IS SO ORDERED.



R. Knox McMahon
Presiding Judge
Eleventh Judicial Circuit


_____, 2010
Lexington, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Linwood Carson,
Applicant,

v.

The State of South Carolina,
Respondent.**COPY**

) IN THE COURT OF COMMON PLEAS

) ELEVENTH JUDICIAL CIRCUIT

) Case No. 2006-CP-32-4563

) NOTICE OF MOTION AND
) MOTION TO ALTER OR
) AMEND JUDGMENT PURSUANT
) TO RULE 59(e), SCRPCRECEIVED
COURT
CLERK
SC

2010 MAR 11 A 10:29

Applicant Linwood Carson ("Applicant" or "Carson"), through counsel, hereby applies to the presiding judge of the Eleventh Judicial Circuit at the Lexington County Courthouse, Lexington County, South Carolina, pursuant to Rule 59(e), SCRPC to alter or amend the Order of Dismissal, entered March 2, 2010 in the above-captioned case ("Order of Dismissal").¹ This motion is based upon the South Carolina Rules of Civil Procedure and applicable law.

In support of this motion, Applicant respectfully shows unto the Court the following:

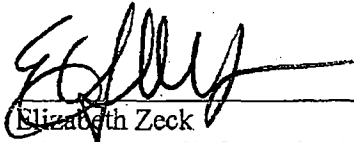
1. Applicant believes that the findings in the Order of Dismissal, which was identical to that submitted as a proposed Order by the State, may not accurately reflect the hearing testimony of Gene Stockholm, Esq., who represented Applicant in the underlying criminal proceeding. Applicant contests *inter alia* the finding that the initial offer of 15 years made through Mr. Stockholm was limited to the burglaries, rather than to the case as a whole.

2. Applicant further believes that the findings in the Order of Dismissal, which was identical to that submitted as a proposed Order by the State, may not accurately reflect his own hearing testimony. Applicant contests *inter alia* the finding that the

WHEREFORE, having fully set forth his motion to alter or amend judgment, Applicant asks this Court to correct its March 2, 2010 Order of Dismissal, make a finding of prejudice,

¹This Order of Dismissal was received by Applicant's counsel on March 4, 2010.

vacate his current sentence and remand this case for a re-sentencing hearing, in which pursuant to the instructions of the South Carolina Supreme Court in Davie v. State, 381 S.C. 601, 617, 675 S.E.2d 416, 424 (2009), the sentencing court should be instructed to "take into consideration the State's prior fifteen-year plea offer" and "direct[ed] that any sentence [Applicant] receives should not exceed the original twenty-[three]-year sentence." Applicant further asks this Court for such other and further relief as is just and proper.



Elizabeth Zeck

WILLOUGHBY & HOEFER, P.A.

930 Richland Street

Post Office Box 8416

Columbia, SC 29202

(803) 252-3300

ezeck@willoughbyhoefer.com

Attorneys for Applicant Linwood Carson

Columbia, South Carolina
March 15, 2010

BETH A. CARPIS
CLERK OF COURT
LEXINGTON, SC

2010 MAR 16 A 10:29

FILED

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Linwood Carson,
Applicant,

Y.

The State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
Case No.: 2006-CP-32-4563

CERTIFICATE OF SERVICE

COPY

This is to certify that I have caused to be served this day one (1) copy of **Applicant's**
Motion to Alter or Amend Judgment Pursuant to Rule 59(e) by placing same in the care and
custody of the United States Postal Service with first class postage affixed thereto and addressed
as follows:

A. West Lee, Esquire
SC Attorney General's Office
Post Office Box 11549
Columbia, SC 29211

Clark Faucher

Clark Fancher

Columbia, South Carolina
March 15, 2010

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

2010 MAR 15 A 10:29

Q

THE UNIVERSITY OF CHICAGO

Sept 18, 2011

Dear Ms. Carigg - 263672

I am writing concerning my PCR Case #2006-CP-32-04563, wondering whether my motion to amendment has been filed in your office. Cause my attorney (Ms. Elizabeth Zeck) filed it March 15, 2010, but I have you to hear anything else in regards of the matter. After several attempts by letters to her for a update or hearing date? All in vain! So I ask that you please, look up my case, or if possible give me any information you may have on it. All your help is truly appreciated.

2006CP3204563

Thank you kindly!
 Regina Carigg
 Sept. 18, 2011

South Carolina Court Administration
 South Carolina Supreme Court
 1015 Sumter St. Suite 200
 Columbia, S.C. 29201
 Telephone # (803)-734-1800

2011 SEP 20 A 11:16
 BETTIE A. CARIGG
 CLERK OF COURT
 LEXINGTON, SC

FILED

COUNTY OF LEXINGTON
ELEVENTH JUDICIAL CIRCUIT

LEXINGTON COUNTY JUDICIAL CENTER
205 EAST MAIN STREET
LEXINGTON, S.C. 29072

TELEPHONE: 803-785-8235



GENERAL SESSIONS
FAMILY COURT
COMMON PLEAS

FAX: 803-785-8603

LISA M. COMER
Senior Court Assistant

EMAIL: LCOMER@LEX-CO.COM

January 17, 2013

Elizabeth Ann Zeck
Post Office Box 8416
Columbia, SC 29202

RE: Linwood Carson, Jr. #263672 v. State of South Carolina
(2006-CP-32-04563)

Dear Ms. Zeck:

Enclosed please find a motion sent to our office in regards to the above referenced case. This motion is being forwarded to you because all motions need to be filed through the applicant attorney. Please review and forward to our office for filing, if necessary.

If you have any further questions, or need any further assistance, please feel free to contact me at the above listed number.

Sincerely,

Lisa M. Comer
Senior Court Assistant
Common Pleas

CC: File (2006-CP-32-04563)

ORIGINAL

FILED
 2013 JAN 10 10:57 AM
 CLERK OF COURT
 LEXINGTON, SC

Mr. Linwood Carson Jr. #3672
 Evans Con. Inst. Waxhaw F4.223
 610 Hwy. 9 West
 Bennettsville, SC 29512

Dear Ms. Carrigg

Could you please file this Motion to Comply with
 Established Law and Civil Procedures 2006-CP-32-4563, for me.
 Sending me a filed Copy back in the enclosed self stamped envelope,
 that I've included in this letter. It would be greatly appreciated,
 your help concerning this matter.

Thank you kindly!
 Linwood Carson Jr.

State of South Carolina
County of Lexington

In the Court of Common Pleas
Eleventh Judicial Circuit

Linwood Carson Jr. #263672
Pro-Se Applicant

VS

State of South Carolina
Respondent

FILED
CLOCK
2010 JUN 10 5
BET. SPRIGG
CLERK OF COURT
LEXINGTON, SC

CASE NO.: 2006-CP-32-4563

Motion to Comply with established
Law and Civil Rules of Procedures
Concerning order denying or granting
Applicant's Motion to Alter or Amend
pursuant to rule 59(e).

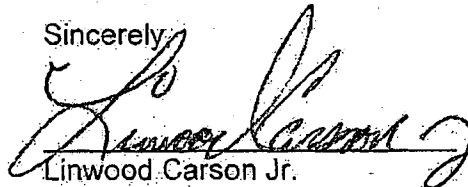
The applicant, Linwood Carson Jr., #263672, Pro-SE, in the above captioned post-conviction relief matter, moving Pro-SE under Section 40-5-80 (2002), requesting respectfully that this Honorable Court comply with South Carolina rules 50, 52, 59, or 60(a) SCRCP, concerning his 59(e) Motion to Alter or Amend his Order denying him relief to preserve proper review of his Claim to South Carolina Supreme Court. In support of this respectful request Pro-SE, applicant would show unto this Honorable Court the following.

Pursuant to the provisions of Section 4, Article V, of the present day South Carolina Constitution, The South Carolina Supreme Court Justice Order, that upon the filing by any party of a post-trial Motion, in jury or non-jury actions under rules 50, 52, 59 or 60(a) SCRCP, the party shall within (10) days provide a copy of the trial judge, it is further ordered that all post-trial motions shall be disposed promptly by written order of the trial judge, but, no later than (60) days after the filing of such motion, The Chief Judge for administrative purpose in each Circuit shall assure compliance with this Administrative of the Supreme Court. The applicant like to bring to Honorable Court attention, that on March 15, 2010 applicant's Counsel (Ms. Elizabeth Zeck) mailed him a copy of the 59(e) motion to alter or amend that she filed in a timely manner on applicant's behalf. And he assumes she forwarded a copy to all parties in this matter. The last time applicant heard from his Counsel June 30, 2010 (see attached letter from Counsel). However, since then applicant has written his Counsel (Ms. Zeck) on several occasions trying to find out the status of his 59(e) motion or any updates in that regard, and she has refused to respond to any of his letters. It's been almost two years now, without a rehearing on it or anything else regarding this case leaving him to believe she has

-2-

abandoned him concerning the case. Which leads him to write the Clerk of Court (Ms. Beth A. Carrigg) regarding his 59(e) motion to alter or amend, the G-S Clerk (Ms. Carrigg) forward the Applicant a letter September 20, 2011 advising him to speak with his Counsel concerning that matter. The applicant further states that his counsel did address these issues before the Court, during applicant's PCR hearing September 3, 2009, and she also addressed these issues in Applicant's 59(e) motion to alter or amend. See Davie vs State, 381SC601, 607, 675 SE 2d 416, 424 (2009). The applicant further states South Carolina Supreme Court states the Honorable Court has (60) days to properly dispose of applicant's 59(e) motion, and it has been well past that. I look forward to hearing from your office concerning this matter.

Sincerely,


Linwood Carson Jr.

CERTIFICATE OF SERVICE

State of South Carolina
County of Lexington

Linwood Carson Jr. #263672
Applicant

CASE NO.: 2006-CP-32-4563

VS

State of South Carolina
Respondent

The above-named applicant, Linwood Carson Jr., #263672, would hereby certify that a true and correct copy of the enclosed Motion to Comply with established Law and Civil rules of procedures concerning order denying or granting applicant's Motion to Alter or Amend pursuant to rule 59(e). Along with Certificate of Service has been sent to named individuals below indicating the same, sent by United States mail, postage prepaid, and addressed to the individuals below as follows:

On this 11th day of January 2013.

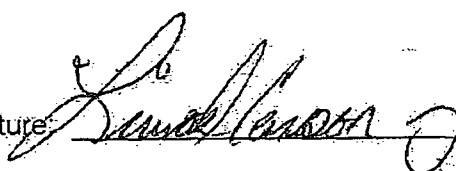
Beth A. Carrigg, Clerk
Lexington County Clerk of Court
For the Common Pleas
205 East Main Street
Lexington, SC 29072

Honorable: Knox McMahon, Judge
Lexington County Courthouse
205 East Main Street
Lexington, SC 29072

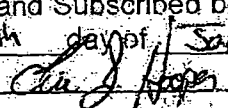
Alan Wilson, Attorney General
Office of the SC Attorney Generals
Post Office Box 11549
Columbia, SC 29211-1549

Daniel E. Shearouse, Clerk
For the Supreme Court of SC
Post Office Box 11330
Columbia, SC 29211

Elizabeth Zeck, Esq.
Attorney at Law
930 Richland Street
Post Office Box 8416
Columbia, SC 29202-8416

Signature 

Sworn to and Subscribed before me

This 11th day of January 2013
 (Seal)

My Commission Expires Feb. 9th, 2020

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
 ELEVENTH JUDICIAL CIRCUIT

Linwood Carson, #263672,)

2006-CP-32-4563

Applicant,)

v.)

RETURN TO MOTION TO ALTER OR
 AMEND THE ORDER OF DISMISSAL
 PURSUANT TO RULE 59(e)

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCF, in which the Applicant, through counsel, asks the Court to direct the alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

This PCR matter came before the Court for an evidentiary hearing on September 3, 2009. Thereafter, this Court issued an Order of Dismissal with Prejudice dated March 2, 2010, and filed with the clerk on March 2, 2010. The Applicant was represented in this matter by Elizabeth Ann Zeck, Esquire.

The Applicant submitted a Motion to Alter or Amend Pursuant to Rule 59(e), SCRCF dated March 15, 2010, and filed with the clerk on March 16, 2011 ("Motion").

II.

The State submits the Motion should be denied. The Applicant is requesting this Court alter or amend the findings of fact and conclusions of law. The State submits this Court has properly addressed the issues about which the Applicant complains:

1. In the Order of Dismissal, first, the Court properly found that Mr. Stockholm testified that Applicant rejected the State's original offer that was conveyed to him by his previous counsel. Second, the Court properly found that Mr. Stockholm testified that during his negotiations, the best offer he was given was negotiated sentence of fifteen (15) years on the burglary charges with the sentence for the remaining charges to be left to the judge's discretion. Last, the Court properly found Mr. Stockholm testified that he advised Applicant of the Offer.
2. In this Order of Dismissal, the Court sufficiently summarized Applicant's testimony at the PCR hearing. Applicant completely fails to announce with any specificity alleged errors made by the Court in this matter.

III.

The State submits the Applicant is merely asking the Court to reverse its decision and grant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court).

IV.

The State therefore requests that the relief requested by the Applicant be denied and asserts a hearing on this matter would be unnecessary.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

BY: *Walt Whitmire*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

Feb. 5th, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Linwood Carson, 263672

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent

IN THE COURT OF COMMON PLEAS
IN THE ELEVENTH CIRCUIT

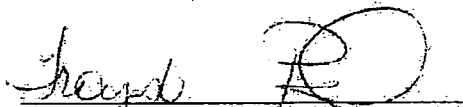
2006-CP-32-4563

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Motion to Amend and Alter** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Elizabeth Zeck, Esquire
P.O. Box 8416
Columbia, SC 29202

DATED this 5th day of February, 2013


Troyeshi Brailey, Legal Assistant
For Respondent

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL
TRACEY C. GREEN
BENJAMIN P. MUSTIAN
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
CHAD N. JOHNSTON
JOHN W. ROBERTS

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

February 8, 2013

*ALSO ADMITTED IN TX

VIA FIRST CLASS MAIL

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street, Suite 146
Lexington, South Carolina 29072

RE: PCR proceeding styled, Linwood Carson, Jr. v. State of South Carolina,
Docket No. 2006-CP-32-4563

Dear Ms. Carrigg:

I am in receipt of your letter of January 17, 2013 forwarding Applicant Linwood Carson's "Motion to Comply" which he sent to the Court on or about January 15, 2013.

Mr. Carson accurately recites the procedural posture of this case, namely that a timely Motion to Alter or Amend Judgment pursuant to Rule 59(e), SCRPC, was filed by this law firm on Applicant's behalf on or about March 15, 2010. Over a year later, on or about April 6, 2011, court reporter L. Coconut Pantsari prepared the official transcript of the PCR hearing held on September 3, 2009, which transcript was provided to the parties, including Applicant, in or around July 2011. From that time until Mr. Carson's attempted filing, no action has occurred in this case.

Apparently prompted by Mr. Carson's attempted filing, the State has finally submitted its Return to the Motion to Alter or Amend the Order of Dismissal, nearly 18 months after receipt of the transcript and nearly three years after the filing of the Rule 59(e) Motion.

Given the lengthy pendency of his Rule 59(e), Mr. Carson respectfully requests that this Court set hearing on this motion at the earliest possible time. I am authorized to represent to the Court that the State joins in this request. Accordingly, we stand ready to work with Assistant Attorney General Walt Whitmire to find a mutually convenient hearing date, noting that since this is a motion for reconsideration, it must be heard by the Hon. R. Knox McMahon, who issued the challenged Order of Dismissal.

263672

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTONFILED IN THE COURT OF COMMON PLEAS
THE ELEVENTH JUDICIAL CIRCUIT

Linwood Carson, #263272,

2013 FEB 25 P 2:55 2006-CP-32-4563

Applicant,

BETH A. CHILDS

vs.

CLERK OF COURT
ORDER DENYING RULE 59(e), SCRCF,
LEXINGTON, MOTION TO ALTER OR AMEND

State of South Carolina,

Respondent.

This matter comes before this Court by way of Applicant's Rule 59(e), SCRCF, Motion to Alter or Amend a Judgment filed with the Lexington County Clerk of Court on March 16, 2010.

An evidentiary hearing into Applicant's PCR action was convened before this Court on September 3, 2009, at the Lexington County Courthouse. Applicant was present at the hearing with counsel, Elizabeth Ann Zeck, Esquire. The state was represented by A. West Lee of the South Carolina Attorney General's Office. At the hearing, both Applicant and Applicant's former plea counsel, Gene Stockholm, Esquire, testified. By order filed March 2, 2010, this Court denied Applicant's request for relief with prejudice. The current post-hearing motion followed.

Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion, this Court is not persuaded to alter or amend the judgment. This Court further finds the March 2, 2010, order of dismissal entered contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRCF. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). After a full review of the case, this Court finds the current order of dismissal makes accurate, complete and appropriate



findings based upon the testimony and arguments presented at the PCR hearing. Therefore, Applicant's Rule 59(e), SCRCP, motion to alter or amend is denied. Further, this Court finds oral argument will not aid in reconsideration of the original judgment.

IT IS THEREFORE ORDERED:

1. Applicant's Rule 59(e), SCRCP, motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 22 day of Feb, 2013.



R. KNOX MCMAHON
Presiding Judge
Eleventh Judicial Circuit

Lexington, South Carolina

FILED
2013 FEB 25 PM 2:55
DEBRA A. CANTRELL
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Linwood Carson Jr., # 263672	)	CASE NO. 2006-CP-35-4563
Pro-Se,	)	
Applicant,	)	
VS.	)	APPLICANT'S MOTION IN OPPOSITION
	)	TO THE RESPONDENT'S RETURN AND
State of South Carolina,	)	MOTION FOR SUMMARY JUDGEMENT
	)	
Respondent.	)	

Now Comes The Applicant in the above captioned Linwood Carson Jr. would like to show this Honorable Court the following . That on February 13, 2013 the applicant received a letter from his PCR attorney Ms. Elizabeth Zeck after he filed a pro-se motion to comply with established Laws. That he also served all parties involved in the matter. Which she then forward him a copy of a Return Motion as Summary Judgment Motion from the Assistant Attorney General (Mr. John Whitmire) that was forwarded to her office on February, 5 2013. Which he ask the Honorable Court for Summary Judgement concerning, the applicant's 59 (e) Motion to Alter or Amend filed March, 15 2010 with the Honorable Court. The Applicant futher states that after his 59(e) Motion to Alter or Amend was filed by the Court on March, 15 2010, he did not hear anything else from his attorney (Ms. Elizabeth Zeck) concerning this matter, nor did he hear anything from the Court regarding the matter. Which the Honorable Court had Sixty (60) days to rule on the applicant's 59(e) Motion to Alter or Amend, According to S.C. Rule Civil Procedure Rule 50, 52, 59, or 60(a) the applicant futher states this Motion has been pending for (3) years with the Court. Which violates the applicant's Constitutional Rights, See Article 1 § 3 S.C. Constitution and the 14 Amendment to the U.S. Constitution, Due Process. Because the Counselor for the Respondent (Mr. John W. Whitmire) office waived their right to

file a return to the applicant's 59(e) Motion to Alter or Amend. They also waived their right to ask the Honorable Court for Summary Judgement concerning the Applicant 59(e) Motion to Alter or Amend. Because according to rule 227 of S.C. Rule of Civil Procedures, Counselor had (30) days to file his return and ask for Summary Judgement with the Court, Counselor was also in violation of rule 240 (c) of S.C. rules of civil procedure. Which shall apply to a return. Failure of a party to timely file a return may be deemed and a consent by that party to relief sought in the Motion or petition. This was a motion "The Return", also rule 240 (g) of S.C. Civil procedure should apply. Failure of the moving party to perform any act required by this rule may be deemed an abandonment of the Motion or Petition in this "Case", it was abandonment of the Motion "The Return". Also see Hudson v. Hudson 290 S.C. 215, 349 S.E.2d. 341 (1986). The Applicant further points out to the Court that Counselor for the Respondent failed to "ask" for an enlargement of time. see S.C. Rules of Civil Procedure Rule 6 Time (b) Enlargement. This Rule states that Counselor for the Respondent must petition the Court for a thirty (30) days "extension", which Counselor can be allowed up to three (3) extension. But the Counselor must be given written order by the administrative Judge of each Circuit, and the Order must say for good cause having been shown the time for serving and filing the Return to the application for Post-Conviction relief. The above entitled action is tolled until the time has elapsed for the Respondent would have to respond. In the Instant case the Respondent's Counsel never filed for Summary Judgement, nor, did the Respondent's Counsel served the Applicant with a copy of such. This Violated the Applicant's Constitutional Rights, see Article 1 § 3 S.C. Constitution, and the 14th Amendment of the United States Constitution, Due Process. The Applicant further points out that the Attorney General's Office never Petitioner the Court for Enlargement of Time, The Respondents just took it upon themselves to ignore the "Law" and rules of Civil procedures. As of this day the Attorney General's Office has not been granted an enlargement of time nor did the Attorney General's office ask the Honorable Court for such orders. This is why the Applicant is asking the Honorable Court for sanction.

Because the Attorney General's Office never filed their return, and the Summary Judgement motion should be Stricken from their defense. The Applicant ask the Honorable Court to Order Counsel for the Respondent (Mr. John W. Whitmire), to forward him and the Court a copy of the Order. Where their Office was granted an enlargement of time by the Honorable Court, to serve and file their return to the 59(e) Motion to Alter or Amend on March, 15 2010. The Applicant futher states he'd like the Court to Order Counsel for the Respondent (Mr. John W. Whitmire) to forward his copy of his Motion for Enlargement of Time, That should have been filed and Granted by the Honorable Court during 2010 Sessions. Can be Afforded the Procedural Due Process, He is Entitled to said Motion before this Honorable Court

CONCLUSION

The Applicant ask that a hearing be held, to Address these issues. Based on the facts of Default on the States behalf, Cause they had (30) Days to file a Return and ask for Summary Judgement. According to Rule 227 of S.C. Rules of Civil Procedures, "Not make their own Rule" see 240 (c), 240 (y) of Civil Procedures. Failure of a party to timely file a return may be deemed an abandonment of the Motion or Petition in the case. Applicant should be granted the relief he's seeking Davie v. State his case should be Reversed and Remanded for re-sentencing. The Court should also take into consideration of the prior fifteen years concurrent offerm and direct[ed] that any sentence applicant receives should not exceed the original twenty-three year sentence. Applicant futher ask this Court for such other and futher relief as is just and proper.

THIS 7 DAY OF March, 2013.

[Signature]
[Signature]

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)
) ELEVENTH JUDICIAL CIRCUIT
)
Linwood Carson Jr., 203672) CASE NO. 2006-CP-33-4563
Pro-Se,)
Applicant,)
)
-vs-)
)
State of South Carolina,) CERTIFICATE OF SERVICE
)
Respondent.) CASE NO. 2006-CP-34-4563

The Above named applicant Linwood Carson Jr., 203672 would hereby certify that a true copy of the enclosed Applicant's Motion in Opposition to the Respondent's Return and Motion for Summary Judgement. Concerning Order Denying or granting Applicant's Motion to Alter or Amend Pursuant to Rule 59(e). The Applicant is also advising his Attorney (Ms. Elizabeth Zeck) to file this Motion on his behalf with Lexington County Clerk of Court. And to serve all Parties that this matter concerns a copy, and to forward the applicant a copy back for his records. Along with a Certificate of Service has been sent to the named individuals below indicating the same, sent by United States mail, Postage prepaid, and Addressed to the individuals as follows.

On This _____ Day of _____, 2013.

Elizabeth Zeck, Esq
Attorney at Law
P.O. Box 6416
Columbia, SC 29202
-6416

Daniel E. Shearouse, Clerk
For the Supreme Court of S.C.
P.O. Box 11330
Columbia, SC 29211

Beth A. Carrigg, Clerk
Lexington County
Clerk of Court
205 East Main Street
Lexington, SC 29072

Hon. Knox McManan, Judge
Lexington County Courthouse
205 East Main Street
Lexington, SC 29072

Alan Wilson, Attorney General
Office of the S.C. Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

[Signature]
Linwood Carson Jr.

Sworn to and Subscribed Before me

This 7 Day of March, 2013.

[Signature]
Sory & Thomas
Notary Public for South Carolina
My Commission Expires. September 19, 2014

Exhibit 28

Mr. Linwood Carson Jr. #476
Evans Corr. Inst. Knoxville
610 Hwy. 9 West
Kennesawville, SC 29512

March 19, 2013

VIA First Class Mail
The Honorable Beth A. Carrigg
Arlington County Clerk of Court
205 East Main St. Suite 146
Arlington, SC 29072

Re: Freedom Information Act Request, S.C. Code Ann 30-4-10, et. Seq.

Dear Ms. Carrigg

Could you please send me a copy of my motion to Comply with established law (No. 2006-CP-32-4563). That I forward to your office to be filed, and a copy of my opposition motion that I sent to you March 7, 2013 for my records. I look forward to your response, it would be greatly appreciated!

Thank you kindly!
Linwood Carson Jr.

Certificate of Service

Exhibit 29

The petitioner, Pro-Se, would hereby Certify that a true and Correct Copy of his, letter asking the Clerk of Court (Ms. Beth A. Carrigg) to send him a copy of his motion to Comply, that he forward to her office Jan., 2013, and a copy of the opposition he also sent March 7, 2013, is being served on the Clerk of Court (Ms. Carrigg) that this matter concerns. And a Certificate of Service has been forward via the United States postal Service, postage prepaid and addressed as below. On this 19th day of March, 2013.

The Honorable Beth A. Carrigg
Lexington County Clerk of Court
205 East Main St. Suite 146
Lexington, SC. 29072

Spencer Carson
Mr. Linwood Carson Jr. #263672
Evans Corr. Inst. Wayhow #212
610 Hwy. 9 West
Bennettsville, SC. 29512

Sworn to and Subscribed before me
this 19th day of March, 2013

Diane S.

Notary Public of South Carolina

My Commission Expires 2-12-2023

WITNESSES

LTPD
Ford, Mike

A-2005-32-00626

4/27/2005 9:56 AM

ARREST WARRANT NUMBER

1625459

ACTION OF GRAND JURY

TRUE BILL

FORELADY

Foreperson of Grand Jury

Date: 11-14-05

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 05 -GS-32- 4184

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2005

THE STATE

vs.

Linwood Carson, Jr.

CDR# 0100

Indictment for

Possession of less than one gram of Ice,
crank, or crack cocaine 1st Offense

§44-53-375(A)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Possession of less than one gram of ice, crank, or crack
cocaine 1st Offense

§44-53-375(A)

At a Court of General Sessions, convened on NOVEMBER, 2005, the Grand Jurors of Lexington County present upon their oath:

That Linwood Carson, Jr., did in Lexington County on or about January 30, 2005, knowingly and intentionally possess a controlled substance under provisions of § 44-53-110, et. Seq. Code of Laws of South Carolina 1976, as amended, to wit: a quantity of crack cocaine, in violation of § 44-53-375(A) Code of Laws of South Carolina, 1976, as amended. Such being the first offense.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Possession of Crack Cocainein violation of § of the S.C. Code of Laws, bearing CDR Code # 8101019☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTES:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years.

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

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

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: January 30, 2006☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$100

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$

\$56-5-2995 (DUI Assessment) \$12 \$

\$35.13 (Public Def/Prob) \$500 \$

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$25

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$100

\$50-21-114(BUI Breath Test Fee) \$50 \$

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

TOTAL \$225

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

LTPD
Ford, Mike

DOCKET NO. 206-GS-32-249

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

Vs.

Linwood Carson, Jr.

A-2005-32-00626

4/27/2005 10:16 AM

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Ben H. Lucas
Foreperson of Grand Jury
Date: 9/12/06

VERDICT

CDR# 0086

Indictment for

Burglary 2nd Degree Section (B) Violent

§16-11-312(B)

DONALD V. MYERS, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

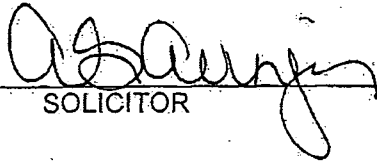
INDICTMENT FOR
Burglary 2nd Degree Section (B) Violent

§16-11-312(B)

At a Court of General Sessions, convened on JANUARY, 2006, the Grand Jurors of Lexington County present upon their oath:

That Linwood Carson, Jr. did in Lexington County on or about January 30, 2005, knowingly and willfully enter a building without consent and with the intent to commit a crime therein, to wit: building 205-L Columbia Avenue, Lexington, SC., and the defendant has two or more convictions for burglary or housebreaking or a combination of both, in violation of § 16-11-312 (B) 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.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF LexingtonSTATE ofAKA: Linwood CarsonRace: BSex: MAge: 26DOB: 11-3-80SS#: 1-11-31240Address: 2006 GS-32City, State, Zip: 249DL# 0101816STL# 11-31240

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006 GS-32-249A/W#: STRAIGHT INDICT.Date of Offense: 1/30/05S.C. Code §: 16-11-312(B)CDR Code #: 0101816☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Burgess 2nd (B)in violation of 16-11-312(B) the S.C. Code of Laws, bearing CDR Code # 0101816☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$14-1-206 (Assessments 107.5%) \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00\$14-1-211(A)(2) (DUI Surcharge) \$100 \$\$56-5-2995 (DUI Assessment) \$12 \$\$ 35.13 (Public Def/Prob) \$500 \$\$73.3; 1B TP (Law Enforce. Funding) \$25 \$35.00\$33.7; 1B TP (Drug Court Surcharge) \$100 \$\$50-21-114(BUI Breath Test Fee) \$50 \$\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$3% to County (if paid in installments) \$TOTAL \$125.00PTUP days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol Testing

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

pmts. of \$ beginning \$ paid to Public Defender Fund Other: ☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE: [Signature]Judge Code: 011011315Sentence Date: 1/30/06Court Reporter: [Signature]Clerk of Court/ Deputy Clerk: [Signature]

WITNESSES

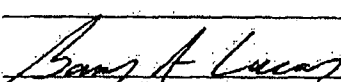
LTPD

Ford, Mike

ARREST WARRANT NUMBER

Straight Indictment

ACTION OF GRAND JURY

TRUE BILL
Foreperson of Grand Jury

Date: 9 Jan 06

VERDICT

Foreperson of Petit Jury
Date:DOCKET # 2006-GS-32- 250

The State of South Carolina

County of LEXINGTON

COURT OF GENERAL SESSIONS

January TERM 2006

THE STATE

vs.

Linwood Carson Jr.

CDR# 86

Indictment for

Burglary Second Degree

(Violent)

§16-11-312(B)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

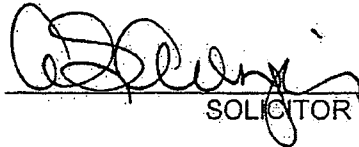
INDICTMENT FOR
BURGLARY SECOND DEGREE
(Violent)
§16-11-312(B)

At a Court of General Sessions, convened in January 2006, the Grand Jurors of
LEXINGTON County present upon their oath:

BURGLARY SECOND DEGREE
§16-11-312(B)

That Linwood Carson, Jr. did, in Lexington County on or about January 30, 2005,
willfully and unlawfully enter a building without consent and with intent to commit a crime
therein, to wit: building 205-P Columbia Avenue, Lexington, South Carolina, and the
defendant has two or more convictions for burglary or housebreaking or a combination of
both, in violation of Section 16-11-312(b) of the South Carolina Code of Laws of 1976, as
amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATELexingtonLinwood Carson, Jr.AKA: _____
Race: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#:

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Burglary 2ndin violation of § 16-11-312 of the S.C. Code of Laws, bearing CDR Code # 0,0,8,6☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTY:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$100
\$56-5-2995 (DUI Assessment)	\$12	\$12
\$35.13 (Public Def/Prob)	\$500	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$100
\$50-21-114(BUI Breath Test Fee)	\$50	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$40
3% to County (if paid in installments)	\$	\$
TOTAL		\$125

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES:

LTPD
Ford, Mike

DOCKET NO. 2006-GS-32-251

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

vs.

Linwood Carson, Jr.

A-2005-32-00626

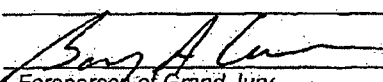
4/27/2005 10:10 AM

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL


Foreperson of Grand Jury

Date: 9 Jan 06

VERDICT

Foreperson of Petit Jury

Date:

CDR# 0086

Indictment for

Burglary 2nd Degree Section (B) Violent

§16-11-312(B)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

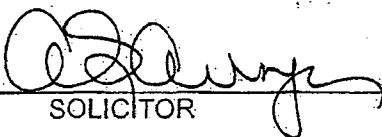
INDICTMENT FOR
Burglary 2nd Degree Section (B) Violent

§16-11-312(B)

At a Court of General Sessions, convened on JANUARY, 2006, the Grand Jurors of Lexington County present upon their oath:

That Linwood Carson, Jr. did in Lexington County on or about January 30, 2005, knowingly and willfully enter a building without consent and with the intent to commit a crime therein, to wit: building 205-O located at Columbia Avenue, Lexington, SC., and the defendant has two or more convictions for burglary or housebreaking or a combination of both, in violation of § 16-11-312 (B) 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.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF

STATE

VS.

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

AKA:

Race:

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

in violation of § 16-11-310 of the S.C. Code of Laws, bearing CDR Code # 0101816

☐ NON-VIOLENT ☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

LTPD
Ford, Mike

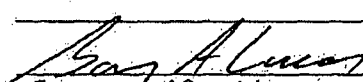
A-2005-32-00626

4/27/2005 10:09 AM

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL
Foreperson of Grand Jury

Date:

9 Jan 06

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2006-GS-32-252

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

vs.

Linwood Carson, Jr.

CDR# 0086

Indictment for

Burglary 2nd Degree Section (B) Violent

§16-11-312(B)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Burglary 2nd Degree Section (B) Violent
§16-11-312(B)

At a Court of General Sessions, convened on JANUARY, 2006, the Grand Jurors of Lexington County present upon their oath:

That Linwood Carson, Jr. did in Lexington County on or about January 30, 2005, knowingly and willfully enter a building without consent and with the intent to commit a crime therein, to wit: building 205-N located at 205 Columbia Avenue, Lexington, SC., and the defendant has two or more convictions for burglary or housebreaking or a combination of both in violation of § 16-11-312 (B) 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.


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington

STATE

AKA: Linwood CarsonRace: black Sex: Male Age: 30DOB: SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Burgundy Ind (CB)in violation of § 16-11-32 (b) of the S.C. Code of Laws, bearing CDR Code # 010816☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 125.00

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 010315Sentence Date: 1/30/06Court Reporter: Carroll

Clerk of Court/Deputy Clerk

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

LTPD
Ford, Mike

DOCKET NO. 2006-GS-32-253

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

vs.

Linwood Carson, Jr.

A-2005-32-00626

4/27/2005 10:00 AM

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL

Bay A. Lucas
Foreperson of Grand Jury
Date: *9 Jan 06*

VERDICT

Foreperson of Petit Jury

Date:

CDR# 0086

Indictment for

Burglary 2nd Degree Section (B) Violent

§16-11-312(B)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

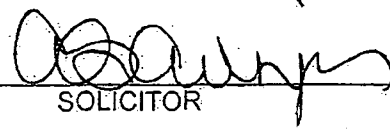
INDICTMENT FOR
Burglary 2nd Degree Section (B) Violent

§16-11-312(B)

At a Court of General Sessions, convened on JANUARY, 2006, the Grand Jurors of Lexington County present upon their oath:

That Linwood Carson, Jr. did in Lexington County on or about January 30, 2005, knowingly and willfully enter a building without consent and with the intent to commit a crime therein, to wit: 205-M located at 205 Columbia Avenue, Lexington, SC., and the defendant has two or more convictions for burglary or housebreaking or a combination of both, in violation of § 16-11-312 (B) 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.


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE South Carolina

AKA:

Race: BSex: MAge: 32DOB: 11-11-31213SS#: 11-11-31213Address: 11-11-31213City, State, Zip: 11-11-31213DL# 11-11-31213SID# 11-11-31213

A/W#:

Date of Offense: 11/30/05S.C. Code §: 16-11-31213CDR Code #: 11-11-31213

INDICTMENT/CASE#:

-GS-

STRAIGHT

INDICTMENT

11/30/05

11-11-31213

11-11-31213

11-11-31213

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11-11-31213

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11-11-31213

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Burglar (1st) (B)in violation of 16-11-31213 of the S.C. Code of Laws, bearing CDR Code # 11-11-31213☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 125

PTUP _____

days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP. Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE J. H. [Signature]Judge Code: 11-11-31213Sentence Date: 11/30/06Court Reporter: [Signature]

Clerk of Court/ Deputy Clerk

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

LTPD
Ford, Mike

DOCKET NO. 2006-GS-32-254

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

vs.

Linwood Carson, Jr.

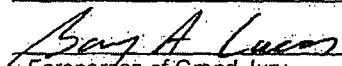
A-2005-32-00626

4/27/2005 10:07 AM

ARREST WARRANT NUMBER

STRAIGHT INDICTMENT

ACTION OF GRAND JURY

TRUE BILL
Foreperson of Grand JuryDate: 9/22/06

VERDICT

Foreperson of Petit Jury

Date:

CDR# 0086

Indictment for

Burglary 2nd Degree Section (B) Violent

§16-11-312(B)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

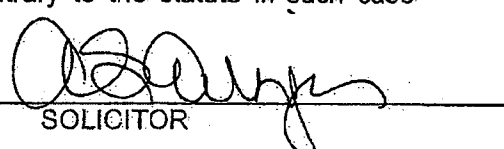
INDICTMENT FOR
Burglary 2nd Degree Section (B) Violent

§16-11-312(B)

At a Court of General Sessions, convened on JANUARY, 2006, the Grand Jurors of Lexington County present upon their oath:

That Linwood Carson, Jr. did in Lexington County on or about January 30, 2005, knowingly and willfully enter a building without consent and with the intent to commit a crime therein, to wit: building 205-K located at 205 Columbia Avenue, Lexington, SC., and the defendant has two or more convictions for burglary or housebreaking or a combination of both, in violation of § 16-11-312 (B) 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.


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Lexington

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

INDICTMENT/CASE#:

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED☒ SENTENCE☒ PLEA ☐ TRIALIn disposition of the said Indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

in violation of § 16-11-312 of the S.C. Code of Laws, bearing CDR Code # 0101816

☒ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS: _____

Recipient:

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$
TOTAL		\$125.00

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP. Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Clerk of Court/Deputy Clerk

Court Reporter:

White - Clerk Green - Corrections Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

LTPD
Ford, Mike

DOCKET NO. 2006-GS-32-255

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE

vs.

Linwood Carson, Jr.

A-2005-32-00626

4/27/2005 10:13 AM

ARREST WARRANT NUMBER

1625465

TRUE BILL

Foreperson of Grand Jury

Date: 9/16/06

VERDICT

Foreperson of Petit Jury

Date:

CDR# 0124

Indictment for

Possession or Making of Burglary Tools

§16-11-20

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

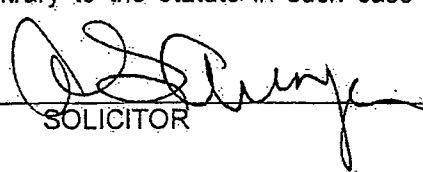
INDICTMENT FOR
Possession or Making of Burglary Tools

§16-11-20

At a Court of General Sessions, convened on JANUARY, 2006, the Grand Jurors of Lexington County present upon their oath:

That Linwood Carson, Jr. did in Lexington County on or about January 30, 2005, knowingly and willfully make or mend, cause to be made or mended, or have in his/her possession any engine, machine, tool, false key, picklock, bit, nippers, nitroglycerine, dynamite cap, coil or fuse, steel wedge, drill, tap-pin, or other implement or thing adapted, designed, or commonly used for the commission of burglary, larceny, safecracking, or other crime, under circumstances evincing an intent to use, employ, or allow the same to be used or employed in the commission of a crime, or knowing that the same are intended to be so used, in violation of §16-11-20 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.


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTONINDICTMENT/CASE#: 2006-32-255

STATE

AKA: MURDER CARSONRace: MSex: MAge: 21AW#: 1625465Date of Offense: 16-11-20S.C. Code §: 16-11-20CDR Code #: 011214Address: 6

DL#

SID#

SENTENCE

☒ PLEA☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Possession of Burglary Toolsin violation of § 16-11-20 of the S.C. Code of Laws, bearing CDR Code # 011214☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$_____; provided that upon the service of _____ days/months/years and/or payment of \$_____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: January 30, 2006☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts. of \$_____ beginning _____

\$_____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 be paid to Clerk during probation

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

\$125.9

Clerk of Court/ Deputy Clerk

Court Reporter: C. Cantelmo

PRESIDING JUDGE

Judge Code: 01101315Sentence Date: 1/30/06

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)