

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Clifton Newman, Circuit Court Judge

RECEIVED

OCT - 4 2013

S.C. Supreme Court

LEWIS ADDIS, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000047

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

GUILTY PLEA TRANSCRIPT DATED APRIL 14, 2011..... 1

SENTENCING TRANSCRIPT DATED MAY 24, 2011 16

APPLICATION FOR POST-CONVICTION RELIEF.....38

RETURN51

POST-CONVICTION RELIEF HEARING TRANSCRIPT59

ORDER OF DISMISSAL99

INDICTMENTS114

State of South Carolina) In the Court of General Sessions
) Fifth Judicial Circuit
 County of Richland) 2010-GS-40-875
) 2010-GS-40-876

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Lewis Addis,)
)
 Defendant.)
)
 _____)

April 14, 2011
 Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge

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

Kathryn "Luck" Campbell, Esquire, Assistant Solicitor
 Attorney for the State

Jennifer C. Davis, Esquire
 Attorney for the Defendant

Elizabeth B. Harris, CVR-M
 Circuit Court Reporter

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Witness/Description Page No.

Lewis Addis

Examination by the Court 3

Statement of Facts by Solicitor 13

Certificate Page 15

E X H I B I T S

No. Description I.D. Ev.

No Exhibits Introduced.

L. ADDIS - EXAMINATION BY THE COURT

1 MS. CAMPBELL: May it please the court? Your Honor,
 2 this is Lewis Addis. He's pleading guilty to burglary in
 3 the first degree and petit larceny.

4 THE COURT: Oh, that's not good.

5 MS. CAMPBELL: With the permission of the court, Your
 6 Honor, we would ask that you take the guilty plea today and
 7 that we could defer sentencing until a later date when the
 8 investigator can be here, as well as I believe he wants
 9 family members here.

10 THE COURT: All right, Mr. Addis, let's see here. You
 11 been sworn?

12 CLERK OF COURT: No, sir. Would you raise your right
 13 hand, please?

14 LEWIS ADDIS, BEING DULY SWORN,
 15 TESTIFIES AS FOLLOWS:

16 EXAMINATION BY THE COURT:

17 Q. All right, Mr. Addis, you're fifty-one years of age?

18 A. Yes, sir.

19 Q. And how far did you go in school?

20 A. Well, I graduated and I had two years of Tech, HVAC.

21 Q. Where did you go to high school? Brookland Casey?

22 A. No, sir. I went in Westside High in Anderson.

23 Q. Westside High in Anderson?

24 A. Yes, sir.

25 Q. All right. You married?

L. ADDIS - EXAMINATION BY THE COURT

4

- 1 A. No, sir. Divorced.
- 2 Q. Children?
- 3 A. Yes, sir.
- 4 Q. How many children you have?
- 5 A. Two.
- 6 Q. Are they grown?
- 7 A. Well, the youngest one's sitting in the front row
- 8 there, and my oldest one, she's married to the Navy.
- 9 Q. She's married to what?
- 10 A. Yeah, they grown. She's married to the Navy.
- 11 Q. She's in the Navy?
- 12 A. Well, she was, but she married somebody in the Navy,
- 13 too. So, she's in Norfolk.
- 14 Q. All right. So, that's your son out there?
- 15 A. Yes, sir.
- 16 THE COURT: What do you do?
- 17 UNIDENTIFIED MALE: Heating and air.
- 18 THE COURT: Pardon me?
- 19 UNIDENTIFIED MALE: Heating and air.
- 20 THE COURT: You do heating and air?
- 21 UNIDENTIFIED MALE: Yes.
- 22 THE COURT: Well, you're getting ready to get busy.
- 23 UNIDENTIFIED MALE: Yes, sir.
- 24 THE COURT: It'll be hot before long.
- 25 BY THE COURT:

L. ADDIS - EXAMINATION BY THE COURT

5

- 1 Q. What kind of work do you do?
- 2 A. Same thing, sir.
- 3 Q. Heating and air?
- 4 A. Yes, sir, HVAC.
- 5 Q. You train your boy?
- 6 A. Yes, sir. He was under houses when he was, like,
- 7 twelve.
- 8 Q. Is he any good?
- 9 A. Yes, sir.
- 10 Q. Now, you're charged with burglary first?
- 11 A. Yes, sir.
- 12 Q. And petit larceny?
- 13 A. Yes, sir.
- 14 Q. Burglary first, you can get up to life imprisonment.
- 15 You understand that?
- 16 A. Yes, sir.
- 17 Q. You've got to get at least fifteen years. You
- 18 understand that?
- 19 A. Yes, sir.
- 20 Q. And petit larceny, you can get up to thirty days.
- 21 A. Yes, sir.
- 22 Q. Which means if I gave you life plus thirty days, when
- 23 you died on the life sentence, they'd hold you another
- 24 thirty days before they'd bury you. You understand that?
- 25 A. Yes, sir.

L. ADDIS - EXAMINATION BY THE COURT

6

1 Q. All right. You want to plead guilty?

2 A. Yes, sir.

3 Q. All right, and you're represented by Ms. Davis?

4 A. Yes, sir.

5 Q. You told Ms. Davis everything you know about this
6 matter?

7 A. Yes, sir. I have.

8 Q. What did she tell you?

9 A. She thinks this is my best option, and so do I.

10 Q. All right, and she answered all your questions?

11 A. Yes, sir, she has.

12 Q. Did everything you asked her to do?

13 A. Yes, sir, she has.

14 Q. You satisfied with her services?

15 A. Yes, sir.

16 THE COURT: All right, Ms. Davis, you concur with your
17 client entering a guilty plea?

18 MS. DAVIS: Yes, sir, Your Honor.

19 THE COURT: Is that what you told him, this is your
20 best option? He do any yelling?

21 MS. DAVIS: No, sir. He could have been noticed with
22 life without parole. So, we talked about it.

23 THE COURT: Whoa.

24 MS. DAVIS: And he did decide that this would be his
25 best option.

L. ADDIS - EXAMINATION BY THE COURT

1 THE COURT: This fellow has not too good a record,
2 huh?

3 MS. DAVIS: From back in the '70s, Your Honor. Well,
4 '85, in '85.

5 THE COURT: And then 2009.

6 MS. DAVIS: Excuse me, Your Honor?

7 THE COURT: And 2009.

8 MS. DAVIS: Yes, sir.

9 BY THE COURT:

10 Q. You got a drug problem?

11 A. Well, alcohol, Your Honor.

12 Q. Alcohol?

13 A. Yes, sir.

14 Q. You drink alcohol and then go out and do bad things?

15 A. No, not generally. Not as a rule, no, sir, but I have
16 had an alcohol problem for quite some time.

17 Q. You don't crawl around under houses under the
18 influence, do you?

19 A. No, sir. Usually I'm ---

20 Q. Sometimes you do?

21 A. --- putting duct work when I'm crawling under a house.

22 Q. You're what?

23 A. Putting in duct work when I'm crawling under a house.

24 Q. Were you taking a little short hit on something when
25 you're under there?

L. ADDIS - EXAMINATION BY THE COURT

1 A. No, sir. I might, I might have drank a couple of
2 times, but really no drug problem.

3 Q. Take a six pack in there with you in your little
4 cooler?

5 A. I ain't going to lie. Sometime I have.

6 THE COURT: Y'all talked about that?

7 MS. DAVIS: We talked about his drinking problem, yes,
8 sir.

9 THE COURT: Did you talk about how it's against the
10 building codes to take coolers under houses when they're
11 working on duct work?

12 MS. DAVIS: We didn't discuss that, but yes, sir, Your
13 Honor.

14 THE COURT: See what they do, when they finish the
15 can, they put it in the duct.

16 DEFENDANT: No, sir.

17 THE COURT: It cuts down on the flow of the air.

18 DEFENDANT: No, sir.

19 THE COURT: And violates the building code, doesn't
20 it?

21 DEFENDANT: Because, because it'd probably make a
22 racket, and they'd be calling you back out there.

23 THE COURT: Unless they drink, too.

24 DEFENDANT: Or they might not notice the racket.

25 THE COURT: Might not notice the racket.

L. ADDIS - EXAMINATION BY THE COURT

9

1 DEFENDANT: I'm sure they would.

2 BY THE COURT:

3 Q. All right, you understand what they've asked me to do
4 is for some reason -- I can't remember -- they don't want
5 me to sentence you now, but bring you back here and
6 sentence you at some point in time in the future?

7 A. Yes, sir. My daughter, I hadn't seen her in about six
8 months, and she's coming ---

9 Q. She's the one coming from Norfolk?

10 A. Yes, sir.

11 Q. She got any children?

12 A. Yes, sir.

13 Q. How many children she got?

14 A. She's got one, and she got one on the way.

15 Q. Well, when she comes, I guess she'll bring the one on
16 the way, but is she going to bring the other one?

17 A. Yes, sir, she is.

18 Q. All right. Now, you understand you don't have to
19 plead guilty? You're presumed to be innocent. The state
20 would have to prove you guilty beyond a reasonable doubt.
21 But by pleading guilty, the state doesn't have to prove
22 you're guilty because you're admitting your guilt. You
23 understand that?

24 A. Yes, sir.

25 Q. And you understand by pleading guilty, you're waiving

L. ADDIS - EXAMINATION BY THE COURT

10

1 some of your constitutional rights? You have a
2 constitutional right to a jury trial if you'd like one, let
3 twelve citizens of this county hear the evidence and
4 determine whether you're guilty or not. But when you plead
5 guilty, you give up your right to a jury trial. You
6 understand?

7 A. Yes, sir.

8 Q. And by pleading guilty, you're waiving some of your
9 constitutional rights -- I mean, you're waiving your
10 constitutional right to confront any witnesses the state
11 may have. You understand that?

12 A. Yes, sir.

13 Q. And by pleading guilty, you're giving up your
14 constitutional right to remain silent as well. Do you
15 understand that?

16 A. Yes, sir, I do.

17 Q. And by giving up your right to a trial, you're giving
18 up your right to contest any evidence the state may have in
19 this matter through any motions *in limine* or motions to
20 suppress. Do you understand?

21 A. Yes, sir.

22 Q. All right. Now, and hadn't had any alcoholic
23 beverages in the last twenty-four hours, have you?

24 A. No, sir.

25 Q. Taken any drugs or had any medication in the last

L. ADDIS - EXAMINATION BY THE COURT

11

1 twenty-four hours?

2 A. No, sir.

3 Q. You under the influence of any kind of substance here
4 today?

5 A. No, sir.

6 Q. You being treated by a psychiatrist or other
7 professional for any mental illness?

8 A. No, sir.

9 Q. You have any complaints with the solicitor's office?

10 A. No, sir.

11 Q. Any complaints with law enforcement?

12 A. No, sir.

13 Q. Any complaints with anybody at the jail?

14 A. No, sir.

15 Q. How long you been in jail?

16 A. Fifteen months..

17 Q. All right. Do you understand when I sentence you here
18 today, you'll have ten days to appeal this sentence?

19 A. Yes, sir.

20 Q. Well, when I sentence you, whenever I sentence. You

21 A. Yes, sir.

22 THE COURT: What? Are y'all planning on waiting until
23 he -- right before he dies and then bring him back so if
24 it's a life sentence, it won't be too long?

25 MS. DAVIS: No, sir. I, I believe Your Honor may be

L. ADDIS - EXAMINATION BY THE COURT

12

1 back on the bench for criminal court May 23rd, so I think
2 we were trying to schedule it that week.

3 THE COURT: Is that my next GS?

4 MS. DAVIS: I believe so.

5 THE COURT: All right. I've got something to look
6 forward to.

7 BY THE COURT:

8 Q. All right, as to indictment 2010-GS-40-875, Mr. Addis,
9 it says you did in Richland County on or about September 9,
10 2009, willfully and unlawfully enter the dwelling of
11 Carolyn Fant without consent, with the intent to commit a
12 crime therein. And you have a prior record, two or more
13 convictions for burglary, house breaking, or a combination
14 of both. How do you plead?

15 A. Guilty, Your Honor.

16 Q. And as to indictment 2010-GS-40-876, which says you
17 did in Richland County on or about September 9, 2009, take
18 and carry away the personal goods of Carolyn Fant valued at
19 \$1,000 or less and described as prescription drugs, and you
20 did so with the intent to deprive the owner permanently of
21 such property and to convert the goods to your own use, all
22 in violation of the statutes of this state, how do you
23 plead?

24 A. Guilty, Your Honor.

25 THE COURT: I find this defendant to be represented by

1 competent counsel. He's satisfied with the services of his
2 attorney. I further find the defendant is pleading guilty
3 freely and voluntarily, and his guilty plea is entered
4 knowingly and intelligently to both the burglary first and
5 the petit larceny charge, and I will accept the plea
6 subject to there being a factual basis.

7 What do you want to tell me?

8 MS. CAMPBELL: I can do a brief factual basis.

9 THE COURT: Well, I think you need to do that.

10 MS. CAMPBELL: This happened on September the 9th at

11 . The victim in the case had actually
12 been taken to the hospital because she suffers from
13 dementia and had fallen. She wasn't there at the time.

14 He and a co-defendant named Casey Chavis gained entry
15 through the rear, by breaking out a rear window. There is
16 actually a CODIS hit from where the co-defendant actually
17 left a spot of blood there at the scene, which was
18 collected when the police responded.

19 At the time, items belonged to the victim, including a
20 handgun, were missing. The defendant -- the co-defendant
21 first gave a statement implicating the defendant in the
22 case. The defendant was then interviewed and Mirandized,
23 and he did confess to participating in the burglary, Your
24 Honor, although he did not say he stole a handgun and other
25 items. He admitted to stealing prescription drugs from the

1 victim. And at the appropriate time, I can go into more
2 how he knew how to break into this house. There was a
3 connection to his family.

4 THE COURT: All right, I guess we'll save whatever you
5 want to tell me in mitigation of being kept in prison for
6 thirty days after you die until the next time.

7 MS. DAVIS: Yes, sir, Your Honor.

8 MS. CAMPBELL: Thank you, Your Honor.

9 THE COURT: All right, Mr. Addis.

10 DEFENDANT: Thank you, Your Honor.

11 THE COURT: See you in another month or so, all right?

12 DEFENDANT: Yes, sir. Take care.

13 THE COURT: You behave in the meantime.

14 DEFENDANT: Oh, I am.

15 MS. DAVIS: Thank you, Your Honor.

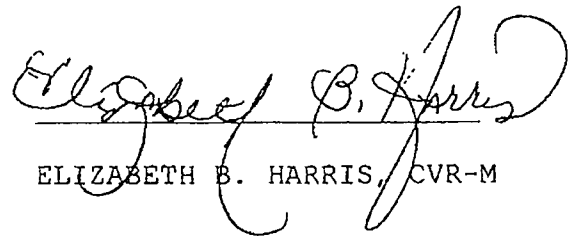
16 THE COURT: All right.

17 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 14TH DAY OF APRIL, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

JANUARY 27TH, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

10-GS-40-0875; 0876

State of South Carolina,)

Plaintiff,)

v.)

Lewis Addis, Jr.,)

Defendant.)

Transcript of Record

SENTENCING

May 24, 2011
Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, Judge

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

Luck Campbell, Esquire
Attorney for the State

Jennifer C. Davis, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS/DESCRIPTION PAGE NO.

Sentencing

EXHIBITS:

No exhibits were marked to this proceeding

Sentence of the Court 21

Certificate of Court Reporter 22

1 THE COURT: Y'all can have a seat.

2 I have no recollection of this whatsoever.

3 MS. CAMPBELL: May it please the Court.

4 Your Honor, this is Mr. Lewis Addis. Your Honor,
5 several weeks ago he pled guilty to one count of burglary
6 first, and, I believe, one count of petty larceny involving
7 an event that occurred on September 9, 2009, at

8 The owner of the house had actually been transported
9 -- she was 85 years of age at the time. She'd actually been
10 transported to the hospital because, I believe, she had
11 fallen and broken a hip and injured herself. During this
12 time period the defendant and a co-defendant who was a
13 friend of his -- this defendant's wife actually was the
14 caretaker of this lady in the house, broke into the house
15 and stole several items.

16 This defendant ultimately confessed to breaking into
17 the house with Mr. Chavis. He indicated that what he stole
18 were prescription drugs, through, there was also, I believe,
19 a gun and some other item missing. He did plead guilty to
20 stealing the prescription drugs and breaking into the house.
21 The reason this was a burglary in the first degree, Your
22 Honor, is because he does have two or more prior convictions
23 for house breaking and or burglary. He was also a potential
24 life without parole person as part of the plea concessions
25 in this case. He is pleading straight up to burglary in the

State v. Addis Sentencing 5/24/11

4

1 first degree and larceny. In exchange, we did not serve him
2 with life without parole. I do have his prior record at the
3 appropriate time, Your Honor.

4 The victim in the case is still hospitalized, Your
5 Honor. I did speak with her caretaker back when the plea
6 originally was taken. She did not wish to be present,
7 however, she was in agreement with all the --

8 THE COURT: Why was it deferred?

9 MS. CAMPBELL: Because they wanted time to meet with the
10 sister. There were some family members that the defendant
11 wanted to meet with prior to being sentenced.

12 MS. DAVIS: Your Honor, I think we initially took
13 the plea, we were trying to get it done the week before the
14 trial date, which was April 25. That following day he had a
15 visit from his daughter who was coming in from out of state
16 and we wanted a chance to have him get that visit, and, I
17 believe, at that time, also, that the investigator couldn't
18 be present for the plea.

19 MS. CAMPBELL: The investigator still can't be present
20 for the plea. I did talk to him today, he is in the middle
21 of interviewing on an armed robbery case and can't be here.

22 THE COURT: All right.

23 MS. CAMPBELL: As far as his prior record --

24 THE COURT: Did y'all have a recommendation?

25 MS. CAMPBELL: We would oppose any kind of suspended

1 sentence, Your Honor, and would recommend a substantial
2 sentence based on his -- the actions plus his prior record.

3 THE COURT: Well, let's start over again.

4 So this guy pled on April 14 --

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: And you say it was coming up for trial
7 when?

8 MS. DAVIS: April 25.

9 MS. CAMPBELL: Uh-huh. (Affirmative response.)

10 THE COURT: 10 days later. And so we -- we did not
11 sentence him because -- well, I'm still not sure, because
12 his daughter was coming to town. What did that have to do
13 with it?

14 MS. DAVIS: One of the things, Your Honor, at that
15 time, when we got him over to plea it was kind of a late
16 agreement, but me and Ms. Campbell did get him brought over.
17 He had a daughter -- has a daughter that lives out of state
18 and she had arranged for visitation at the jail the
19 following night. So we were trying to allow him to still be
20 at Alvin S. Glenn so that when she came through town, she
21 would be able to visit him as opposed to being moved to
22 Kirkland R&E where he wouldn't be available for the visit.

23 THE COURT: Y'all told me that?

24 MS. DAVIS: I believe we did, but the other reason, at
25 that time, was that Ms. Campbell said the investigator could

State v. Addis Sentencing 5/24/11

6

1 not be present for the plea and agreed that we could defer
2 sentencing.

3 MS. CAMPBELL: She asked -- I -- it was deferred, Your
4 Honor. I thought at her request, but I could be wrong.

5 THE COURT: All right.

6 So now tell me the facts. This is -- an elderly lady
7 that this person and somebody else broke into her house?

8 MS. CAMPBELL: Yes, sir. She was not present at the
9 time.

10 THE COURT: Where was she?

11 MS. CAMPBELL: She was at the hospital. She had
12 fallen.

13 THE COURT: Where was -- did they know the lady?

14 MS. CAMPBELL: Apparently, Mr. Addis -- I don't know
15 the relationship, you might be able to educate me. Rebecca
16 Addis was the caretaker for this woman, and she is related
17 to Lewis Addis.

18 MS. DAVIS: His ex-wife. Yes, sir.

19 THE COURT: All right. His ex-wife, and she told Mr.
20 Addis that this house was available, there were drugs there
21 or something like that?

22 MS. DAVIS: No, sir. I don't think it was intentional
23 on her part. They communicated. Mr. Addis was also
24 familiar with the victim, Ms. Carolyn Fant, and, him and his
25 ex-wife, both, Rebecca Addis, through their conversations he

1 learned that the victim had fallen and was not at home. I
2 don't believe it was her telling Mr. Addis --

3 THE COURT: Right. Well --

4 MS. DAVIS: -- to come over or anything.

5 THE COURT: All right. So he and this other fellow
6 broke in.

7 MS. CAMPBELL: At the point of entry there was some
8 blood left by the co-defendant. Ultimately, the
9 co-defendant is interviewed -- they interviewed Mr. Addis,
10 they ultimately interviewed the co-defendant. The
11 co-defendant then gives up this person, Mr. Addis, and then
12 they go and interview Mr. Addis. He is advised of his
13 rights and gives a statement admitting to going in and
14 participating in the robbery -- in the burglary, excuse me,
15 Your Honor, but says the only thing he took, once he was
16 inside were prescription drugs.

17 THE COURT: The other fellow took some other stuff?

18 MS. CAMPBELL: The other fellow indicates that he took
19 some pills and a cutter from the home, too, although, they
20 said a gun was missing but neither person confessed to
21 taking the gun.

22 THE COURT: All right. So tell me his record?

23 MS. CAMPBELL: His record, Your Honor, starts back in
24 1978. He was convicted of breaking and entering, and then
25 petty larceny. In addition to that, he was convicted of

State v. Addis Sentencing 5/24/11

8

1 three counts of house breaking. He did receive a nine year
2 active sentence on that.

3 THE COURT: It was breaking and entering. He's got
4 breaking and entering and then three counts of house
5 breaking?

6 MS. CAMPBELL: Yes, sir, from '78 --

7 THE COURT: All right.

8 MS. CAMPBELL: -- in Anderson County, and some
9 larcenies. And then there appears to be another house
10 breaking and larceny for which he received 12 years
11 suspended on five years probation. He then escaped shortly
12 after being sentenced, it looks like, to me, Your Honor, and
13 I think was out of source from '79 until '82. He was
14 ultimately picked up and convicted on a escape charge in
15 '82, is how I read his prior record. It then looks like he
16 was paroled in 1984 on those charges. He then, in 1985, was
17 convicted of attempted armed robbery and received a 20 year
18 suspended on five years confinement sentence on that one,
19 Your Honor. Then in 1989, he was out again and was
20 convicted of disorderly conduct, in 1990, driving under the
21 influence, in 1989, driving under suspension, in 1990 a DUI
22 second, another DUS. Then in 1990 another disorderly
23 conduct. Then finally he was committed to R&E on December
24 of 1990 for resisting arrest with a deadly weapon and
25 fraudulent check. He then was convicted in 1992 on his

1 first count of criminal domestic violence. In 1992 parole
2 was revoked for house breaking and grand larceny charges.
3 And, I assume on the others, too. In 1995, he was convicted
4 again of criminal domestic violence. In 1996, he was
5 convicted of simple assault and shoplifting. In 1997, he ws
6 convicted again of criminal domestic violence. In 1997, he
7 was then convicted of harassment within seven years of a
8 prior conviction, I assume of harassment. Then in 1999, he
9 was convicted of public drunk. In September of 2000,
10 disorderly conduct. Again, in October, disorderly conduct.
11 Then in 2005, he pled to misprision of a felony down from
12 accessory after the fact. Then in 2005, disorderly conduct,
13 2006 disorderly conduct and then arrested -- excuse me,
14 convicted in 2009 of shoplifting and then arrested on these
15 charges.

16 THE COURT: He's got five house breaking, breaking and
17 entering --

18 MS. CAMPBELL: As far as I --

19 THE COURT: -- a number of CDVs and assault and battery
20 and one armed robbery?

21 MS. CAMPBELL: Yes. Generally. I can hand up the rap
22 sheet. It's a little bit difficult to read, but --

23 THE COURT: All right, Ms. Davis, tell me about your
24 client, he's 51 years of age?

25 MS. DAVIS: Yes, sir.

State v. Addis Sentencing 5/24/11

10

1 Thank Your Honor. May it please the Court. Mr. Addis
2 has been in jail since the arrest on February 4. His
3 ex-wife, Rebecca Addis is here, as well as his son, Chad
4 Addis.

5 Your Honor, I understand that he has a lengthy record
6 that dates back to 1978. The one thing I would point out
7 is, from my perspective, since the last 26 years, he has
8 gotten in trouble still. He's gotten in trouble with
9 disorderly conduct, he's gotten in trouble with DUI. He's
10 gotten CDVs. So he's still definitely been in the criminal
11 system, but I do think since 26 plus years he's not been in
12 any trouble like he is in front of you today on the
13 burglary.

14 It was a daytime burglary. No one was home. I believe
15 that Mr. Addis and Mr. Chavis knew that no one was home. I
16 do understand that still does not excuse any burglary, and
17 Mr. Addis does not offer anything as an excuse. He knows
18 what he did was shameful and wrong and illegal, and he feels
19 specially remorseful because he does know Ms. Fant.
20 Although she was no at home and was in the hospital, he
21 understand that that would -- that he was betraying her
22 trust, not only by breaking the law but probably hurt her
23 just the fact that she knew him.

24 Your Honor, I believe that Mr. Addis can be
25 rehabilitated. He has an immense alcohol --

1 THE COURT: He doesn't have enough life to be
2 rehabilitated.

3 Now, on the -- when did he go to jail?

4 MS. DAVIS: On this charge, Your Honor, on February 4,
5 2010.

6 He has an immense alcohol problem. He has been an
7 alcoholic for 25 plus years. He -- actually when he was
8 arrested one time in Lexington County he actually suffered
9 DTs so bad he was in a coma for almost two weeks because of
10 his withdrawal symptoms. So I have no doubt that the
11 alcohol played a role in all of his criminal history, but
12 certainly it did play a role on this date.

13 I do not believe that any weapon was taken and the
14 warrant certainly alleges that there was a gun taken. I
15 don't know anywhere in the discovery where that information
16 came from. When he was later indicted, he was indicted
17 based on the fact that he does have prior burglaries, which
18 would enhance it, to the burglary first, but there's no
19 mention of a weapon being taken.

20 I believe her family, Ms. Fant's closes relatives were,
21 unfortunately, in Texas, so they had a hard time, I think,
22 describing what was taken. By the time they got there, one
23 of the neighbors that we interviewed actually said that
24 friends of Ms. Fant has come in the house and basically
25 ransacked the place.

State v. Addis Sentencing 5/24/11

12

1 I don't believe there was any weapon. Neither of his
2 co-defendants mention any weapon. Mr. Chavis was actually
3 asked, did you take a firearm. He said, no. Mr. Addis was
4 asked what he took, and he said some pills and I believe
5 that Mr. Chavis does say a cutter, a bolt cutter, weed
6 cutter was taken as well.

7 Your Honor, I understand, like I said with his lengthy
8 record, this is not an ideal situation. He has always taken
9 responsibility. He initially, you know, was scared with
10 talking with police, but he eventually did confess and give
11 a statement admitting what he had done. He has always
12 admitted to me what he had done and wanted to take
13 responsibility.

14 THE COURT: What do y'all want, Ms. Davis?

15 MS. DAVIS: Your Honor, I'm asking the Court to
16 consider, on one hand, allowing him to complete the Bethel
17 House -- Victorious Overcomer's program. I understand that
18 that's a stretch --

19 THE COURT: I don't know what that is.

20 MS. DAVIS: Excuse me?

21 THE COURT: I don't know what that is. Is that prison?

22 MS. DAVIS: The Victorious Overcomer's Program, Your
23 Honor.

24 THE COURT: Is that prison?

25 MS. DAVIS: They've reorganized and renamed it.

1 Is that prison?

2 THE COURT: Yes.

3 MS. DAVIS: No, sir.

4 I explained to Mr. Addis that that would a possibility
5 we could pose to the judge. He was screened for and
6 accepted into the program. I understand that Your Honor is
7 possibly not inclined to do such a thing, but it would be a
8 situation where we could fashion a sentence, you know, where
9 if it was 20 years or 15 years suspended to that completion
10 and then automatic jail time if he messed up.

11 I personally believe that --

12 THE COURT: I don't know what automatic jail time is?

13 MS. DAVIS: That if we draft the order such that it
14 could be 20 suspended to the completion of the program and
15 if he violated it would be an automatic 20 years.

16 THE COURT: I don't think -- if he were put on
17 probation he would be entitled to a probation hearing, and
18 it would have to be willful, and I don't think that's going
19 to work.

20 MS. DAVIS: Yes, sir.

21 THE COURT: But, let's talk. I'm not going to do that.

22 MS. DAVIS: I understand that.

23 THE COURT: He's going to prison and the only question
24 is is he going to get out.

25 MS. DAVIS: Yes, sir.

State v. Addis . Sentencing 5/24/11

14

1 THE COURT: Or is he not going to get out. He's 51
2 years old. He's got 16 months to whatever it is we do, and
3 probably anything over 30 years he's going to have a tough
4 time making it.

5 MS. DAVIS: Yes, sir.

6 THE COURT: I don't know. He might make it.

7 MS., DAVIS: In the alternative, Your Honor, we would
8 ask that Your Honor still consider suspending the sentence
9 to 15 years. I think, based on the fact, that I understand
10 he record is such that he has gotten in trouble in the past
11 25 years, but compared to armed robbery and the burglaries
12 that led to him being charged with burglary first I do think
13 this is the most serious thing he's been before any court on
14 in the last quarter of a century.

15 I understand that because he committed these house
16 breakings in 1979, that that is added up and that's why he's
17 before Your Honor on a burglary first degree and certainly
18 understand that law and accept that, but I do believe that
19 he went into a house that he knew no one was home and he
20 took some medication from the home.

21 I'd ask Your Honor, to take those circumstances, as
22 well, into account, and I'd ask Your Honor to consider
23 suspending the 15 years.

24 THE COURT: Well --

25 MS. DAVIS: I believe Mr. Addis would like to address

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

you.

THE COURT: All right. Mr. Addis, come on down.

MR. ADDIS: Yes, sir. I just want to say I am ashamed of what I've done. I know better than that, and I never thought I'd get into a position again, never in my life. I was being evicted. That's no excuse. I know that. I didn't have a job, and I'd been drinking. Somebody talked me into doing something that I knew was wrong. I don't know what to say, Your Honor. I'm sorry. I never, like I said, I never thought I'd be here again.

THE COURT: Well, you're too old to be here, Mr. Addis.

MR. ADDIS: Yes.

THE COURT: You were 49 years old or 50 whenever you committed this offense.

MR. ADDIS: Yes, sir.

THE COURT: It was February --

MR. ADDIS: Yes, sir. February.

THE COURT: -- when you committed this offense. In September you were 49, getting ready to turn 50.

MR. ADDIS: Yes, sir.

THE COURT: You're too old to be doing that stuff. You've been in prison too much of your life to not know better.

MR. ADDIS: I understand, sir.

THE COURT: Alcohol or no alcohol. Unfortunately, you

State v. Addis Sentencing 5/24/11

16

1 can't run from your record.

2 MR. ADDIS: Yes, sir, I understand.

3 THE COURT: I mean, I don't like sitting here having to
4 take somebody who has a limited number of years. I don't
5 know what the mortality tables are for somebody 50 years of
6 age, probably another 25 to 30 years, and take a good
7 portion of that and have to spend it in the Department of
8 Corrections. You've been making silly decisions for years.

9 Anything else?

10 MS. DAVIS: Nothing else, Your Honor. I believe prior
11 to this the State has recommended 15 years, and Mr. Addis
12 understood that, but at that time --

13 THE COURT: When did the State recommend 15?

14 MS. DAVIS: Prior -- that was the offer instead of
15 LWOP, and then she took LWOP off the table, and we chose to
16 plea before Your Honor. I mean, I understand today that's
17 not what she's saying, but prior --

18 THE COURT: Well, I think that is what she's saying.
19 She didn't want me to suspend anything but -- at one time
20 y'all had offered 15?

21 MS. DAVIS: Yes, sir.

22 MS. CAMPBELL: I remember offering burglary first and
23 we would take life without parole off the table. I mean, I
24 don't -- I mean, we would oppose any suspended sentence. If
25 that is in effect 15, under their understanding.

1 Did you accept it or did you leave it up to the Judge?

2 MS. DAVIS: In the end, it was left up to Your Honor.

3 It's not checked as a recommendation.

4 THE COURT: Well, it's let up to me anyway.

5 MS. CAMPBELL: That's correct, Your Honor.

6 THE COURT: Regardless of what y'all -- I mean, I
7 certainly would pay great attention to what you told me, Ms.
8 Campbell.

9 MS. CAMPBELL: We defer to you, Your Honor, as we
10 always do.

11 THE COURT: Sometimes reluctantly, but --

12 MS. CAMPBELL: No, sir.

13 MS. DAVIS: Your Honor, Ms. Rebecca Addis would like to
14 address you briefly. I apologize --

15 THE COURT: Sure. Yes, ma'am. Your name is Rebecca
16 Addis?

17 MS. ADDIS: Yes. I'm his ex-wife.

18 THE COURT: When were y'all married?

19 MS. ADDIS: 1982.

20 THE COURT: When did you get unmarried, '83?

21 MS. ADDIS: We've been divorced 10 years.

22 THE COURT: How long?

23 MS. ADDIS: 10 years. He has a drinking problem, no
24 doubt. He needs help for that. Sending him to prison is
25 not going to help him.

State v. Addis Sentencing 5/24/11

18

1 THE COURT: Well, that's probably true. He's probably
2 beyond reclamation at this point in time. It comes down to
3 punishment at this point in time.

4 MS. ADDIS: Well, if he gets somewhere they can help
5 him and he can get out and go stay with his daughter. His
6 daughter keeps him pretty straight.

7 THE COURT: You don't want him to come --

8 MS. ADDIS: She has a little baby.

9 THE COURT: -- you don't want him to come stay with
10 you?

11 MS. ADDIS: No. We're divorced.

12 THE COURT: Y'all aren't that good at divorce, huh?

13 MS. ADDIS: We get along.

14 THE COURT: Well, good. You seem like a nice lady. He
15 should get along with. Do you work?

16 MS. ADDIS: I have a planting business.

17 THE COURT: You have what?

18 MS. ADDIS: I have a planting business, and I do crafts
19 on the side.

20 THE COURT: You do what on the side?

21 MS. ADDIS: Crafts and I work for the church.

22 THE COURT: Crafts?

23 MS. ADDIS: Uh-huh. (Affirmative response.) I make
24 stuff.

25 THE COURT: Oh, you do. What church is that?

1 MS. ADDIS: Northstar off of Longtown Road.

2 THE COURT: All right. Do y'all have children together?

3 MS. ADDIS: We have two.

4 THE COURT: This being one of them?

5 MS. ADDIS: We have a granddaughter, seven, and another
6 one on the way. He's very good with his kids. He's just
7 got a drinking problem. You know, I've tried to --

8 THE COURT: Were you ever the victim of any of those
9 CDVs?

10 MS. ADDIS: Huh?

11 THE COURT: Were you the victim of any of those CDVs;
12 criminal domestic violence?

13 MS. ADDIS: Huh-uh. (Negative response.)

14 THE COURT: He never touched you, huh?

15 MS. ADDIS: Sir?

16 THE COURT: He never hurt you?

17 MS. ADDIS: Huh-uh. (Negative response.)

18 THE COURT: Who was the victim of all those offenses?

19 MS. ADDIS: A long time ago, he did.

20 MR. ADDIS: Your Honor -- that's where the harassment
21 charge came from but the harassment charge that Ms. Campbell
22 spoke of was dropped on the condition that I pled guilty to
23 CDV. She was the victim in that, but I never put my hands
24 on her. I didn't even see her for a month. So that's where
25 that came from. One of the CDVs come from. I never touched

1 her.

2 THE COURT: Were you threatening her?

3 MR. ADDIS: No, sir. We was going through a divorce.
4 So I didn't -- I didn't threaten her. I didn't do anything
5 really, but I've had to pled guilty to CDV to get out of
6 jail after I'd been in there seven months, Your Honor.

7 THE COURT: You didn't have to pled guilty to anything.

8 MR. ADDIS: No, sir, but once you're in jail for a long
9 time like that, you know, if they offer you a get out of
10 jail free card -- I understand it ain't free now, but at the
11 time it seemed like it was get out of jail free. So I took
12 it.

13 THE COURT: So you lied to the judge when you pled
14 guilty, huh?

15 MR. ADDIS: Yes, sir, I guess.

16 THE COURT: All right. Well, that ain't good.

17 MR. ADDIS: No, sir.

18 THE COURT: All right. Sentence of this Court is you
19 be committed to the Department of Corrections for a term of
20 15 years, plus costs and assessments as applicable. Give
21 him credit for time served since February of 2010.

22 MS. DAVIS: Thank Your Honor.

23 MS. CAMPBELL: Thank Your Honor.

24 MS. DAVIS: The petty larceny, Your Honor?

25 THE COURT: That will be 30 days to run concurrent.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

County detention center for 30 days.

MS. DAVIS: Thank Your Honor.

MS. CAMPBELL: Thank Your Honor.

(This proceeding was concluded.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 24 DAY OF MAY, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

Hilda M. Jordan, CVR-M

COLUMBIA, SOUTH CAROLINA

September 22, 2012

5th BP

2011CP40 8096

STATE OF SOUTH CAROLINA

In the Court of Common Pleas

County of Richland

Lewis Addis, JR 95323

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

vs.
Atty: Ben. Alan Wilson
Name of Respondent.

the State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2011 NOV 28 PM 2:22
JEANNETTE W. MURPHY
C.C.P. & C.S.

INSTRUCTIONS — READ CAREFULLY

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

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

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

- Place of detention Mc Cormick Corr. Inst. 386 Redemption Way
Mc Cormick S. C. 29849
- Name and location of Court which imposed sentence Gen. Sessions Richland Co.
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - Ind. 2010-GS-40-875 Burglary
 - Ind 2010-GS-40 876 petty Larceny
 -
- The date upon which sentence was imposed and the terms of the sentence:
 - 4-14-11 15 yrs
 - 4-14-11 30 days
 -

- 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? NO

- 7. If you answered "yes" to (6), list
 - (a) the name of each Court to which you appealed:
 - i. _____ N / A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____ N / A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____ N / A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____ N / A
 - ii. _____
 - iii. _____

- 8. If you answered "no" to (6), state your reasons for not so appealing:
 - (a) Counsel did not preserve anything for appeal rights
 - (b) _____
 - (c) _____

- 9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective Assistance of counsel
 - (b) Guilty plea "was not" intelligently or voluntarily made
 - (c) _____

- 10. State concisely and in the same order the facts which support each of the grounds set out in (9):
 - (a) _____
 - (b) SEE ATTACHED SHEETS 1-7
 - (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. N
- ii. _____
- iii. _____
- iv. A

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

- i. N
- ii. _____
- iii. _____
- iv. A

(c) the disposition thereof:

- i. N
- ii. _____
- iii. _____
- iv. A

(d) the date of each such disposition:

- i. N
- ii. _____
- iii. _____
- iv. A

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

- i. N
- ii. _____
- iii. _____
- iv. A

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 (), 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) See 9 (a) Applicant first time presenting ground
- (b) See 9 (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? none
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? none
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? none

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. Senator Davis P.D. Office, Richland Co.
 - ii. BETSE Lipson P.D. Office Richland Co.
 - iii. _____

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

- i. Plea and sentence
- ii. Bond hearing up until Ms. Davis took over
- iii. _____

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

Vacate conviction, plea, sentence and remand for resentencing....
And any other relief the court deems just and fair.

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

NO

STATE OF SOUTH CAROLINA

County of McCormick

VERIFICATION

I, Lewis W. Addis 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.

Lewis Addis Jr

SWORN to and subscribed before me this 22 day of November, 19 2011

J C Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

2011 NOV 28 PM 2:22
JEANNETTE W. MCBRIDE
C.S.P. & G.S.
RICHLAND COUNTY
FILED

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

I, Lewis W. Addis 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.

Lewis Addis Jr.
Applicant

SWORN or affirmed to and subscribed before me this: 22 day of November 2011

J C Franklin
Notary Public

My Commission Expires 12-16-2019

The Hon. Richland Co.
Clerk of Ct. Jeanette W. McBride
P.O. Box 2766
Colg SC 29202-2766

Date:

Dear Hon. Clerk of Ct.

Please find enclosed for filing my P.C.R
form. Would you be so kind as to return me
back a filed copy, along with sending the Atty.
Gen's office a copy.

Thank you

Sincerely

Lewis Bobbitt Jr.

cc: Personal file

11 (2) INEFFECTIVE ASSISTANCE OF COUNSEL

Per. the Bill of Rights to the Federal Constitution

I was denied the right to effective assistance of counsel as guaranteed by BOTH the 6th and 14th Amendments to the U. S.

Const. and by Article I sec-3 and sec 14 of the South Carolina Const. Also see Cherry v

State 386 SE2d 624 and Strickland v Washington

104 S Ct. 2052 Counsel Renee Liptson and,

Which counsel Senator Davis acts and or omissions

including but not limited to the following

perjudiced my whole case, Conflict of interest

At my first bond hearing at the Richland

county jail 2-4-10 • I did not have counsel

Although the victims advocate said that the alleged victim CAROLYN FAUST had been contacted.

But the alleged victim said that she had not been a victim of any crime and she refused to press any charges.

The bond hearing judge only said that General Sessions had to set bond on my charges.

(3) But about a week or so later I spoke with Renee Liptson, although I waived that upcoming bond hearing. I told her what had happened at my first bond hearing. Which she said that she would check into it.

(4) Although at Sept. 2010 bond hearing in front of Judge Barber the solicitor changed and said that my ex-wife Rebecca Addis was the

victim.

(5) Some 8-9 months later at a hearing in front of judge Thomas Cooper to dismiss Ms. Liptson.

judge Cooper told Ms. Liptson to get the transcript and tape of my first bond hearing. Which Ms.

Liptson came back later saying that the tape had been disposed of after 6 months.

(6) Counsel never informed me that I could request a "mere presence" and or "accessory after the fact" charges. Where I did not have a mens rea that my alleged co-defendant was going to commit this alleged crime.

(7) Counsel never inform me or investigate the State's potential witnesses or my alleged co-defendant

per. SCRE 607, 608 and or 609 to see if they had been convicted of impeachment crimes - to attack their credibility or for potential bias for their statements and or testimony against me.

- (8) Here, the Mexican girl was not even charged with any crime, where she gave me and this alleged co-defendant a ride to and from the home.
- (9) Counsel never inform me that I had a right to an expert per. S.C. Code Ann 17-3-50 where the I.D. process was unduly suggestive - where the police stated that after awhile was able to I.D. me. Here, the officers did not speak any Spanish.
- (10) Nor did Mexican girl, who is Mexican spoke good English. thereby, any in-court I.D. would not

have been reliable independent of this unduly suggestive out of court alleged I.D. of me.

where she had only seen me once.

(11) Therefore, I argue that counsel should have

hired a translator to interview her and

for trial per unduly suggestive Neil v Biggers
409 U.S. 188.

(12) Moreover, an expert in the area of identification,

specifically in face recognition, perception and

cross racial I.D. should have been hired.

(13) Counsel further misinform me that the State
can still try me without a victim, "corpus delicti".

She never told me that burglary was a crime

against possession, not against property. And the

State did not have a victim who wanted to
press any charges. Nor was the State the victim.

- (14) Further counsel failed to inform me that since my ex-wife was the caretaker of said home of this alleged burglary - my ex-wife had lawful possession of this home. Thus, she had the RIGHT to request that the charge(s) be dismissed against me, or anyone else.
- (15) Counsel never told me or the court that my ex-wife even had written a letter to her requesting that the charge(s) be dismissed against me.
- (16) Moreover, counsel never did tell me in South Carolina, in "all" burglary the State is required to prove I entered or one entered without consent. Which the State could not have done so without a victim or one willingly to press charge(s), as burglary is a crime against possession, not against property.

10(b) GUILTY PLEA "WAS NOT" INTELLIGENTLY OR VOLUNTARILY MADE

I re-argue "all" the above grounds set out in 10(a) above.

And further argue that counsel told me to go alone

with the State and what she told the judge to get a sup. sentence. And, if I did not plea guilty the State was seeking a life sentence against me. Although, counsel stated that I told her I had committed the crime. I never told counsel that

(2) A matter of fact counsel never even ask me if I had committed the crime. And, I strongly contend that if it was not for counsel perjudicial acts and or omissions I've argued, I would not have pled guilty but would have insisted on going to trial see:

Hill vs. Lockhart 474 U.S. 52; Winson vs State
377 SE2d 338.

Date: _____

Respectfully Submitted
s/ Lewis Caldwell Jr.



ALAN WILSON
ATTORNEY GENERAL

Tuesday, December 06, 2011


Clerk of Court - Richland County
Jeanette W. McBride
PO Box 2766
1701 Main Street, Room 205
Columbia, SC 29202

Re: PCR (2011CP4008096) - ADDIS Lewis, 95323 v. State

Richland County Clerk of Court:

Enclosed for filing is the State's Return in the PCR matter for:
ADDIS Lewis, 95323 v. State
(2011CP4008096).

Thank you for all of your assistance in this matter,


Brian T. Petrano
Assistant Attorney General
bpetrano@scag.gov

Enc.

cc. ADDIS Lewis, 95323 - McCormick Correctional Institution, 386 Redemption Way, McCormick,
SC 29899

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

ADDIS Lewis -)
95323,)

2011CP4008096

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

RICHLAND COUNTY
FILED
2011 DEC 12 AM 10:59
JEANETTE H. REBRIDE
C.C.P. & G.S.

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 28, 2011, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Jennifer Davis, Esquire. On April 14, 2011, following a guilty plea, the Applicant was sentenced by The Honorable James R. Barber, III.² The Applicant had been indicted and/or convicted of the following: Petit

¹ <http://www4.rcgov.us/publicindex/PCCaseDetails.aspx?County=40+&Casenum=2011CP4008096&CourtType=G&CaseType=Civil&CourtAgency=40002>

² The Applicant pled guilty pursuant to North Carolina v. Alford.

Larceny(\$1000 or Less) and Burglary 1st Degree - (2010-GS-40-876;875). According to SCDC, he is serving the following sentence:

Offender Type Adult-straight Sentence Offense Burglary-1st Degree Sentence Start Date 02/04/2010 Sentence Length 15 YRS, 0 MOS, 0 DYS Admission Date 05/26/2011 Committing County Richland Location McCormick Projected Release Date 11/01/2022 Projected Parole Eligibility 11/04/2022 Supervised Furlough Eligibility Not Eligible Sex Offender Registry No

3

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

Direct Appeal

The Applicant did not appeal his conviction and/or sentence .

The application for post conviction relief (PCR) was filed November 28, 2011.

III.

³ <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00095373>

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even 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 (1985)

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the

issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, TBT, Esquire regarding when the hearing should be set.⁴


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

December 6, 2011

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
ADDIS Lewis -)
95323,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2011CP4008096

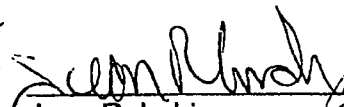
CERTIFICATE OF SERVICE

JEANETTE M. McBRIDE
 C.C.P. & G.S.
 2011 DEC 12 AM 10:59
 RICHLAND COUNTY
FILED

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

ADDIS Lewis, 95323 – McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899

DATED December 8, 2011.



 Jean R. Indriago
 Legal Assistant

State of South Carolina)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2011-CP-40-8096

Lewis W. Addis, Jr.,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

Transcript of Record

October 18, 2012
Columbia, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

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

Tommy A. Thomas, Esquire
Attorney for the Applicant

Robert D. Corney, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

<u>Witness/Description</u>	<u>Page No.</u>
Lewis W. Addis, Jr.	
Direct Examination by Mr. Thomas	4
Cross-examination by Mr. Corney	20
Redirect Examination by Mr. Thomas	24
Jennifer C. David	
Direct Examination by Mr. Corney	25
Cross-examination by Mr. Thomas	32
Ruling of the Court	39
Certificate Page	40

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
	No Exhibits Introduced.	

1 MR. CORNEY: May it please court, Your Honor?

2 THE COURT: Yes, sir.

3 MR. CORNEY: Your Honor, the state calls the
4 post-conviction relief action of Lewis Addy, Jr. [sic]. It
5 is docket number 2011 -- excuse me -- CP-40-8096. Mr. Addy
6 was true-bill indicted at the July 2010 term of the
7 Richland County grand jury for burglary in the first degree
8 and petit larceny, value of \$1,000 or less.

9 Mr. Addy pled guilty April 14, 2011, before Judge
10 Barber. He pled guilty to the burglary first as indicted
11 and the lesser-included offense of simple larceny without
12 recommendations or negotiations, and sentencing was
13 deferred at that time.

14 He came before Judge Barber May 24, 2011, for
15 sentencing, at which time Judge Barber imposed a fifteen
16 year term of imprisonment for burglary in the first degree
17 and a thirty day term of imprisonment for petit larceny to
18 run concurrently to each other.

19 Mr. Addy did not have a direct appeal but filed a
20 timely PCR application November 28, 2011. He is
21 represented today by Mr. Tommy Thomas.

22 THE COURT: All right.

23 MR. THOMAS: Good afternoon, Your Honor.

24 THE COURT: Good afternoon.

25 MR. THOMAS: Your Honor, if it please the court? We

L. ADDIS - DIRECT EXAMINATION BY MR. THOMAS

4

1 would call Mr. Lewis Addis to the stand.

2 LEWIS W. ADDIS, JR., BEING DULY
3 SWORN, TESTIFIES AS FOLLOWS:

4 CLERK OF COURT: Please have a seat there. State your
5 full name for the record.

6 WITNESS: Lewis William Addis, Jr., A-d-d-i-s.

7 MR. THOMAS: Please the court?

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION BY MR. THOMAS:

10 Q. Mr. Addis, you are currently serving time in South
11 Carolina Department of Corrections?

12 A. Yes, sir.

13 Q. All right, and in which institution are you being
14 housed?

15 A. McCormick Correction.

16 Q. All right, sir, and you're serving how much time?

17 A. Fifteen.

18 Q. For what?

19 A. First-degree burglary. First-degree burglary.

20 Q. First-degree burglary?

21 A. Yes, sir.

22 Q. You got, and you got a petit larceny, but you've maxed
23 that out?

24 A. Yes, sir.

25 Q. Okay. Now, Mr. Addis, you are here for

L. ADDIS - DIRECT EXAMINATION BY MR. THOMAS

5

1 post-conviction relief. You understand that?

2 A. Yes, sir.

3 Q. And you understand what post-conviction relief, what
4 that action is?

5 A. Yes, sir, I do.

6 Q. You're asking for a new trial?

7 A. Yes, sir.

8 Q. Okay, and basically you're saying that your plea was
9 not freely and voluntarily given?

10 A. No, sir. That's true.

11 Q. Or knowing and intelligent, intelligently given. You
12 entered a plea in this case. Is that correct?

13 A. Yes, sir.

14 Q. All right, sir. Now, you understand that the, that
15 the relief the court can grant is a new trial?

16 A. Yes, sir. I do.

17 Q. You're charged with burglary first?

18 A. Yes, sir.

19 Q. Carries up to life?

20 A. Yes, sir.

21 Q. You understand that should you win this action and the
22 court grants your relief, that you could be taken back, and
23 you'd be in the -- in a position that you were prior to
24 entering your plea, and that you'd have certain exposure?

25 A. Yes, sir, I do.

L. ADDIS - DIRECT EXAMINATION BY MR. THOMAS

6

1 Q. All right. You willing to accept that exposure?

2 A. Yes, sir.

3 Q. And you want to go forward today?

4 A. Yes, sir.

5 Q. All right, sir. Now, you were represented by who, Mr.
6 Addis?

7 A. The public defender's office.

8 Q. All right.

9 A. At first it was Renee Lipson, but later on after I
10 filed a motion to dismiss the public defender's office
11 altogether -- but, but the judge said he'd think about it,
12 and then Renee Lipson showed back up about a month later,
13 and I run her off. I told her that she was not
14 representing me.

15 And I wrote the judge. I wrote Judge Cooper a letter
16 and told him I was disappointed in his decision because she
17 told the judge that she hadn't had time for me.

18 Q. All right, sir.

19 A. That she was working on a murder trial, and she had a
20 lot of -- and at that time, it come out in *The State* paper
21 that South Carolina was taking money out of the indigent
22 fund to hire private attorneys to defend the State of South
23 Carolina against lawsuits.

24 Q. So, you were dissatisfied with ---

25 A. I was dissatisfied totally with ---

L. ADDIS - DIRECT EXAMINATION BY MR. THOMAS

7

1 Q. And then ---

2 A. --- the public defender's office.

3 Q. And ultimately who was appointed to your case?

4 A. Well, he wrote. He sent me a copy of the letter he
5 wrote her back. Told me not to be writing him no more, and
6 told her to do whatever that she thought necessary in that
7 case proper for -- for her to resolve it, in other words.
8 And about a month later, Ms. Davis showed up.

9 Q. Okay, and she represented you at your plea?

10 A. Yes, she did.

11 Q. Right. Did you talk to her about preparing this case
12 in regards to whether it was going to be a trial or a plea?

13 A. Yes, sir. I mean, she was, she was same way as Ms.
14 Lipson. She told me fifteen, plead to fifteen, and that's
15 the reason I got rid of Ms. Lipson. I told her there's no
16 way I would plead to fifteen, no way and...

17 Q. They allege that you, that you basically went into a
18 house of someone that you knew?

19 A. Yes. Yes. I've been knowing the woman thirty years.
20 I've been in the house a hundred times probably.

21 Q. And that certain items were taken out of the house?

22 A. Yes.

23 Q. All right. Now, did, did you make -- give a statement
24 in this case?

25 A. Yes, but I was -- when I went -- when I was arrested,

1 I weighed, like, a hundred -- she had the medical records.
2 I weighed 116 pounds. I was taking Ativan. It was a two
3 and a half interrogation where I told them over and over
4 that I had nothing to do with it, and they took -- after I
5 read the statement, which ain't but a couple of sentences
6 long, they took, like, where I said -- they said he let me
7 in the back door. I told them there was no back door to
8 that house.

9 And they told me -- I kept holding, holding my head.
10 He asked me why I was shaking. I was shaking because I was
11 about to go into DTs. I mean...

12 Q. You've had a horrific alcohol problem. Is that
13 correct?

14 A. Yes, sir. Definitely and ---

15 Q. And it's gone on for quite some time?

16 A. Yes, sir, and my medical records reflect it. I was
17 under medication when they questioned me. And I even
18 mentioned that to the public defender's office, and they
19 told me it wouldn't do no good.

20 Q. So, you talked to them about suppression of any
21 statement that you made?

22 A. Yes, I did.

23 Q. Because you were under the influence at the time?

24 A. Yes, I did.

25 Q. Okay. Now, you made a decision to enter into this

L. ADDIS - DIRECT EXAMINATION BY MR. THOMAS

9

1 plea rather than go to trial. Why did you do that?

2 A. Because Ms. Davis asked me would I consider going to
3 Pastor Breen's Victorious outreach program. I didn't know
4 anything ---

5 Q. What, what, what is that?

6 A. I didn't know anything about it, but she set it up.
7 She told me if she could get me accepted, would I take
8 that, and I told her of course because it was a year
9 program.

10 And they, they sent me things to go up there to it,
11 and I met Pastor Breen, and he told me about the program
12 and everything. And, and one year, one year rehab, and I
13 paid for rehab before. I've been to about every rehab in
14 Columbia as far for alcohol abuse. So, I thought it wasn't
15 going to do nothing but help me because I was about
16 drinking myself to death. So, it sounded ---

17 Q. You alcohol free now?

18 A. Yes, sir, definitely.

19 Q. How long you been alcohol free?

20 A. Three years. So, you know, sounded like a good deal.

21 Q. When do you max out?

22 A. 2022.

23 Q. All right, and you're how old now?

24 A. I'm fifty-two.

25 Q. And you'll be how old when you max out?

1 A. Sixty-two.

2 Q. Now, the -- Lewis, you, you've got a prior record,
3 don't you?

4 A. Yes, sir.

5 Q. And I don't want to, I mean, I don't want to disparage
6 you, but it's a piddly record, isn't it?

7 A. Yes, sir. It's petty, and most of it is -- a lot of
8 it, now if you look at my record, most of it's drinking
9 anyway. I mean, I had ---

10 Q. Disorderly conduct?

11 A. Yes, sir, driving and just...

12 Q. What's the most serious charge, serious crimes you've
13 committed prior to coming in to this?

14 A. I, I, I guess maybe a break in, break ins in '78 when
15 I was eighteen years old.

16 Q. All right. Let me ask you about that.

17 MR. THOMAS: Can I beg the court's indulgence, Your
18 Honor?

19 (COUNSELORS CONFER.)

20 Q. Now, Lewis, they, they -- and I say they. The
21 solicitor's office threatened you with life without parole.
22 Is that correct?

23 A. Well, through my attorney. I mean, yes.

24 Q. Yeah, they were going ---

25 A. Yes. Yes.

L. ADDIS - DIRECT EXAMINATION BY MR. THOMAS

11

1 Q. They were going to notice you for life without parole?

2 A. Yes. That's what they was telling me.

3 Q. And do you know why.

4 Q. They kept saying that I had burglaries in the '70s,
5 '80s, and the '90s, but I didn't have -- I ain't never had
6 no burglaries any time except in '78 when I was eighteen
7 years old.

8 Now, my rap sheet I'll, I'll admit does look
9 confusing, but they got on there, looks like convictions
10 where I made parole on that in '84, and then again when
11 they violated the probation that I got in '78. It's on, on
12 the record, on the rap sheet again. It looks like
13 burglary.

14 Q. Right.

15 A. Well, not. I mean, it's violation of probation. I
16 got a year sentence -- a three year sentence for it.

17 MR. THOMAS: Your Honor, may I approach?

18 THE COURT: Yes, sir.

19 BY MR. THOMAS:

20 Q. Lewis, I'm going to show you this. You recognize
21 that?

22 A. Yes, sir.

23 Q. What is that?

24 A. That's SLED. It's a male. It's a rap sheet.

25 Q. Rap sheet?

1 A. Yeah.

2 Q. All right. Now, you're talking about burglaries, but
3 they had asked you about -- they were enhancing your
4 housebreakings. Isn't that correct?

5 A. Yes, sir.

6 Q. Saying that you had two or more housebreakings, and
7 they were going to enhance this to ---

8 A. From a second to a first.

9 Q. To a burglary first. Now, in '78 you had
10 housebreakings?

11 A. Yes, sir.

12 Q. All right, and you were convicted of those
13 housebreakings?

14 A. Yes, sir.

15 Q. And what kind of, what kind of conviction or what kind
16 of sentence did you receive for that?

17 A. Twelve years and five years' probation.

18 Q. All right. Now, and then on the rap sheet, it's
19 housebreakings again in, in 1984?

20 A. That's, that's where I made parole. I mean, I, I
21 tried to explain that to both Renee Lipson and Ms. Davis.
22 Them are not new convictions. Them is where I made parole.

23 Q. All right.

24 A. But, I mean, I don't think it done any good.

25 Q. All right, and then these housebreakings show up again

L. ADDIS - DIRECT EXAMINATION BY MR. THOMAS

13

1 on your rap sheet.

2 A. In '92.

3 Q. In '92 and is that another conviction for
4 housebreaking?

5 A. No, sir. That's a violation of probation that I
6 received in '78.

7 Q. All right. So, that's a, that's a continuation of the
8 same charge?

9 A. That same charge, yes.

10 Q. And you had multiple housebreakings, but you pled to
11 them all at the same, same time?

12 A. Yes, sir. It, it states multiple charge, one
13 disposition twelve years, five years' probation.

14 Q. So, it was your contention that you only had, for
15 enhancement purposes, you only had one housebreaking. Is
16 that right?

17 A. Yes, sir.

18 Q. Okay, and you talked to counsel about that?

19 A. I tried to, but they said it was on my rap sheet, and
20 they never got it straightened out. I mean, neither one of
21 them.

22 MR. THOMAS: Your Honor, if it please the court, I
23 have a copy of the rap sheet. I thought the rap sheet was
24 part of the package that came from the Attorney General
25 that came to the court, Your Honor. I had asked, and he

1 said not.

2 I'd be more than happy to hand my copy up, or if the
3 court would prefer, I can get a clean copy and submit it.

4 THE COURT: I have no preference.

5 MR. THOMAS: All right, sir. Can I submit a clean
6 copy, Your Honor?

7 THE COURT: Yes.

8 MR. THOMAS: All right. Thank you. May I approach
9 the witness again, Your Honor?

10 THE COURT: Yes.

11 BY MR. THOMAS:

12 Q. Lewis, I want to show you this document, which is
13 South Carolina Department of Corrections Record Summary.

14 A. Yes, sir.

15 Q. And I want to direct your attention -- which I think
16 the court does have a copy of this from the Attorney
17 General's package -- the prior commitments over ninety
18 days. And it shows: Housebreaking, HB other building.

19 A. Yes, sir.

20 Q. Okay, and ---

21 A. And that, that is -- that can't be -- that's when I
22 made parole. If y'all'd look ---

23 Q. That's when you made parole?

24 A. June the 20th, 1984. Alvin Neal represented me.

25 Q. All right. Now, now, you entered into this plea based

L. ADDIS - DIRECT EXAMINATION BY MR. THOMAS

15

1 in part upon the fear that you were going to be subject to
2 life without parole?

3 A. Yes, sir. Definitely.

4 Q. All right, and it's your position, your contention
5 that you didn't have the second housebreaking which they
6 could have used to enhance?

7 A. Yes, sir. I mean, I told them that.

8 Q. All right. Now, the -- what did you think was going
9 to happen to you?

10 A. I thought I was going to get a year of rehab. I mean,
11 Pastor Breen told me he would accept me into the program,
12 and I, I steadfastly told him there's no way I'm pleading
13 guilty to violent fifteen. And she asked me would, would
14 you consider pleading to a year of rehab, said the year
15 program.

16 Q. All right.

17 A. So, every other time I, I -- I've never went to trial.
18 Every other time, every attorney over the years that I've
19 had for any crime, any attorney that I ever had asked me
20 would I plead to that. That's what I got. I mean, this is
21 the first time I didn't get what they asked me would I
22 plead to, so.

23 Q. Now, so you entered into -- your, your plea was broken
24 up into two parts, what we call bifurcated. In other
25 words, you went and you pled guilty, and then you were

1 sentenced later?

2 A. Yes, sir.

3 Q. All right. When you went into the sentencing, it was
4 your thought that you were going to Pastor Breen's program?

5 A. Yes. Yes, sir. Well, when I was down there, when
6 they took me out the tank to talk to Ms. Davis now, she,
7 she told me then. Said, well, you -- that she had talked
8 to the person that had power of attorney over the house
9 that -- over Carolyn Fant's house. Carolyn Fant told the
10 detectives and, and the victim's advocate, and my attorneys
11 know this, that they ain't -- she ain't been the victim of
12 no crime. She, she did not wish to press no charges
13 against anybody.

14 Q. Right. She was ---

15 A. And ---

16 Q. She was a friend of your ex-wife. Is that correct?

17 A. Yes, and also a friend of mine. I mean, I've done
18 work for her on several, several occasions, so.

19 Q. And it was your understanding that she didn't wish to
20 pursue any charges against you?

21 A. She told the detectives that.

22 Q. All right.

23 A. She told the detectives and victim's advocate that.

24 Q. All right, and ---

25 A. But -- and before I went to sentencing, she, she did

L. ADDIS - DIRECT EXAMINATION BY MR. THOMAS

17

1 say that, well, that -- I can't pronounce the woman's name,
2 but it's Cheryl Gadahar [phonetic]. She lived across the
3 street from Carolyn. I don't, I don't know the lady.

4 Q. Right.

5 A. But she said that the investigator went by there, and
6 they told her that -- she stated that -- or through my
7 attorney. This is what I'm telling you. Stated that she
8 would think a six or seven years sentence would be more
9 appropriate. Fifteen seemed a little harsh, and she did
10 tell me.

11 Q. All right. Well ---

12 A. In her defense, she did tell me that and ---

13 Q. All right. Well, don't, don't tell us what other
14 people said.

15 A. Okay. Okay.

16 Q. But it was your understanding that, that Ms. Fant, the
17 victim in this case, didn't want to proceed with this
18 action, is that right, against you?

19 A. Yes, sir.

20 Q. All right. Now, in our discussions, you had indicated
21 to me that you thought you were getting fifteen suspended
22 to five years' probation on a burglary first?

23 A. Well, I'm sure there would have been some probation,
24 yeah.

25 Q. All right.

1 A. I mean, she never said probation.

2 Q. And was there any discussion as to this going in front
3 of Judge Barber?

4 A. Yes, sir.

5 Q. Okay.

6 A. She said I had to go in front of Judge Barber because
7 he's the only one that would suspend a burglary first.

8 Q. Okay. So, it was your thoughts that you were going,
9 that you were specifically going in front of Barber because
10 he was someone who would suspend the, the burglary first?

11 A. The only one.

12 Q. All right, and that the purpose of the suspension was
13 for you to go into Pastor Breen's program?

14 A. Yes, sir.

15 Q. All right. Now, and that was the basis and
16 understanding of why you entered into this plea?

17 A. Yes, sir.

18 Q. Had you know that it was going to be any differently,
19 would you have pled guilty to this crime?

20 A. No, sir, definitely not.

21 Q. Did you feel like there was a viable defense for
22 trial?

23 A. Yes, sir, definitely.

24 Q. And what defense did you think that you had?

25 A. Like I said. I mean, there, there was no victim to

L. ADDIS - DIRECT EXAMINATION BY MR. THOMAS

19

1 the crime basically. I didn't commit the crime. They,
2 they claim they have a statement, but like I, like I
3 testified, that was -- I was being detoxed. I mean, I was
4 116 pounds. She had all this, I mean, you know, and...

5 Q. Right, and you felt like, or you feel like now that
6 you didn't have the two housebreakings to enhance to LWOP?

7 A. Sir?

8 Q. In other words, you didn't have the LWOP exposure,
9 You didn't ---

10 A. I felt like I shouldn't have had the LWOP exposure,
11 no, sir. I, I feel like I shouldn't have had that.

12 Q. But you still could have gotten life on, on the
13 burglary first, which would basically be life without
14 parole because it's an eighty-five sentence.

15 A. Yes, sir. Well, I told her if, if -- I might as well
16 do life if -- fifteen years is just about like life to me,
17 you know?

18 Q. Now, Mr. Addis, we've talked about this. This is your
19 day in court.

20 A. Yes, sir.

21 Q. And this is your opportunity. You've been waiting for
22 this day for quite some time. Is there anything else that
23 you would like to tell the court that I may have omitted?
24 I'm not saying that I have, but I want to give you an
25 opportunity to raise anything that you feel like the judge

1 should know in this case.

2 A. No, sir. I don't. I think you basically covered it.

3 Q. So, it's your contention today that -- and we're
4 talking legal terms, but you and I talked about this --
5 that you didn't enter your plea freely and voluntarily.
6 That you didn't know, you didn't -- you weren't able to
7 make a good decision in regards to this is what you wanted
8 to do.

9 A. Well, I basically believed that what -- like I said.
10 Every time I've ever pled guilty, I've got what my attorney
11 told me I was going to get. So, I believed that I was
12 going to get a year. I mean, I...

13 Q. That's what you thought was going to happen?

14 A. That's what I thought was going to happen.

15 MR. THOMAS: Your Honor, I have no further questions.

16 THE COURT: By the state?

17 MR. CORNEY: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. CORNEY:

19 Q. At your plea hearing, Judge Barber -- and this was at
20 the April 14, 2011, plea hearing. Judge Barber told you
21 that you were going to give up your right to contest any of
22 the state's evidence presented, that could be presented
23 against you by pleading guilty, correct?

24 A. I don't remember, but it -- probably. I mean, that's
25 usually the way it goes.

L. ADDIS - CROSS-EXAMINATION BY MR. CORNEY

21

1 Q. All right. Judge Barber also told you at that plea
2 hearing that you were going to have to get at least fifteen
3 years, correct?

4 A. Yes, sir.

5 Q. Okay. So, you knew that fifteen, you were going to
6 get at least fifteen years when you entered that plea?

7 A. No, I did not know that. I thought it'd be fifteen
8 suspended. I mean, he had done it with others in the, in
9 the dorm that I was in.

10 Q. All right. So, when Judge Barber right there on page
11 5 of your transcript said: You've got to get at least
12 fifteen years; you understand that? You say: Yes, sir.

13 A. Ms. Davis had told me just, just don't make the judge
14 mad when we go in there. And I thought, you know, every
15 time I go there -- I mean, when you make a deal, I mean, I
16 thought that was it.

17 Q. Okay, but you did tell Judge Barber that you thought
18 this plea was in your best interest, correct?

19 A. I thought maybe I was escaping a life sentence and
20 maybe going to a year of rehab.

21 Q. You didn't want that life sentence, right?

22 A. No, sir. Who does?

23 Q. All, and that's why you plea guilty: because you
24 didn't want to get life.

25 A. Fifteen is just about like life.

1 Q. All right.

2 A. At my age.

3 Q. But you did, you did tell the judge at the plea
4 hearing, he asked you what, what Ms. Davis had told you,
5 and you said: She thinks this is in my best option, and so
6 do I. Correct?

7 A. I don't recall that, but...

8 Q. All right. At your sentencing hearing, the solicitor
9 actually requested I believe pretty early on in your --
10 page, on page 4, which is very early on in the sentencing
11 transcript from May 24, 2011. Ms. Campbell said:

12 We would oppose any kind of suspended sentence,
13 Your Honor, and would recommend a substantial
14 sentence based on his actions plus his prior
15 record.

16 Do you recall that?

17 A. No, sir.

18 Q. You don't recall that? Okay. If you'd have heard
19 that, if you were to have heard that, would you have said
20 something to the judge at that point in time? Maybe said
21 hey, that's not what I'm trying to plead to. She just said
22 I'm not going to get a suspended sentence.

23 A. Well, like I said, every time, every other time I
24 pled, I got what the lawyer said I was going to get. You
25 know, regardless, they tell you just go along with the

1 judge. You're going to get this; you going to get that.

2 Q. All right, and you're aware that if you were to win
3 PCR, this, this action here today, get sent back to general
4 sessions court, a judge can no longer suspend the burglary
5 first degree sentence below fifteen years. You aware of
6 that?

7 A. Well, Judge Barber was suspending them. I know that,
8 and she told me right before I went in the court that day
9 that yeah, Judge Barber was still suspending burglary first
10 sentences.

11 Q. Okay, and I'm not talking about when you entered this
12 plea. I'm talking about here today. If you were to be
13 granted relief, you'd go back to general sessions court
14 with the solicitor, and no judge in South Carolina can
15 suspend a burglary first degree sentence below fifteen
16 years now. So, you have to be doing at least fifteen if
17 you pled guilty or were convicted of burglary first degree.

18 A. Okay.

19 Q. All right. I just wanted to make sure you were aware
20 of that.

21 MR. CORNEY: All right, thank you, Your Honor. That's
22 all the questions I have.

23 THE COURT: All right.

24 MR. THOMAS: Your Honor, if I may just one?

25 THE COURT: Yes.

1 REDIRECT EXAMINATION BY MR. THOMAS:

2 Q. In follow up, Mr. Addis, when you were at sentencing,
3 Ms. Davis actually argued for the Victorious Overcomers
4 program, which was Pastor Breen's program?

5 A. She did. She raised that, yeah.

6 Q. She raised it?

7 A. Yeah.

8 Q. And that's what you thought that you were going to
9 get?

10 A. Yes. I mean, that's what she told me.

11 MR. THOMAS: All right. No further questions, Your
12 Honor.

13 THE COURT: You may step down.

14 (THE WITNESS EXITS THE STAND.)

15 MR. THOMAS: Your Honor, if it pleases the court,
16 that's the applicant's case.

17 THE COURT: All right, by the defendant? By the
18 state?

19 MR. CORNEY: The state would call Ms. Jennifer Davis
20 to the stand, please, Your Honor.

21 JENNIFER DAVIS, BEING DULY SWORN,
22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: Please have a seat. State your full
24 name for the court.

25 WITNESS: Jennifer Catherine Davis.

J. DAVIS - DIRECT EXAMINATION BY MR. CORNEY

25

1 MR. CORNEY: May it please the court, Your Honor?

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION BY MR. CORNEY:

4 Q. Ms. Davis, thanks for your patience with us this
5 morning.

6 A. Sure.

7 Q. You recall representing Mr. Addis on the current
8 charges that he's challenging?

9 A. I do.

10 Q. Okay, and how did you become involved in this case?

11 A. Renee Lipson was initially assigned to represent him.
12 I think around January when I got appointed to him, our
13 office just restructured the case load. She was doing, I
14 believe, nonviolent crimes at that time, and so the case
15 got reassigned to me.

16 Q. Okay, and when you took over at that point in time,
17 were you able to collect Ms. Lipson's file from her or any
18 preparation she had done to that point?

19 A. I, I did get her file and then met with Mr. Addis, and
20 we did a pretty significant investigation actually.

21 Q. Okay, and in your -- first of all, how many times
22 would you say, just off the cuff, you think you might have
23 met with him?

24 A. Well, I know exactly how many times I would have met
25 with him. I first met with him January 19th, and met him

1 him again December 22nd, again March 8th. So, one, two,
2 three, four, five, five times between January 19th and
3 April 11th, not counting the day that he came -- actually
4 six times, and then again the day he pled.

5 Q. Okay. During those meetings with him, were you able
6 to review the indictments and the charges he was facing
7 with him?

8 A. Yes, sir. We went through the discovery in his case.

9 Q. Okay. In your review of the indictments charging him
10 with this crime, were you able to kind of look at the basis
11 of it and how it was founded on two prior burglaries or
12 housebreaking charges?

13 A. I believe that -- well, one, the prior record, but
14 also there was an allegation of a gun being stolen, which
15 is also what made it a burglary first degree.

16 Q. Okay. So, even without the priors, there's a, there's
17 an argument to made that it could have been burglary in the
18 first degree?

19 A. The state -- correct. The state's version was that a
20 gun had been taken.

21 Q. Okay. Were you able to look into his criminal
22 background to verify that he did, in fact, have two priors,
23 if that was the basis that they were bringing the
24 indictment on?

25 A. I did not do an independent look of anything. I

J. DAVIS - DIRECT EXAMINATION BY MR. CORNEY

27

1 looked solely at the rap sheet that was provided. I did
2 talk with Mr. Addis about his rap sheet.

3 Q. Okay. When you spoke with him about it, what was his,
4 what was his kind of standpoint on the prior charges?

5 A. I mean, I'm not a hundred percent. I do recall him
6 talking about the parole and the dates being all of the
7 same nature. At that point, I was more concerned about the
8 allegation of the gun making it a burglary first.

9 Q. Okay, and he was facing a potential life sentence on
10 the charge. Is that your recollection?

11 A. The state had, right, had stated that if he had gone
12 to trial, they would serve life without parole notice based
13 on prior conviction in '85, I think it was '85.

14 Q. Okay. Was that something you were able to discuss
15 with him in your meetings?

16 A. Yes, sir. We discussed LWOP and what it meant.

17 Q. Were you able to review with him the fact that
18 burglary in the first decree carries a mandatory minimum of
19 fifteen years?

20 A. We did talk about what burglary first carried. He is
21 correct in the sense that we were going in front of Barber,
22 Judge Barber for the specific reason that he had in the
23 past suspended burglary firsts. I know at this point,
24 that's no longer allowed period across the board. But at
25 that time, he was and had suspended some burglary first

1 degrees. That's why we went before him, for that option.

2 The state initially had recommended fifteen years as a
3 minimum. Mr. Addis did not want to agree to fifteen years,
4 and which -- that's why we went in front of Judge Barber,
5 so that we could actually argue for less and a suspended
6 sentence.

7 Q. Okay. Did you ever have any issues, any conversations
8 with him with -- I guess relating to his ability to
9 understand your conversations or participate in the
10 conversations that you had with him?

11 A. I never had any concern about his competency. We were
12 always able to discuss the case and the evidence against
13 him. If you're referring to the -- his statement that he
14 gave, we definitely discussed the alcoholism and the
15 feeling that he going through withdrawals and/or DTs around
16 the time that he was interrogated and gave a statement.

17 And I had informed him that we would argue that issue
18 at trial and suppression. I had all his medical records
19 and documented exactly what was noted as his symptoms and
20 the time frame of that compared to the time frame of the
21 interrogation. So, I was definitely aware that that was a
22 concern; we would have raised that.

23 Q. And he was aware that that was a motion you could make
24 at trial, and you were prepared to make it at trial?

25 A. We ---

J. DAVIS - DIRECT EXAMINATION BY MR. CORNEY

29

1 Q. Or would be prepared to make at trial?

2 Q. Right. We discussed that that would be an issue for
3 trial, and it would be up to the judge, of course, of
4 whether or not the statement came in.

5 Q. Okay.

6 MR. CORNEY: Beg the court's indulgence for just one
7 minute, Your Honor.

8 (A PAUSE.)

9 Q. Based on your review of the discovery materials and
10 your discussions with Mr. Addis, were you able to start
11 forming an opinion on the state's ability to prove his
12 guilt, guilt beyond a reasonable doubt at trial?

13 A. Was I -- did I think they could prove his guilt at
14 trial?

15 Q. Were you able to formulate ---

16 A. An opinion?

17 Q. --- some type of opinion that you discussed with him?

18 A. Well, sure. I mean, I left the decision up to Mr.
19 Addis. When I met with him initially, he did say he wanted
20 a trial. I left that decision up to him, and continually
21 when I did come back and talk to him about that, again let
22 him know that that was his option was to plead or to go to
23 trial. We had actually started preparing for trial because
24 I thought that that's where it would be going.

25 They had a co-defendant that was also charged in this

1 that also gave a statement and implicated Mr. Addis who was
2 lined up and ready to testify against him at trial. His
3 statement as well, and they had a female that placed them
4 at the scene. Whether or not they could have actually
5 found her, I don't know. We tried, and I don't believe we
6 were able to.

7 Q. Okay. When it came down to him pleading guilty, were
8 you able to kind of go over with him the rights that he may
9 be waiving by entering that guilty plea, and the fact that
10 he wouldn't be able to challenge the statement or, or any
11 of the evidence the state had against have him?

12 A. Right. Yes.

13 Q. You were able to discuss that with him?

14 A. Yes.

15 Q. As far as plea negotiations, you said there had been
16 one for fifteen years. Do you recall any other plea
17 negotiations or offers coming in from the state?

18 A. Not that I'm aware of. I believe that was the offer
19 when Ms. Lipton had the case. I talked several times with
20 Ms. Campbell about trying to get it reduced to burglary
21 second. She was not willing to make a reduction at any
22 time. She said she would recommend a minimum of fifteen.

23 When we actually went to the plea, the only reason
24 there was not a recommendation outright of fifteen was
25 because Mr. Addis wanted to argue for less time, which is

J. DAVIS - DIRECT EXAMINATION BY MR. CORNEY

31

1 what we did.

2 Q. Okay. In your discussion with him, did you promise
3 him a particular sentence, or the fact that his sentence
4 would be suspended when he entered his plea?

5 A. No. I was definitely hopeful that Judge Barber would
6 consider suspending the sentence in light of the fact that
7 it was daytime robb -- or burglary, that no one was home,
8 no one was hurt, medication was taken.

9 I thought that they would have -- at least there was
10 an issue about the gun. They were -- the state was
11 standing by that allegation. I don't know if that would
12 have come to light or not. But I did make it clear to him
13 and have in my notes that I told him it was actually a long
14 shot that Judge Barber would grant the Victorious
15 Overcomers program. And that he could very well end up
16 getting the minimum fifteen.

17 Q. Based on your discussion with him, did he seem to
18 understand that?

19 A. He did. I know he was hopeful, as was I, that he
20 would get a suspended sentence, but he did understand the
21 possibility.

22 Q. And you presented -- I apologize.

23 A. No, he understood the possibilities. I'm sorry.

24 Q. And you presented to the court at the sentencing the,
25 the -- and I don't remember the name of it. You just said

1 the program he wanted to get into.

2 A. The Victorious Overcomers. I think at that time they
3 had maybe changed to the Bethel, Bethel House.

4 Q. But you did present that at his sentencing hearing
5 that he was ---

6 A. That he had been -- sorry. Yes, that he had been
7 screened and accepted into that program.

8 Q. Okay. You feel you gave him all that information and
9 advice necessary to make a voluntary and informed decision
10 on his right to enter a plea or go to trial?

11 A. I do.

12 MR. CORNEY: That's all the questions that I have.

13 Thank you.

14 THE COURT: By the petitioner?

15 MR. THOMAS: Your Honor, if it please the court?

16 CROSS-EXAMINATION BY MR. THOMAS:

17 Q. Ms. Davis, on the gun charge, that was a questionable
18 charge, wasn't that?

19 A. It was. Certainly the state, Ms. Campbell, was
20 standing by that. But I, you know, in our investigation, I
21 did think that had we gone to trial, I certainly would have
22 argued that there was no gun, or that they couldn't prove
23 that a gun had been taken.

24 Q. Okay. Were there any allegations, or did they bring
25 any charges specifically against him in regards to the gun,

1 or was it just burglary?

2 A. No other charges. It was just -- well, they had the
3 -- he was initially charged with burglary first and grand
4 larceny. He ended up pleading to burglary first and petit
5 larceny, but no independent gun charges, no, sir.

6 Q. Now, so I guess for enhancement purposes, they could
7 have used the gun or the, or the two alleged prior
8 housebreakings?

9 A. Right. I believe the state's position is that they
10 would have been able to get an enhancement on the prior
11 record as well, and then the gun on itself would have made
12 it a burglary first.

13 Q. Did -- and, and he discussed with you about his rap
14 sheet, about he was saying these were multiple listings of
15 the same conviction?

16 A. Right. I don't remember the exact details, but I know
17 we went up through the rap sheet, and I remember there
18 being some conversation about that they weren't brand new
19 charges.

20 Q. Did you follow up with SLED, or did you follow up with
21 anybody in regards to that rap sheet, trying to correct it
22 or find out what the...

23 A. I did not. I didn't do anything independent from the
24 SLED report. Mostly in light -- I guess in my opinion was
25 because the gun charge allegation was there, that it didn't

1 necessarily alter it. But no, I did not ---

2 Q. Okay.

3 A. --- do any independent research.

4 Q. Now, he indicated -- you said there was a fifteen year
5 offer on the table, and that he told you that he didn't
6 want to take fifteen?

7 A. He -- right. He had had an offer. The state wanted
8 to -- I can't remember if it was a recommendation, or that
9 she would negotiate maybe the minimum on burglary first.
10 She was never willing to do anything other than that, and
11 he did not want to just agree to fifteen years, and that's
12 when we discussed the possibility of Judge Barber. And at
13 that time he had suspended sentences, and that that would
14 be our only option. If he pled to a burglary first, that
15 would be our only option in terms of him having a chance of
16 getting less than fifteen.

17 Q. So, there was some basis for going in front of Judge
18 Barber, and some basis for Pastor Breen's program?

19 A. Oh, definitely. I mean, we definitely discussed the
20 Pastor Breen program. The only difference, I would say, is
21 that I knew it was a long shot. I talked to him and that
22 it was a long shot that that would be given, and that I
23 didn't know if the judge would suspend in his case or not.

24 Q. And really in looking at his years of alcoholism, I
25 mean, the one year in Pastor Breen's program would

J. DAVIS - CROSS-EXAMINATION BY MR. THOMAS

35

1 probably, probably would have been a good resolution for
2 him. Not other than just not having to do fifteen, but it
3 might have -- but it would have been a good thing to do to
4 try to address the problem he was having.

5 A. I mean, in my opinion personally, yeah. Absolutely.
6 I think that would have been extremely helpful to him to be
7 able to get that ---

8 Q. Right.

9 A. --- service.

10 Q. Rather than just incarcerate him.

11 A. Absolutely.

12 Q. Now, you said that at trial, if it was, was gone --
13 was going to go to trial, you said that there was -- the
14 co-defendant was going to testify against him?

15 A. Right. I think it was Casey Chavis was the name. I
16 remember Mr. Deon O'Neil represented him and had indicated
17 as well that he was.

18 Q. Do you remember whether or not he had been sentenced
19 prior to this, or were they withholding sentencing after
20 his testimony?

21 A. That I don't know. I don't recall.

22 Q. Now, the victim in this case, I guess the actual
23 victim, Ms. Fant.

24 A. Yes, sir.

25 Q. Did you ever speak with her?

1 A. I did not. She, from my understanding in the case
2 itself as well as interviewing witnesses -- she had a
3 guardian *ad litem*. I believe she actually had dementia or
4 was having the onset of dementia.

5 Q. Right.

6 A. Around the time of this incident.

7 Q. Were you aware that it was her opinion that she didn't
8 want to, she didn't want to prosecute? She wasn't --
9 didn't want to go forward with it?

10 A. I knew that Mr. Addis had said that. I know there was
11 some discussion just from the notes of Ms. Lipson that he
12 had mentioned something being said at a bond setting. By
13 the time Ms. Lipson requested that, those tapes were no
14 longer -- didn't exist anymore. They had been erased. I
15 was not able to independently do that. In talking to the
16 solicitor, she certainly was not of that opinion, and that
17 they intended to pursue the charges.

18 Q. But you didn't, you didn't personally speak with Ms.
19 Fant?

20 A. No, I did not. We spoke with her guardian *ad litem*
21 and were advised that she had dementia.

22 Q. Okay.

23 A. That's why she had a guardian *ad litem* appointed to
24 her.

25 Q. He had potential violable defenses, do you think?

J: DAVIS - CROSS-EXAMINATION BY MR. THOMAS

37

1 A. Had we gone to trial, I mean, we would have tried to
2 suppress the confession. Like I said, we had the medical
3 records in existence. I think we would have at least had a
4 argument to make that he was going through withdrawals or
5 DTs even possibly.

6 Q. Right.

7 A. I think it would have been a valid argument. I
8 certainly don't think it would have been frivolous to say
9 that it wasn't voluntary. But whether or not, you know, if
10 that had been admitted by a judge, I don't know.

11 Q. So, then I guess we -- that's a bunch of ifs, but if
12 we had asked -- if, if the co-defendant had not testified,
13 then they really would not have had a very strong case
14 against him, would they?

15 A. If the statement was -- if his statement was
16 suppressed and they had no co-defendant, they would have
17 had a much weaker case, yes.

18 Q. All right.

19 A. But up to the plea, I was told by the state and by the
20 defendant's -- co-defendant's attorney that he was planning
21 to testify against Mr. Addis.

22 MR. THOMAS: Your Honor, if I can beg the court's
23 indulgence?

24 (COUNSEL COVERS WITH APPLICANT.)

25 MR. THOMAS: I have no further questions, Your Honor.

1 THE COURT: Anything further?

2 MR. CORNEY: No redirect from the state, Your Honor.

3 THE COURT: All right, you may step down.

4 (THE WITNESS EXITS THE STAND.)

5 THE COURT: Any further witnesses?

6 MR. CORNEY: No further witnesses from the state, Your
7 Honor.

8 THE COURT: Any further statements?

9 MR. THOMAS: Your Honor, if it please the court? We
10 would just very briefly say that we believe that he's
11 entitled to the granting of post-conviction relief in this
12 case based upon the fact that his understanding of the plea
13 -- that he wasn't freely and -- that it wasn't freely and
14 voluntarily given or knowingly and intelligently given.

15 Probably more of that in that he thought -- it was his
16 understanding that by entering into the plea, that he was
17 going to get placed in the Victorious Overcomers program.
18 There is testimony that Judge Barber was actually selected,
19 for lack of a better word, because it was a possibility
20 that he would suspend the burglary first to probation,
21 allow him to go into the program.

22 And there were viable defenses in this case, and that
23 -- in that it was his understanding that what was going to
24 happen was that he was going in the program. And there's
25 also testimony that, in fact, he did not want to accept the

1 fifteen, and that he would have rather gone to trial, Your
2 Honor.

3 THE COURT: All right. Yes, sir, Mr. Corney.

4 MR. CORNEY: Your Honor, the state would just rest on
5 the testimony of Ms. Davis and the clear plea transcript
6 before the court. Thank you.

7 RULING OF THE COURT:

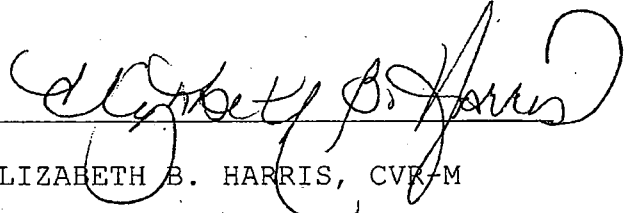
8 THE COURT: The credible testimony in the plea
9 transcript indicates that it was a free and voluntary plea
10 by the defendant, being fully informed by the court, as
11 well as counsel, as to the potential sentence that he might
12 receive. I do not find any ineffective assistance of
13 counsel in this case. And if you'll prepare an order
14 reflecting that, I'd appreciate it.

15 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND / BEAUFORT COUNTY, SOUTH CAROLINA, ON THE **TH DAY OF JANUARY, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

MAY 2ND, 2013

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
 Lewis Addis, Jr., #095373,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-08096

ORDER OF DISMISSAL

JENNIFER W. JAMES BRIDE
 C.P. & G.S.
 2012 DEC 11 AM 11:02
 RICHLAND COUNTY
 FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 28, 2011. An evidentiary hearing into the matter was convened on Thursday, October 18, 2012, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tommy Thomas, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former plea counsel, Jennifer Davis, Esquire (hereafter "counsel"). This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the July 2010 term of the Richland County Grand Jury for Burglary – First Degree and Petit Larceny (\$1,000 or Less) (2010-GS-40-0875, -0876). On April 14, 2011, Applicant appeared with counsel before the Honorable James R. Barber, III, where he pled guilty to Burglary as indicted and the lesser included Simply Larceny;

SCANNED

sentencing was deferred at that time. On May 24, 2011, Applicant came back before Judge Barber, at which time he was sentenced to fifteen (15) years imprisonment for Burglary and thirty (30) days imprisonment for Simple Larceny. The sentences were set to run concurrently. No direct appeal was filed.

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

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

- (a) Ineffective Assistance of Counsel
 (b) Guilty plea "was not" intelligently or voluntarily made
 (c) _____

But the alleged victim said that she had not been a victim of any crime and she refuse to press any charges.

At my first bond hearing at the Richland county jail 2-4-10 I did not have counsel the bond hearing judge only said that General Sessions had to set bond on my charges. But about a week or so later I spoke with Renae Liptson, although I waived that up coming bond hearing, I told her what

had happen at my first bond hearing. Which she said that she would check into it.

Although at Sept. 2010 bond hearing in front of judge Barber the solicitor change and said that my ex-wife Rebecca Addis was the victim.

1) Some 8-9 months later at a hearing in front of judge Thomas Cooper to dismiss Ms. Liptson. Judge Cooper told Ms. Liptson to get the transcript and tape of my first bond hearing. Which Ms. Liptson came back later saying that the tape had been deposed of after 6 months.

Counsel never informed me that I could request a "mere presence" and or "accessory after the fact" charges. Where I did not have a mens rea that my alleged co-defendant was going to commit this alleged crime.

Counsel never inform me or investigate the State's potential witnesses or my alleged co-defendant per. SCRE 607, 608 and or 609 to see if they had been convicted of impeachment crimes - to attack their credibility or for potential bias for their statement(s) and or testimony against me.

- 1) Here, the Mexican girl was not even charged with any crime, where she gave me and this alleged co-defendant a ride to and from the home.
- 2) Counsel never inform me that I had a right to an expert per. S.C. Code Ann 17-3-50 where the I.D. process was unduly suggestive - where the police stated that after awhile was able to I.D. me. Here, the officers did not speak any Spanish
Nor did Mexican girl, who is Mexican spoke good English. thereby, any in-court I.D. would not

have been reliable independent of this unduly suggestive out of court alleged I.D. of me, where she had only seen me once.

- 1) Therefore, I argue that counsel should have hired a translator to interview her and for trial per unduly suggestive Neil v Biggers 409 U.S. 188.
- 2) Moreover, an expert in the area of identification, specifically in face recognition, perception and cross racial I.D. should have been hired.
- 3) Counsel further misinform me that the State can still try me "without" a victim, "corpus delicti". She never told me that burglary was a crime against possession, "not" against property. And the State did not have a victim who wanted to press any charges. Nor was the State the victim.

Further counsel: failed to inform me that since my ex-wife was the caretaker of said home of this alleged burglary - my ex-wife had lawful possession of this home. Thus, she had the RIGHT to request that the charges be dismissed against me, or anyone else.

Counsel never told me or the court that my ex-wife even had written a letter to her requesting that the charges be dismissed against me.

Moreover, counsel never did tell me in South Carolina, in "all" burglary the State is required to prove I entered or one entered without consent. Which the State could not have done so without a victim or one willingly to press charges, as burglary is a crime against possession, not against property.

10(b) GUILTY PLEA "WAS NOT" INTELLIGENTLY OR VOLUNTARILY MADE

And further argue that counsel told me to go along with the State and what she told the judge to get a sup. sentence. And, if I did

not plea guilty the State was seeking a life sentence against me. Although, counsel stated that I told her I had committed the crime. I never told counsel that. A matter of fact counsel never even ask me if I had committed the crime. And, I strongly contend that if it was not for counsel prejudicial acts and or omissions I've argued, I would not have pled guilty but would have insisted on going to trial See:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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).

Involuntary Guilty Plea

Applicant contends his guilty plea was involuntarily entered as a result of counsel's ineffective representation on the current charges. Specifically, Applicant testified counsel

“threatened” him by saying he would receive a life sentence at trial if he did not enter a guilty plea and that, but for those threats, he would not have pled. Applicant also alleged his charge for Burglary – First Degree was premised upon a criminal history of two prior housebreaking convictions, but stated the rap sheet setting forth those convictions was incorrect as he only had one prior housebreaking conviction. The others, Applicant alleged, were merely his release to parole and subsequent probation revocation for the same housebreaking conviction. Applicant said he tried to explain this to counsel, but was unsuccessful in doing so. Applicant finished by saying he pled guilty under the impression he was going before Judge Barber to receive a fifteen (15) year term of imprisonment suspended to some sort of probationary term, as he believed Judge Barber was the only judge who would suspend the mandatory minimum fifteen year sentence for Burglary – First.

Counsel testified she took over Applicant’s representation from former public defender Renee Lipson when the office was restructured. She stated she met with Applicant about six (6) times during which she reviewed the indictments outlining the charges with Applicant, as well as the facts giving rise to the charges. She recalled there was a weapon stolen from the house during the incident so the “first degree” classification was proper even if Applicant was correct in stating he did not have two prior housebreaking convictions. Counsel stated she did recall Applicant alleging the additional “housebreaking” convictions on his rap sheet were actually just probation revocations for the same charge, but reiterated that the state was able to premise the first degree charge on the weapon stolen anyway.

Counsel testified she reviewed the potential sentencing range for the charges with Applicant including the potential life sentence for the Burglary, and noted Applicant had rejected a plea offer from the state for fifteen (15) years imprisonment as he said he did not want it.

Counsel said Applicant initially said he wanted a trial, but ultimately made the decision to plead guilty of his own will as she left that decision entirely up to Applicant. She said the state made it clear they intended to pursue a life sentence at trial which she relayed to Applicant. Counsel went on to say she and Applicant were hopeful Judge Barber would impose a suspended sentence upon entry of the plea, but said she never promised Applicant such a result and actually advised Applicant it "would be a long shot" for him to receive a suspended sentence for alcohol rehab. Counsel finished direct examination by stating she believed she gave Applicant all the advice and information necessary to make a voluntary and informed decision whether to plead guilty or continue to trial to challenge the charges.

On cross-examination, counsel reiterated the state was "standing by" the use of a weapon as the basis for the "first degree" classification of the Burglary, but said she would have presented an argument against the sufficiency of the charge at trial had Applicant proceeded. She again noted this independent basis for the charge was the reason she didn't conduct any further independent investigation into the alleged errors on Applicant's rap sheet. Counsel agreed they tried to get Applicant's plea before Judge Barber as he was the one judge known to suspend Burglary sentences below the mandatory minimum; however, counsel stressed Applicant was well aware it was a "long shot" for him to receive a suspended sentence as they discussed the risks of pleading guilty in depth prior to the hearing. Counsel noted Applicant's codefendant was prepared to testify against Applicant at trial.

After a thorough review of the record and the testimony presented at the evidentiary hearing, this Court finds Applicant has failed to carry his burden in proving his plea was entered involuntarily or unintelligently as a result of counsel's alleged ineffectiveness. As a preliminary

matter, this Court finds counsel's testimony to be very credible, while conversely finding Applicant's testimony to be not credible.

Based on the credible evidence presented and the record of the plea hearing, this Court finds Applicant entered his guilty plea voluntarily and intelligently after being fully and adequately advised of all relevant issues involved with the charges by competent counsel acting within the range of reasonableness demanded based on professional norms. Applicant was fully advised of the potential risks and benefits of entering the plea without negotiations or recommendations from the state, including the realistic possibility of receiving a life sentence for the Burglary charge, after which he openly told the plea judge he wished to plead guilty as he believed doing so was in his best interest. (Plea Tr. p. 6, l. 9). Contrary to Applicant's assertion, counsel's advisement of the realistic potential life sentence he was facing on the charge and the state's intention to pursue such a sentence at trial is not tantamount to coercion, duress or an improper "threat" rendering the plea involuntary. Therefore, this Court finds Applicant has failed to prove counsel's performance was deficient such that it rendered the subsequent guilty plea involuntary.

Further, Applicant has failed to sufficiently prove resulting prejudice as he has not convinced this Court that, but for the alleged deficiencies of counsel, he would not have pled guilty but rather insisted on going to trial to challenge the charges. The credible evidence reflects the state was prepared to seek a life sentence at a trial where Applicant's codefendant was going to present critical testimony against Applicant to help secure a conviction. With the remaining evidence against Applicant as reflected in the record, this Court cannot find any reasonable probability that, but for counsel's alleged "errors", Applicant would not have pled guilty but rather insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d

203 (1985) (*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*). Therefore, this allegation is without merit and must be denied.

Ineffective Assistance of Counsel

Applicant also set forth two additional instances in which he alleged counsel was ineffective in her representation. First, Applicant contended counsel was ineffective for failing to further investigate and present victim's request not to pursue the charges against him. Second, Applicant said counsel was ineffective for failing to further investigate and prepare a motion to suppress his confession to police due to the severe alcohol withdrawals he was suffering at the time.

Victim

Applicant alleged counsel was ineffective for failing to further investigate and/or present the plea court with information on victim's desire for the state not to pursue the charges Applicant. Counsel testified she did investigate this lead after discussing this allegation with counsel, but victim was diagnosed dementia and under the supervision of a guardian ad litem. That guardian, counsel said, refused to allow counsel to speak with victim about Applicant's case. Counsel noted the solicitor was "not of the opinion" that victim did not wish to pursue the charges based on their discussions.

This Court finds this allegation to be without merit. First, counsel's credible testimony reflects she did attempt to undertake a reasonable and diligent investigation into Applicant's contention, but was hindered by victim's mental incapacity. Applicant has failed to establish what further "reasonable" action counsel should have taken that she did not. Further, Applicant

has failed to provide this Court with any evidence to substantiate the claim that victim did, in fact, desire the charges against him not be pursued, or that such a desire would have made any difference in the state's decision to prosecute Applicant. This Court finds Applicant's self-serving testimony in this regard to not be credible. Therefore, Applicant has failed to prove resulting prejudice as he has merely presented this Court with mere speculation, wholly unproven by credible, admissible evidence. Accordingly, this allegation is denied.

Applicant's Statement to Police

Counsel testified she was aware Applicant was an alcoholic and had discussed with Applicant his allegation that he was suffering from severe withdrawals at the time he gave his statement to police. Counsel stated she gathered all of Applicant's medical records necessary to support this contention in preparation of a pretrial motion to exclude the statement, which counsel noted she would have made had Applicant decided to proceed to trial. She also stated she would have argued the unreliability of the statement to the jury at trial on these same grounds had the statement be admitted by the trial judge. On cross-examination, counsel noted suppression of Applicant's statement would have beneficial to his chances at trial, but would not have significantly weakened the state's case as Applicant's codefendant was prepared to testify to the same information at trial.

Based on the testimony above and a review of the record, this Court finds Applicant was not ineffective in this regard. Counsel's credible testimony reflects she undertook a diligent and objectively reasonable investigation to develop a motion to suppress Applicant's statement to police based on his alleged alcohol withdrawal symptoms. It was Applicant's own voluntary decision to plead guilty that prevented counsel from presenting the motion she fully contended she was/would have been prepared to present in pretrial on Applicant's behalf. Therefore, this

Court finds no deficiency in counsel's performance. Further, as stated by counsel, suppression of the statement was not the only high hurdle Applicant had to overcome if he had gone to trial; Applicant's codefendant's purported testimony was equally a concern in evaluating Applicant's chances of success at trial. This Court finds Applicant has failed to prove that, even if his statement to police were suppressed from consideration by a jury at trial, a trial would have resulted in something less than a full conviction of the charges as indicted. Therefore, this allegation is without merit.

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.

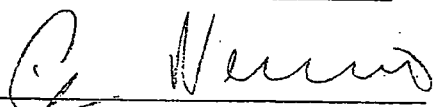
Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal 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.

This Court notes Applicant 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), SCRCR, 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 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 5th day of December, 2012.


Clifton B. Newman
Presiding Judge
Fifth Judicial Circuit

Kingstree, South Carolina.

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

Defendant

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

CERTIFIED TRUE COPY OF ORIGINAL FILED
RICHLAND COUNTY SOUTH CAROLINA

Defendant

Witness:

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

DOCKET NO. 2010GS40875

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2010

42

THE STATE vs.

Lewis William Addis, Jr.

Indictment for BURLGLARY 1ST DEGREE

SC Code: 16-11-0311
CDR Code: 0079

WITNESSES

(S) Joseph Clarke - Richland County Sheriff

ARREST WARRANT NUMBER

1918424

ACTION OF GRAND JURY

TRUE BILL

William H. Field
Foreperson of Grand Jury

Date: JUL 16 2010

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

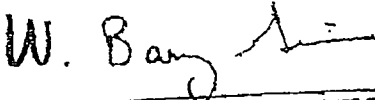
At a Court of General Sessions, convened on July 14, 2010, the Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

CDR: 0079 16-11-0311

That Lewis William Addis, Jr. did in Richland County on or about September 9, 2009 willfully and unlawfully enter the dwelling of CAROLYN FANT without consent and with the intent to commit a crime therein and the defendant has a prior record of two or more convictions for burglary, housebreaking or a combination of both. All in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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


WARREN B. GIESE, SOLICITOR

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

Defendant

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

CERTIFIED TRUE COPY OF ORIGINAL FILED IN CASE NO. 2010GS40876

Defendant

Witness:

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

DOCKET NO. 2010GS40876

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2010

42

THE STATE vs.

Lewis William Addis Jr

Indictment for PETIT LARCENY (\$1000 OR LESS)

SC Code: 16-13-0030(B)(1) CDR Code: 0478

WITNESSES

(s) Joseph Clarke - Richland County Sheriff

ARREST WARRANT NUMBER

1918425

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JUL 16 2010

VERDICT

Foreperson of Petit Jury

Date:

