

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

RECEIVED

OCT - 7 2013

S.C. Supreme Court

WILLIAM CHESSER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000937

APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
 ) NINTH JUDICIAL CIRCUIT  
COUNTY OF BERKELEY ) CASE NO.: 2012-CP-08-00349

STATE OF SOUTH CAROLINA )  
 )  
VS. )  
 )  
WILLIAM CHESSER, )  
 )  
 )  
DEFENDANT. )  
\_\_\_\_\_ )

**PLEA**

held before the Honorable Kristi L. Harrington  
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit  
in the Berkley County Courthouse  
Moncks Corner, South Carolina  
on Wednesday, December 1, 2010, Commencing at 3:26 p.m.

---

SUSAN "MIA" PERRON, CVR-CM-M  
*Circuit Court Reporter - 9th Judicial Circuit*  
Post Office Box 31865  
Charleston, South Carolina 29417-1865  
1-706-231-6028

---

## APPEARANCES OF COUNSEL

FOR THE STATE: Ashley Cornwell, Esquire  
Assistant Solicitor  
9th Judicial Circuit Solicitor's Office  
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Moncks Corner, South Carolina 29461

FOR THE DEFENDANT: Debra Littlejohn, Esquire  
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Moncks Corner, South Carolina 29461

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EXHIBITS

[None]

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PROCEEDINGS

THE COURT: Are you William Chesser?

MR. CHESSER: Yes, ma'am.

THE COURT: Please swear the defendant.

THE CLERK OF COURT: Please raise your right hand.

[Whereupon, Mr. Chesser is duly sworn by the clerk of court as follows: do you solemnly swear or affirm the testimony you give the Court in this matter will be the truth, the whole truth, and nothing but the truth, so help you God]

THE WITNESS: Yes, ma'am.

THE CLERK OF COURT: Thank you.

THE COURT: Ms. Littlejohn, you represent Mr. Chesser?

MR. LITTLEJOHN: I do, Your Honor.

THE COURT: Have you advised your client the charge that he is facing, the possible punishment, as well as the consequences of this plea?

MR. LITTLEJOHN: I have, Your Honor.

THE COURT: Do you agree with his decision to plead guilty here today?

MR. LITTLEJOHN: I do, Your Honor.

THE COURT: Mr. Chesser, how old are you?

MR. CHESSER: Twenty.

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1 THE COURT: How far did you go in school?  
2 MR. CHESSER: Tenth.  
3 THE COURT: Do you have your GED?  
4 MR. CHESSER: Oh. I got my GED, too.  
5 THE COURT: You have your GED?  
6 MR. CHESSER: Yes, ma'am.  
7 THE COURT: What type of work do you do?  
8 MR. CHESSER: Construction and roofing.  
9 THE COURT: Are you married?  
10 MR. CHESSER: No, ma'am.  
11 THE COURT: Do you have children?  
12 MR. CHESSER: I've got one on the way.  
13 THE COURT: Ever been treated for the abuse of  
14 drugs or alcohol?  
15 MR. CHESSER: The Kennedy Center.  
16 THE COURT: When did you complete the Kennedy  
17 Center?  
18 MR. CHESSER: Maybe like '07.  
19 THE COURT: What drug were you using?  
20 MR. CHESSER: Pills and alcohol.  
21 THE COURT: Did you complete that program?  
22 MR. CHESSER: Yes, ma'am.  
23 THE COURT: How long have you been in custody?  
24 MR. CHESSER: I'm not sure, Your Honor.  
25 September 21st.

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1 THE COURT: Since?

2 MR. CHESSER: September 21st.

3 THE COURT: Sir, you're here to plead guilty on  
4 indictment 2010-GS-08-1837, which is a true billed  
5 indictment for burglary in the second degree. I can  
6 sentence you on that up to ten years in the department  
7 of corrections. Do you understand that's the possible  
8 punishment?

9 MR. CHESSER: Yes, ma'am.

10 THE COURT: Knowing that, do you still wish to  
11 go forward here today?

12 MR. CHESSER: Yes, ma'am.

13 THE COURT: This is without recommendations or  
14 negotiations?

15 MS. CORNWELL: Yes, Your Honor.

16 THE COURT: Is that your understanding,  
17 Ms. Littlejohn?

18 MR. LITTLEJOHN: Correct, Your Honor.

19 THE COURT: Mr. Chesser, you do not have to  
20 plead guilty. By pleading guilty you waive or give up  
21 certain rights: your right to a jury trial, your  
22 right to have a jury determine your guilt beyond a  
23 reasonable doubt based upon the evidence the State  
24 presents as well as any evidence you may introduce,  
25 your right against self-incrimination, your right to

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1 say nothing at all, your right to confront and be  
2 confronted by the witnesses against you, as well as  
3 the right to call witnesses on your behalf. By  
4 pleading guilty here today, sir, you give up any  
5 defense you may have to this charge.

6 Do you understand those rights that you are  
7 waiving?

8 MR. CHESSER: Yes, ma'am.

9 THE COURT: And do you waive those rights at  
10 this time?

11 MR. CHESSER: Yes, ma'am.

12 THE COURT: Understanding the charge that you  
13 are facing, the possible punishment, as well as the  
14 consequences of this plea, how do you plea to burglary  
15 in the second degree under the nonviolent provision?

16 MR. CHESSER: Ma'am?

17 THE COURT: How do you plea?

18 MR. CHESSER: Guilty.

19 THE COURT: Are you pleading guilty because you,  
20 in fact, are guilty?

21 MR. CHESSER: Yes, ma'am.

22 THE COURT: Anybody promise you anything,  
23 threaten you, force you to plead guilty here today?

24 MR. CHESSER: No, ma'am.

25 THE COURT: Whose decision was it for you to

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1 plead guilty?

2 MR. CHESSER: Mine.

3 THE COURT: Have you been completely satisfied  
4 with the services of Ms. Littlejohn?

5 MR. CHESSER: Yes, ma'am.

6 THE COURT: Do you need any additional time to  
7 meet with her?

8 MR. CHESSER: No, ma'am.

9 THE COURT: You have the right to appeal this  
10 plea and any sentence that I impose but you or your  
11 attorney must do so within ten days. Do you  
12 understand that?

13 MR. CHESSER: Yes, ma'am.

14 THE COURT: Please listen to the facts.

15 Ms. Cornwell?

16 MS. CORNWELL: Thank you, Your Honor. May it  
17 please the Court.

18 On September 20th of 2010, officers were  
19 responding to a burglary in the Goose Creek area of  
20 Berkeley County. Police officers spoke with  
21 witnesses. One of the witnesses stated that they saw  
22 some of the reported stolen items in this defendant's  
23 apartment. When police approached this defendant, the  
24 defendant originally pointed a finger at his  
25 codefendant. Since thenm he has admitted his guilt

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1 and is in front of Your Honor today. He does not have  
2 a prior record.

3 The victim is here. She has addressed the  
4 Court. She did indicate to me that she is more  
5 concerned with the codefendant than this defendant.  
6 She is not as afraid of this defendant as she was the  
7 codefendant. I don't know that she wants to speak.

8 THE COURT: Does she wish to address the Court  
9 again?

10 I need you to state your full name for the  
11 record -- we're on a different record -- and spell  
12 your last name.

13 HAZINAKIS: Mary Hazinakis. H-A-Z-I-N-A-K-I-S.

14 THE COURT: Yes, ma'am.

15 HAZINAKIS: I have heard -- I have been here  
16 since 8:30 this morning and I've heard everybody's  
17 excuse: I didn't get my medicine, I come from a  
18 broken home. Well, I was brought up in a severely  
19 dysfunctional home. My father is a convicted felon.  
20 I've never been in jail. I've never stolen something  
21 that didn't belong to me. I have raised five kids. I  
22 have five kids. Most of those five kids were raised  
23 as a single mom. So all the excuses offend me because  
24 of how I was raised and how I overcame it and I didn't  
25 get involved in all this other stuff.

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1 I was and am more concerned with the defendant  
2 that just left than I am with Mr. Chesser. Mr.  
3 Chesser lived right across from us for a short amount  
4 of time, for a few months. We never had problems out  
5 of him, had any concerns, until Mr. Hammit [phonetic]  
6 moved in with him. That's when the problems started.  
7 That's when the loud noises and the arguing and  
8 everything else that happened in the middle of the  
9 night started happening. I don't think -- had Mr.  
10 Hammit not been there, I don't think we would have had  
11 the problems with Mr. Chesser that we've had. His  
12 girlfriend and his --

13 Her son, I've actually watched the child before.  
14 My four-year-old and that child play together.

15 I ask leniency for Mr. Chesser. I think he  
16 was influenced by Mr. Hammit. And that I ask for  
17 Mr. Chesser's leniency, probation. If he gets on  
18 probation, the only thing I ask is for satellite  
19 monitoring.

20 THE COURT: Thank you.

21 Mr. Chesser, anything -- you heard the facts as  
22 presented by the State. Are those facts true? Is  
23 that what you did?

24 MR. CHESSEER: Yes, ma'am.

25 THE COURT: I find a substantial factual basis

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for your plea. Your decision to plead guilty has been freely, voluntarily, knowingly and intelligently made. You've indicated to the Court you've had the advice and counsel of a competent attorney with whom you've told the Court you're satisfied. I hereby accept your plea of guilt.

Ms. Littlejohn, I'll be happy to hear from you.

MR. LITTLEJOHN: Yes.

Your Honor, Mr. Chesser is twenty years old. As he explained to you, he does roofing for a living and he does have his GED.

I think I can understand what the victim is saying with regard to him being fairly quiet, because he's been fairly quiet when he and I have talked. He was real straightforward with me.

He tells me he was on his Clonipin and Xanax. Which the more I do this, the more I'm seeing the prescription pills just increasing. Nevertheless, there's no excuse.

He told me he really likes the victim. They've lived there and there has not been any problems, just like she said. So he talked about being here, being remorseful for it.

I asked him where would he live if he were to get probation. Said right out of Summerville in the

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1 College Park area with his mother. I said, well, is  
2 there any need for you to go to Goose Creek. He said,  
3 not unless I have a job there. He work's for Barry's  
4 Roofing. He says, no, I would have no reason to go  
5 back into Goose Creek.

6 Your Honor, I would -- at this time I think  
7 Mr. Chesser would like to address the Court.

8 THE COURT: All right. Mr. Chesser, I'll be  
9 happy to hear from you.

10 MR. CHESSER: I just want to apologize to the  
11 Court and the victim for all the things I did and  
12 caused their family to go through. And I'm real sorry  
13 for the pain that I caused them, and not be able to  
14 sleep at night. I know if it was my mama, I wouldn't  
15 want that to happen. And I'm sorry for all the things  
16 I caused. I didn't mean to -- I feel for them. And I  
17 didn't mean for none of it to happen. But there's no  
18 excuse for what I did. I just hope she forgives me  
19 and give me a chance.

20 THE COURT: Anything further, Ms. Littlejohn?

21 MR. LITTLEJOHN: Your Honor, as Mr. Chesser and  
22 I have talked, he seems to have come to realize it  
23 wasn't about what was taken so much as it was about,  
24 as he -- the security of their house.

25 He has no prior record of a conviction. He has

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no pending charges. I would ask that the Court give him a probationary sentence.

THE COURT: Anything further from the State?

MS. CORNWELL: Nothing, Your Honor.

THE COURT: It's the order of the Court on indictment 2010-GS-08-1837 that you be committed to the State Department of Corrections under the Youthful Offender Act not to exceed six years. Suspend the balance, place you on probation for two years. Terms and conditions: you must complete fifty hours of community service, substance abuse counseling, random drug and alcohol testing. You are to make payable \$500 to the clerk during your probationary sentence. Credit for any time that you have served. Good luck to you, sir.

MR. CHESSER: Thank you, ma'am.

THE COURT: No contact with the victim.

MR. LITTLEJOHN: Thank you, Your Honor.

[PLEA CONCLUDES AT 3:35 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the plea held before the Honorable Kristi L. Harrington, on Wednesday, December 1, 2010.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 15th day of August, 2013.



Mia Perron, CVR-CM-M  
Circuit Court Reporter  
9th Judicial Circuit

FORM 5

20 ~~12~~ CP - 08 - 349

STATE OF SOUTH CAROLINA )  
County of Berkeley county )  
William chesser # 348724 )  
Full name and prison number (if any) of Applicant )

IN THE COURT OF COMMON PLEAS

v. )  
State of South Carolina )

APPLICATION FOR  
POST-CONVICTION RELIEF

FILED  
2012 FEB - 6 PM 4:55  
CLERK OF COURT  
COUNTY, SC

**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Hill Finkley Detention center
2. Name and location of Court which imposed sentence Berkeley county  
general sessions court house, moncks corner, S.C 29461
3. Name(s) of co-defendant(s) (if any) Tradd lee Hammet Jr  
(cousin)
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) V.O.A 1-6 Suspended to 2yrs probation M-332369
  - (b) \_\_\_\_\_

WJ MF  
2/6/12

- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) Dec - 1 - 2010
  - (b) 2yrs probation
  - (c) \_\_\_\_\_

- 6. Check whether a finding of guilty was made:
  - after a plea of guilty I pled guilty
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_

7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO

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

- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) I didnt appeal because i was satisfied with my 16 yrs suspended to 2yrs probation
  - (b) \_\_\_\_\_

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

(a) once I entered Kirland R&E They changed my 1-6 Y.O.A (10) months to DO a mandatory Y.O.A sentence.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) Kirland changed my 10 months on a Y.O.A sentence to a mandatory Y.O.A sentence due to the fact that June 2, 2010 the law changed for Burglary 2nd degree, that I did not know about and my lawyer did not inform me about.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) any petition in a State Court under South Carolina Law? \_\_\_\_\_

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? \_\_\_\_\_

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? \_\_\_\_\_

(d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

(a) the specific nature thereof:

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

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

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

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

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

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

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

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

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

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

*No this is the only application I have filed*

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

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- (a) I have not been brought into court yet due to what Kirtland has done.
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? No trial
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?  
NO

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

- (a) the name and address of each attorney who represented you:
  - i. Little John  
219 N. Hwy. 52, Suite E post office box 1687
  - ii. marck corner S.C 29461.
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. She was there when I made my plea.
  - ii. She was also there when I got 2yrs probation  
suspended from a 1-6 Y.O.A. sentence.
  - iii. \_\_\_\_\_

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

I would like to be brought back into court so that I can get my 10 months back. I have a mandatory sentence and I did not plea to that in

20. Are you now under sentence from any other court that you have not challenged? <sup>The court room.</sup>

yes in Berkeley county I have 2 second degree burg. and a first degree Burg. Dropped down to receive stolen goods.

20 12 - CP - 08 - 349

STATE OF SOUTH CAROLINA )  
County of Berkeley )

VERIFICATION

I, William Chessee 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.

William Chessee  
William Chessee Jr

SWORN to and subscribed before me this 3rd day of February, 2012.

Evelyn Hays (L.S.)  
Notary Public

My Commission Expires: April 27, 2016

FILED  
2012 FEB -6 PM 4:55  
CLERK OF COURT  
BERKELEY COUNTY, SC

20 12 - CP - 08 - 349

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

I, William Chesser 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:

I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

William Chesser  
William Chesser Jr  
Applicant

SWORN or affirmed to and subscribed before me this  
3rd day of February, 2012

[Signature]  
Notary Public

My Commission Expires: April 27, 2016

2012 FEB - 6 PM 4: 55  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

## Illegal Sentence

2012-CP-08-349

### Trial Court Committed Error

The applicants submits that his sentence was illegal an trial court committed error according to the mandates set forth in *Chesser v. State*, 410 So 2nd 563.

The applicant asserts that the trial court sentenced him illegally & committed an error by sentencing the applicant to a youthful offender act when in fact the statute for burglary 2nd degree YOA sentence was changed to a mandatory 3 year sentence.

The applicant submits that when a person cannot be sentenced to what he has been sentenced to it is void & the sentence must be remanded. See *Chesser*, *Supra*.

## Involuntary Guilty Plea

The applicant asserts that his guilty plea was involuntary pursuant to the precepts of Hill vs Lockhart, 884 F2d 1009, 877 F2d 688 (8th Circuit 1989),  
 Gordon v Dugger, 909 F2d 474 (8th circuit 1991),  
 Holmes v US, 876 F2d 1545 (11th circuit 1989)

The applicant asserts that he plead guilty to Burglary 2nd degree 10 months YOA, upon the advice of his counsel. Upon entering S.C.D.C. he found out that he is required to serve a mandatory 3 years for Burglary 2nd degree.

The applicant has proved that his defence counsel & the trial Judges advice rendered his guilty plea invalid, and entitled petitioner to a rehearing applicant had explicitly asked his counsel about parole system and made it clear that timing of eligibility was dispositive issue him in accepting or rejecting plea bargain Hill v Lockhart 884 F2d 1009 (8th circuit 1989)  
 See plea transcript

## Ineffective Assistance of Counsel

The applicant asserts that his counsils performance was deficient, inadequate, and insufficient by the mandates set forth in the preceding cases: Strickland v Washington, 466 U.S. 668, 109 S.C. & 2052 (1984), Garmen v Lockhart, 894 Fed 1009 (1990), Hill v Lockhart, 877 F. 2nd 602 (9th circuit 1985)

(A)

The applicant avers that his lawyer was ineffective for failing to inform defendant about mandatory parole terms prior to guilty plea, see Blair with there is striking as to the applicants issues,

In Blair, plea counsel was found to be ineffective for failing to inform defendant about mandatory term before being considered for parole prior to entry of guilty had he been so advised also take note to the applicant in where it definitively states that the applicant would be doing ten months YOD before being considered for parole/ninety day stock incarceration.

(B)

Applicant also alleges that his counsel was ineffective for failing to research the newly amended statutes covering those sentenced to a YOA burglary 2nd degree. Hill v Lockhart, 877 F.2d 638 (1989)

The applicant argues that his prejudiced the outcome of his case because if he was informed of proper applicable statute concerning his plea bargain he would have refused the plea bargain and insisted on going to trial. See Hill v Lockhart, 477 U.S. 52, 106 S.Ct. 366 (1985)

### Conclusion

By and large the applicant has proved that his counsils performance was incompetent which led to a prejudicial outcome of the applicants case.

There for, for the aforementioned reasons listed above the only and proper remedy to satisfy these particular errors are to have the applicants case remanded and resentenced to clear up any discrepancies.



- I. Ineffective assistance of counsel.
  - a. "Kirkland changed my 10 months on a Y.O.A. sentence to a mandatory Y.O.A. sentence due to the fact that June 2, 2010 the law changed for Burglary 2<sup>nd</sup> degree, That I did not know about and my lawyer did not inform me about."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records for Berkeley County and the South Carolina Department of Corrections' records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

### III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on December 1, 2010. This Application was filed on February 6, 2012, which was over two (2) months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a

motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired.

Respectfully submitted,

ALAN WILSON  
Attorney General

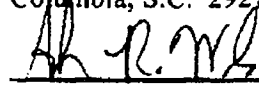
JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Assistant Deputy Attorney General

ASHLEIGH WILSON  
Assistant Attorney General

P.O. Box 11549  
Columbia, S.C. 29211

By:

  
Attorneys for the Respondents

Columbia, South Carolina  
May 25, 2012

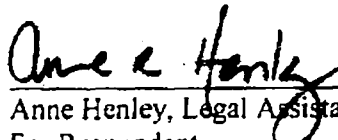
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2012-CP-08-0349
	)	
WILLIAM CHESSER, #348724	)	
	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

---

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

**William Chesser, #348724**  
**Turbeville Correctional Institution**  
**PO Box 252**  
**Turbeville, SC 29162**

DATED this 25th day of May, 2012

  
 \_\_\_\_\_  
 Anne Henley, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

2012-CP-08-0349

William Chesser, #348724, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

CONDITIONAL ORDER OF DISMISSAL

2012 DEC 11 AM 11:11  
CLERK OF COURT  
BERKELEY COUNTY, SC  
B

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 6, 2012. In its Return, Respondent requested that the application be summarily dismissed.

**PROCEDURAL HISTORY**

This Court has before it a copy of the records of the Berkeley County Clerk of Court and Applicant's records from the South Carolina Department of Corrections. The Applicant was indicted at the November 2010 term of the Berkeley County Grand Jury for second degree burglary (2010-GS-08-1837). Debra K. Littlejohn, Esquire represented him. On December 1, 2010 the Applicant pled guilty as indicted before the Honorable Kristi Lea Harrington and was sentenced under the Youthful Offender Act to six (6) years imprisonment suspended to two (2) years probation. On November 17, 2011 Applicant's probation was revoked. Applicant did not file an appeal.

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

1. Ineffective assistance of counsel.
  - a. "Kirkland changed my 10 months on a Y.O.A. sentence to a mandatory Y.O.A. sentence due to the fact that June 2, 2010 the law changed for Burglary 2<sup>nd</sup> degree, That I did not know about and my lawyer did not inform me about."

12/20/12  
email:  
MF

12/20/12  
mail:  
WC

1 of 3

12/23  
[Signature]

B

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the pleadings and all relevant supporting documents. Pursuant to S.C. Code Ann. § 17-27-70(b), the Court makes the following findings of fact and conclusions of law:

This Court finds that this matter should be summarily dismissed because Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on December 1, 2010. Therefore Applicant would have to file his application on or before December 1, 2011. This Application was filed on February 6, 2012, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the PCR Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law."

2013  
AKG

CONCLUSION

S.C. Code Ann. § 17-27-70(b) states in pertinent part:

When a court is satisfied, on the basis of the application, the answer or motion, and on the record, that Applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings, it may indicate to the parties its intention to dismiss the application and give its reasons for so doing. Applicant shall be given an opportunity to reply to the proposed dismissal.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Berkeley County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Ashleigh Wilson, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 13<sup>th</sup> day of Dec., 2012.

Deadra L. Jefferson  
DEADRA L. JEFFERSON  
Chief Judge for Administrative Purposes  
Ninth Judicial Circuit Court

Charleston, South Carolina.

343  
2/19

State of South Carolina  
County of Charleston  
William Chesser, #348724  
Applicant,

In the Court of  
Common Pleas  
2012-CP-08-0349  
Objection to  
conditional order of Dismissal

V.  
State of South Carolina,  
Respondent.

I, William Chesser #348724 hereby objects to the Request for a conditional order of dismissal which was filed by the Respondent, SDC and served on January 07, 2013....

I

The applicant is presently confined in South Carolina Department of Corrections pursuant to order of commitment of the Clerk of Court for Berkeley County. The Applicant was indicted at the Nov. 2010 term of Berkeley County Grand Jury for Second Degree Burglary (2010-BS-08-1337). Debra K. Little John Esquire represented him. on Dec. 1 2010 the Applicant pled guilty as indicted before the Honorable Kristi Lee Harrington and was sentenced under the youthful offenders Act (YOA) to Six years imprisonment suspended to two (2) years probation, on Nov. 17, 2011. Applicant's probation was revoked. Applicant did not file an appeal.

2013 JAN 17 PM 4:36  
HARRY B. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

FILED

II

22

In my current application for Post Conviction Relief the applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of Counsel

a. Kirkland Charged my ten (10) months on a 40A Sentence to mandatory 40A. Sentence due to the fact that on June 2, 2010 the law changed for Burglary 1st Degree, that I did not know about and my lawyer did not inform me about.

2. My lawyer specifically told me it was a 0 to 10 day, and if I go in front of the Judge that I would get a ten (10) month or probation because it was my first felony charge, and he told me it was a win-win situation. So then I signed the paper work to go in front of the Honorable Judge Harrington. My co-defendant went first and the judge told him he got ninety (90) days shock. My co-defendant is Todd Hammit, which he got his over turned. And then the Judge dismissed him.

Then they called my name, so we went in front of the Judge with Debbie Little John, and the Judge started speaking to my lawyer and she asked me if I had anything to say and I said yes. So then I started speaking and I apologized to the victim because I know how devastating it must have been for them and if somebody broke into my house I wouldn't know what to do also and so forth. Then the Judge asked

the victim if she had anything to say. At first she said  
 no and then she came and spoke on my behalf. She started  
 saying that she believes I should get probation, because she  
 knew the situation that happen. Then she got back down.  
 The judge started speaking and told me I had a ~~one~~  
~~one~~ (6) ~~year~~ suspended to two (2) years probation, as  
 you know and as I stated before that in the new law in  
 Section 16-11-312, The offender must receive and serve  
 a minimum sentence of three (3) years, no part of which may be  
 suspended, and the person is not eligible for conditional  
 release until the person has served the three (3) year  
 minimum sentence. Therefore you can see that I was not  
 properly sentenced and when I signed my paper work for  
 probation I specifically asked her what would happen if I  
 violated and she said I would only have to do 10 months. So  
 that's why I did not file my P.C.R. inside the Statute  
 of limitations, because I was not properly informed of a mandatory  
 sentence until I got to Terrebonne Conditional Institution, and  
 my lawyer Debbie Little John swore under oath to tell the  
 truth and do right by me, but instead she neglected me as  
 you can see from the letters I have already sent you and  
 plus I was not informed of a P.C.R. either so if I was  
 properly informed of mandatory sentence, and if I was properly  
 sentenced and did not get a suspended sentence then I would  
 have filed a P.C.R. under the proper requirements. Tom

asking you for a belated P.C.R. due to the facts I have given you, and also due to the facts that I was not properly informed of a P.C.R. by my lawyer until I arrived at Trumbull Correctional Institution and so therefore it was ineffective assistance of counsel

3. Thus petitioner was entitled to P.C.R. Alexander v. State 303 S.E.2d 484 (1981) Court found ineffective assistance of counsel when trial counsel misinformed petitioner and petitioner testified at P.C.R. he would not have pled guilty.

4. While the assistant solicitor was involved in attaining the plea agreement to petitioner, the solicitor was bound by that plea offer, see State v. Spivey 355 S.E.2d 278 (2003) premise of one prosecutor in the office bound all prosecutions in the office.

5. Plea Counsel, breach the petitioner agreements, counsel advise him at the time of plea, he would receive probation. At the sentencing the applicant contends that the State breached the plea agreement pursuant to the mandates set forth in Cestovic v. State 644 S.E.2d (SC 2001) Reed v. Beckie 333 S.C. 676, 511 S.E.2d 396 (Ct app 1999)

### Conclusion

For the foregoing reasons, discussions, and arguments, petitioner would solemnly pray that the Court finds that return on motion to dismiss for P.C.R. Hearing be denied and that a Hearing date be set because petitioner has shown there exists a genuine issue of material facts precluding such P.C.R. hearing at this time. Anderson et al. v. Liberty Lobby, Inc., 477 US 242, 106 Sct 2505 (1986) P.C.R. Judgment will not lie if the dispute of fact is "genuine" i.e. if the evidence is such that a reasonable jury could return a Verdict for the non moving party.

Respectfully Submitted  
William Lee Chesser, Jr.  
William Lee Chesser, Jr.

SWORN to and subscribed before me this  
14<sup>th</sup> day of January, 2013.  
Emily Hines (L.S.)  
Notary Public for South Carolina

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA )  
 COUNTY OF BERKELEY )  
 )  
 )  
 William Chesser, 348724, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2012-CP-08-0349

FINAL ORDER OF DISMISSAL

2013 APR -2 AM 11:08  
 FILED  
 CLERK OF COURT  
 BERKELEY COUNTY, SC

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 6, 2012. The Respondent (the State) made a timely Return, requesting that the Application be summarily dismissed. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal filed June 6, 2012, provisionally denying and dismissing this action, while giving the Applicant twenty (20) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is Respondent's proof of service dated January 7, 2013, serving the Conditional Order of Dismissal on the Applicant.

The Applicant made a response on January 17, 2013, alleging:

1. He was not properly informed of mandatory sentence until he got to Turbeville Correctional Institution. If he was properly sentenced and did not get a suspended sentence then he would have filed a PCR under the proper requirements.
2. Counsel failed to inform him about filing a PCR.

*4/13/13  
mail.  
aw*

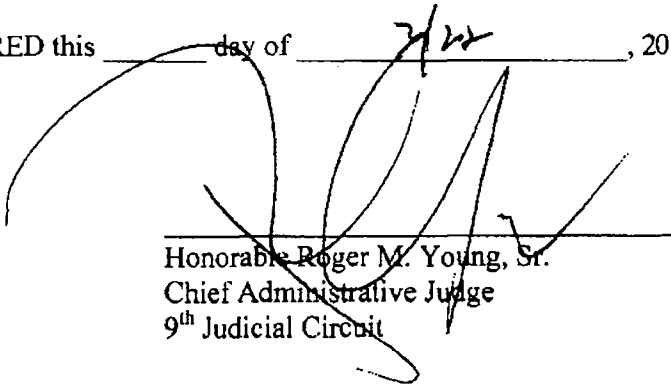
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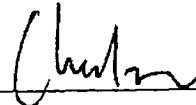
This Court has reviewed the original pleadings and finds that a sufficient reason has not been shown why the Conditional Order of Dismissal should not become final.

IT IS THEREFORE ORDERED that, since this matter should be summarily dismissed because Applicant has failed to comply with the filing procedures of the Uniform Post-Conviction Procedure Act<sup>1</sup>, the Application for PCR is hereby denied and dismissed with prejudice.

This Court hereby advises the Applicant that he must file and serve a Notice of Appeal within thirty (30) days of the service of this Order to secure appellate review. See Rule 203, SCACR. The Applicant's attention is directed to Rule 227, SCACR., for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this \_\_\_\_\_ day of 2/22, 2013.

  
 \_\_\_\_\_  
 Honorable Roger M. Young, Sr.  
 Chief Administrative Judge  
 9<sup>th</sup> Judicial Circuit

 South Carolina.

<sup>1</sup> The Applicant was convicted on December 1, 2010. Since all of the allegations raised in his PCR application referenced his guilty plea proceeding, his application should have been filed on or before December 1, 2011. This application was filed on February 6, 2012 which was at least one year from the expiration of the statutory filing period.

**SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**  
Post Office Box 21787 - Columbia, South Carolina 29221

Pursuant to Code Section 15-9-500, Code of Laws of South Carolina, 1976, the Director of the South Carolina Department of Corrections has designated Wanda Pugh (Server) as his duly authorized agent for the purpose of making service of the process on the below named individual.

STATE OF SOUTH CAROLINA )  
COUNTY OF Clarendon )

**AFFIDAVIT OF PERSONAL SERVICE**

On this 7 day of January, <sup>2013</sup>~~2012~~, I served the **Conditional Order of Dismissal**, on Inmate William Chesser, SCDC Inmate #348724, by delivering personally and leaving a copy of the same at Turbeville Correctional Institution. Deponent is not a party to this action.

Wanda Pugh  
SCDC Server

SWORN TO AND SUBSCRIBED BEFORE ME

this 7th day of January, 2013  
Duquesne Jones (L.S.)

Notary Public for South Carolina

My Commission Expires: 2017

**ADMISSION OF SERVICE**

Service of a copy of the within **Conditional Order of Dismissal** is admitted at the S.C. Department of Corrections (Turbeville Correctional Institution),

Turbeville, Clarendon County, SC this 7 day of January, <sup>2013</sup>~~2012~~.

William Chesser  
Inmate

SCDC Inmate # 348724

WITNESSES

Michael R Cotte  
Berkeley County Sheriffs Office



AGENCY CASE NUMBER  
1009041707

ARREST WARRANT NUMBER

M332369

DATE OF ARREST

September 21, 2010

ACTION OF GRAND JURY

True Bill

Supervisor of Grand Jury

Date: 11-10-10

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010-GS-08-1837

The State of South Carolina  
County of Berkeley

COURT OF GENERAL SESSIONS

NOVEMBER Term 2010

THE STATE

vs.

William Lee Chesser Jr

DOB:

W/M

Indictment for

BURGLARY 2ND DEGREE

2010 NOV 10 PM 12:36  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

FILED

844

