

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

RECEIVED

JAN 30 2013

S.C. Supreme Court

SINTARI SUMMERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-212153

APPENDIX

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STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

) COURT OF GENERAL SESSION
) 2007-GS-41-376

STATE OF SOUTH CAROLINA
VS.

SINTARI SUMMERS
DEFENDANT

) TRANSCRIPT OF RECORD
)
)

JANUARY 22, 2008
SALUDA, SOUTH CAROLINA

B E F O R E:

HONORABLE JAMES W. JOHNSON, JR., JUDGE

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

ERVIN MAYE, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

MICHAEL ELLISOR, ESQ.
ATTORNEY FOR THE DEFENDANT

JOY E. HOLSTON
OFFICIAL COURT REPORTER

EXHIBITS

(NO EXHIBITS WERE INTRODUCED.)

1 MR. MAYE: SINTARI SUMMERS, COME AROUND. MAY IT
2 PLEASE THE COURT, YOUR HONOR. BEFORE YOU STANDS SINTARI
3 SUMMERS, HE IS INDICATED THE WILLINGNESS TO ENTER A GUILTY
4 PLEA TO INDICTMENT 2007-GS-41-376. AN INDICTMENT FOR
5 BURGLARY IN THE FIRST DEGREE. HE IS PLEADING AS CHARGED
6 WITHOUT NEGOTIATIONS OR RECOMMENDATIONS ON A SINGLE COUNT
7 ON BURGLARY FIRST, YOUR HONOR. THIS CHARGE IS AS
8 INDICTED. HE IS REPRESENTED BY HIS ATTORNEY, MR. MICHAEL
9 ELLISOR ON THIS COUNT, ONE COUNT OF BURGLARY FIRST.
10 PURSUANT TO THE PLEA AGREEMENT, YOUR HONOR, MR. SUMMER WAS
11 INVOLVED WITH A NUMBER OF CODEFENDANTS, IT WAS BASICALLY A
12 RING OF BURGLARIES. HE ADDITIONALLY HAS FIVE COUNTS OF
13 BURGLARY FIRST, THREE COUNTS OF BURGLARY SECOND, SIX
14 COUNTS OF GRAND LARCENY, MORE THAN \$1,000.00, LESS
15 \$5,000.00, YOUR HONOR. AND FOUR COUNTS OF PETIT LARCENIES
16 ARE PENDING AGAINST HIM, YOUR HONOR. HE ALSO HAS A CHARGE
17 OF CONTRABAND OR HAVING CONTRABAND IN THE SALUDA JAIL
18 WHILE HE WAS AN INMATE. THAT IS INDICTMENT 144, I AM JUST
19 GOING TO READ INTO THE RECORD, 363, 375, 369, 368, 367,
20 366, 360, 378, 377, 370, 371, 372, 364, 362, 361, 374, 373
21 AND 365. ALL OF THOSE INDICTMENTS NUMBERS ARE 2007
22 INDICTMENTS, YOUR HONOR, WITH THE EXCEPTION OF THE JANUARY
23 OF 2008 ONE OF CONTRABAND WHICH IS 2008-144. THOSE ARE
24 ALL THE PENDING CHARGES THAT HE WAS IN SALUDA COUNTY AT
25 THE MOMENT. HE HAS AGREED TO PLEAD STRAIGHT UP TO THE

1 BURGLARY FIRST, I AM GOING TO NOLLE PROS ALL OF THESE
2 OTHER INDICTMENTS, YOUR HONOR, THERE ARE A NUMBER OF
3 CODEFENDANTS INVOLVED IN THIS CASE. I RECOGNIZE THAT HIM
4 PLEADING TO BURGLARY FIRST, THAT WHATEVER RESTITUTION
5 PLAYING IN THIS IS IN ALL LIKELIHOOD NOT COLLECTIBLE TO
6 THE EXTENT ANY RESTITUTION RESPONSIBILITIES REST ON HIS
7 SHOULDERS. WE INTEND THAT THEY BE JOINT AND SEVERAL WITH
8 ANY OF THE CODEFENDANTS THAT WE INTEND TO DISPOSE OF THEIR
9 CASES. NONE OF THE OTHER INDIVIDUALS CASES HAVE BEEN
10 DISPOSED OF. MR. SINTARI SUMMERS WOULD BE THE FIRST OF
11 THE ONES THAT WAS INVOLVED IN THIS BURGLARY RING. IT IS
12 CERTAINLY OUR INTENTION TO MAKE ANY CODEFENDANTS JOINT AND
13 SEVERALLY RELIABLE FOR ANY RESTITUTION WITH ANYTHING THAT
14 WE STRUCTURE ON THEIR SENTENCES. BUT THAT IS THE FULL
15 EXTENT OF THE PLEA NEGOTIATIONS FROM THE STATE'S
16 PROSPECTIVE FOR MR. SUMMERS PLEA.

17 THE COURT: ALL RIGHT, THIS IS INDICTMENT
18 07-GS-41-376, STATE VERSUS SINTARI SUMMERS, YOU ARE MR.
19 SUMMERS, IS THAT RIGHT?

20 MR. SUMMERS: YES, SIR.

21 THE COURT: RAISE YOUR RIGHT HAND THE BEST YOU CAN.

22 SINTARI SUMMERS, AFTER BEING DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 THE COURT: MR. SUMMERS, HOW OLD ARE YOU?

25 MR. SUMMERS: 21.

1 THE COURT: 21. HOW FAR DID YOU GO IN SCHOOL?

2 MR. SUMMERS: GED.

3 THE COURT: ARE YOU MARRIED?

4 MR. SUMMERS: NO, SIR.

5 THE COURT: DO YOU HAVE ANY CHILDREN?

6 MR. SUMMERS: YES, SIR.

7 THE COURT: HOW MANY?

8 MR. SUMMERS: TWO.

9 THE COURT: BEFORE YOU WERE ARRESTED WHAT KIND OF
10 WORK WERE YOU DOING OR HAVE YOU DONE?

11 MR. SUMMERS: I WORKED AT KFC.

12 THE COURT: AND HOW LONG HAD YOU DONE THAT?

13 MR. SUMMERS: ABOUT FOUR MONTHS.

14 THE COURT: AND YOU HAVE BEEN IN JAIL ON THESE
15 CHARGES, IS THAT RIGHT?

16 MR. SUMMERS: YES, SIR.

17 THE COURT: DO YOU REMEMBER YOUR DATE OF ARREST?

18 MR. SUMMERS: MAY 17TH, '07.

19 THE COURT: AND YOU HAVE BEEN IN CONTINUOUSLY SINCE
20 THEN?

21 MR. SUMMERS: YES, SIR.

22 THE COURT: MR. ELLISOR, ARE YOU APPOINTED OR
23 RETAINED IN THE CASE?

24 MR. SUMMERS: I AM COURT APPOINTED, YOUR HONOR.

25 THE COURT: YOUR CLIENT IS CHARGED WITH IN THIS

1 INDICTMENT AND APPARENTLY TENDERING A PLEA ON THE CHARGE
2 OF FIRST DEGREE BURGLARY, IT DOES CARRY A MINIMUM,
3 MANDATORY OF 15 YEARS UP TO LIFE IN PRISON. HAVE YOU
4 EXPLAINED THAT TO HIM?

5 MR. ELLISOR: YES SIR, I HAVE.

6 THE COURT: AND IN YOUR OPINION DOES MR. SUMMERS
7 UNDERSTAND THAT?

8 MR. ELLISOR: YES SIR, HE DOES.

9 THE COURT: AND YOU HAVE EXPLAINED TO HIM THE FACT
10 THAT THIS IS CLASSIFIED AS A VIOLENT OFFENSE, A MOST
11 SERIOUS OFFENSE AND IT IS A STRIKE AND IT IS A EIGHTY-FIVE
12 PERCENT OFFENSE SO THAT HE WILL HAVE TO SERVE AT LEAST
13 EIGHTY-FIVE PERCENT OF WHATEVER THE COURT IS IMPOSING.
14 YOU HAVE EXPLAINED THAT TO HIM?

15 MR. ELLISOR: I HAVE, YOUR HONOR.

16 THE COURT: ALL RIGHT, MR. SUMMERS, AT THIS TIME DO
17 YOU HAVE ANY QUESTIONS EITHER ABOUT WHAT THIS CHARGE IS OR
18 WHAT THE SENTENCE ON THIS CHARGE COULD BE. DO YOU HAVE
19 ANY QUESTIONS ABOUT THAT?

20 MR. ELLISOR: NO, SIR.

21 THE COURT: YOU SIGNED YOUR NAME ON THE PAPERWORK
22 INDICATING THAT YOU ~~DON'T~~ WANT TO PLEAD GUILTY WITHOUT ANY
23 NEGOTIATED PLEA, WITHOUT ANY RECOMMENDATIONS FROM THE
24 STATE TO ONE COUNT OF FIRST DEGREE BURGLARY, IS THAT
25 RIGHT?

1 MR. SUMMERS: YES, SIR.

2 THE COURT: IS THAT YOUR DECISION?

3 MR. SUMMERS: YES, SIR.

4 THE COURT: HAVE YOU MADE THE DECISION FREELY AND
5 VOLUNTARY?

6 MR. SUMMERS: YES, SIR.

7 THE COURT: HAVE YOU HAD ENOUGH TIME TO TALK TO MR.
8 ELLISOR ABOUT THIS?

9 MR. SUMMERS: YES, SIR.

10 THE COURT: HAVE YOU TOLD HIM EVERYTHING THAT YOU
11 KNOW ABOUT THIS CASE SO THAT HE COULD FULLY PREPARE AND
12 DEFEND YOU IN THIS CASE?

13 MR. SUMMERS: YES, SIR.

14 THE COURT: IS THERE ANYTHING THAT YOU HAVE ASKED HIM
15 TO DO THAT HE HAS FAILED TO DO?

16 MR. SUMMERS: NO, SIR.

17 THE COURT: ALL RIGHT, YOU ARE SATISFIED WITH THE
18 REPRESENTATION THEN THAT HE HAS PROVIDED FOR YOU?

19 MR. SUMMERS: YES, SIR.

20 THE COURT: ALL RIGHT, SIR. MR. ELLISOR, YOU HEARD
21 THE SOLICITOR DESCRIBE THE EXTENT OF THE NEGOTIATIONS. AS
22 I UNDERSTAND IT IT IS A STRAIGHT UP PLEA ON ONE COUNT OF
23 FIRST DEGREE BURGLARY WITHOUT ANY RECOMMENDATIONS AND ALL
24 OF THESE OTHER CHARGES THAT THE SOLICITOR HAS MENTIONED
25 WOULD BE NOLLE PROSED. IS THAT YOUR UNDERSTANDING OF THE

1 NEGOTIATED PLEA?

2 MR. SUMMERS: IT CERTAINLY IS, YOUR HONOR.

3 THE COURT: AND, MR. SUMMERS, DO YOU HAVE ANY
4 QUESTIONS ABOUT THE NEGOTIATED PLEA?

5 MR. SUMMERS: NO, SIR.

6 THE COURT: IS THE WAY THAT THE LAWYERS HAVE
7 EXPLAINED IT TO ME THE SAME WAY THAT YOU UNDERSTOOD IT?

8 MR. SUMMERS: YES, SIR.

9 THE COURT: AND OTHER THAN THE NEGOTIATED PLEA ANY
10 OTHER PROMISES BEEN MADE TO YOU OR HAS ANYBODY THREATENED
11 YOU IN ANY WAY TO FORCE YOU TO PLEAD GUILTY?

12 MR. SUMMERS: NO, SIR.

13 THE COURT: ALL RIGHT. I AM SURE THAT MR. ELLISOR
14 HAS EXPLAINED TO YOU THE VARIOUS RIGHTS AND IMPORTANT
15 RIGHTS THAT YOU HAVE IN THAT YOU ARE GOING TO GIVE UP WHEN
16 YOU PLEAD GUILTY. I HAVE TO DO IT HERE IN THE COURTROOM
17 ALSO. IF YOU DON'T UNDERSTAND IT AND YOU NEED MORE TIME
18 TO SPEAK WITH YOUR LAWYER JUST STOP ME AND I WILL GIVE YOU
19 WHATEVER TIME YOU NEED. YOU HAVE THE RIGHT TO HAVE A JURY
20 TRIAL, YOU KNOW WHAT A JURY TRIAL IS?

21 MR. SUMMERS: YES, SIR.

22 THE COURT: A JURY WOULD BE SELECTED FROM THE PEOPLE
23 HERE IN SALUDA COUNTY, THE STATE WOULD HAVE TO PROVE THAT
24 YOU ARE GUILTY IN THIS CHARGE BEYOND A REASONABLE DOUBT
25 BEFORE YOU COULD BE CONVICTED. AS A DEFENDANT YOU DO NOT

1 HAVE TO PROVE THAT YOU ARE NOT GUILTY, THE STATE HAS TO
2 PROVE THAT YOU ARE GUILTY. YOU WOULD HAVE THE RIGHT TO
3 SUBPOENA WITNESSES TO COME IN AND TESTIFY ON YOUR BEHALF.
4 YOU HAVE THE RIGHT TO PRESENT ANY DEFENSES THAT YOU MIGHT
5 HAVE FOR THE JURY, THEY CAN CONSIDER THOSE DEFENSES. BUT,
6 AGAIN, THE STATE WOULD HAVE THE BURDEN OF PROVING YOUR
7 GUILT BEYOND A REASONABLE DOUBT BEFORE YOU COULD BE
8 CONVICTED AND THAT WOULD BE THE PURPOSE OF A TRIAL. IF
9 YOU PLEAD GUILTY YOU ARE GIVING UP YOUR RIGHT TO HAVE THAT
10 JURY TRIAL. THERE WILL NOT BE A JURY TRIAL IN THIS CASE,
11 DO YOU UNDERSTAND THAT?

12 MR. SUMMERS: YES, SIR.

13 THE COURT: ANY QUESTIONS ABOUT THAT?

14 MR. SUMMERS: NO, SIR.

15 THE COURT: YOU HAVE THE RIGHT TO CONFRONT THE
16 STATE'S WITNESSES, THAT SIMPLY MEANS TO LOOK AT THEM AND
17 SEE WHO THEY ARE AND HAVE YOUR LAWYER CROSS-EXAMINE THOSE
18 WITNESSES WHILE THEY TESTIFY. IF YOU ARE GOING TO PLEAD
19 GUILTY THE STATE IS NOT GOING TO BE REQUIRED TO BRING ANY
20 OF THEIR WITNESSES TO COURT. YOU ARE GOING TO GIVE UP
21 YOUR RIGHT TO CONFRONT AND TO QUESTION THOSE PEOPLE IF YOU
22 PLEAD GUILTY. DO YOU UNDERSTAND THAT?

23 MR. SUMMERS: YES, SIR.

24 THE COURT: AND, MR. SUMMERS, YOU HAVE THE
25 CONSTITUTIONAL RIGHT TO REMAIN SILENT. NOBODY IN THE

1 COURTROOM OR ANYWHERE ELSE COULD FORCE YOU TO TAKE THE
2 WITNESS STAND AND TO TESTIFY AGAINST YOURSELF. IF YOU
3 CHOSE NOT TO TESTIFY THE JURY COULD NOT HOLD THAT AGAINST
4 YOU, THEY COULD NOT USE THAT AGAINST YOU, THE JURY WOULD
5 BE INSTRUCTED THAT THEY COULD NOT EVEN DISCUSS THAT IN THE
6 JURY ROOM. ANYONE WHO DECIDES THAT THEY ARE GOING TO
7 PLEAD GUILTY HAS TO GIVE UP THAT RIGHT IF THEY WANT TO
8 COME INTO COURT AND ADMIT THEIR GUILT. SO, YOU WILL HAVE
9 TO GIVE UP YOUR RIGHT TO REMAIN SILENT TO ENTER THIS PLEA.
10 DO YOU UNDERSTAND THAT?

11 MR. SUMMERS: YES, SIR.

12 THE COURT: ANY QUESTIONS ABOUT THAT?

13 MR. SUMMERS: NO, SIR.

14 THE COURT: AT THIS TIME, MR. SUMMERS, ANY QUESTIONS
15 ABOUT ANYTHING THAT I HAVE GONE OVER WITH YOU?

16 MR. SUMMERS: NO, SIR.

17 THE COURT: AND YOU UNDERSTAND THAT YOU HAVE GIVEN UP
18 ALL OF THESE RIGHTS IF YOU ENTER THIS PLEA, IS THAT
19 CORRECT?

20 MR. SUMMERS: YES, SIR.

21 THE COURT: IS THAT WHAT YOU WANT TO DO?

22 MR. SUMMERS: YES, SIR.

23 THE COURT: ARE YOU GUILTY OF THIS CHARGE?

24 MR. SUMMERS: YES, SIR.

25 THE COURT: TODAY ARE YOU UNDER THE INFLUENCE OF ANY

1 KIND OF DRUGS OR ALCOHOL?

2 MR. SUMMERS: NO, SIR.

3 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT WHAT IS
4 GOING ON TODAY?

5 MR. SUMMERS: NO, SIR.

6 THE COURT: ARE YOU NOW OR HAVE YOU EVER HAD ANY
7 TREATMENT FOR ANY KIND OF MENTAL HEALTH PROBLEMS?

8 MR. SUMMERS: NO, SIR.

9 THE COURT: SOLICITOR, TELL ME WHAT HAPPENED, PLEASE.

10 MR. MAYE: IF IT PLEASE THE COURT, YOUR HONOR. AS TO
11 THE SPECIFIC FACTS, I AM GOING TO GIVE YOU A FULL
12 RECITATION OF THE FACTS IN THE INDICTMENT IN WHICH HE IS
13 ACTUALLY PLEADING TO. I BASICALLY OFFERED TO MR. SUMMERS
14 IN THIS CASE THAT HE COULD PLEAD A SINGLE COUNT OF
15 BURGLARY FIRST IN HERE WHICH I BASICALLY JUST SELECTED ONE
16 AT RANDOM. HE HAD SIX SUCH CHARGES OF BURGLARY FIRST
17 PENDING AND I SELECTED ONE, BASICALLY BECAUSE ONE OF THE
18 VICTIMS IS ACTUALLY HERE AND PRESENT. MR. BRADLEY, THE
19 ONE THAT HE IS PLEADING TO IS PRESENT. MR. SUMMERS ALONG
20 WITH A NUMBER OF CODEFENDANTS WAS INVOLVED WITH WHAT WE
21 CAN ONLY CHARACTERIZE OF JUST A CRIME SPREE OF BURGLARIES.
22 ALL OF THESE BURGLARIES, MOST OF THEM CENTER AROUND
23 BREAKING INTO, ENTERING DWELLINGS AND THEN STEALING
24 WEAPONS AND BECOMING ARMED WITH THOSE WEAPONS UPON EXITING
25 THE PREMISES. THE BURGLARY FIRST COUNTS ALL INVOLVE

1 STEALING WEAPONS. INVESTIGATOR SHORTER IS GOING TO GIVE
2 YOU THE SPECIFIC FACTS ON THIS CASE. THIS WAS NOT ONLY
3 HERE IN SALUDA COUNTY BUT SOME OF THEM SPILLED INTO
4 OBVIOUSLY INTO GREENWOOD COUNTY AS WELL AND I UNDERSTAND
5 THERE ARE CHARGES PENDING OVER THERE. I DON'T HAVE ANY, I
6 CERTAINLY DON'T HAVE ANY WAY TO FIND THEM IN ANY REGARD TO
7 ANYTHING THAT MIGHT BE PENDING IN ANOTHER COUNTY BUT THIS
8 WOULD CLEAR THE SLATE FOR SALUDA. INVESTIGATOR ROBERT
9 SHORTER WITH THE SALUDA COUNTY SHERIFFS OFFICE, IS THE
10 CHIEF INVESTIGATOR, WILL GIVE YOU THE FACTS.

11 THE COURT: BEFORE I HEAR FROM MR. SHORTER, MR.
12 ELLISOR, YOU HAVE EXPLAINED THAT THOSE OTHER COUNTY
13 CHARGES IN OTHER COUNTIES IS STILL GOING TO BE OUT THERE.
14 YOU HAVE EXPLAINED THAT TO HIM?

15 MR. ELLISOR: I HAVE EXPLAINED THAT TO HIM AND HE
16 UNDERSTANDS THAT.

17 THE COURT: YOU UNDERSTAND THAT, MR. SUMMERS?

18 MR. SUMMERS: YES, SIR.

19 INVESTIGATOR: THANK YOU, YOUR HONOR. YOUR HONOR, IN
20 THE EARLY PART OF MAY OF LAST YEAR THE SALUDA COUNTY
21 SHERIFFS OFFICE ALONG WITH THE SALUDA DEPARTMENT HAD NINE
22 SEPARATE RESIDENTIAL BURGLARIES THAT WE HAD TO INVESTIGATE
23 STARTING FROM MAY THE 7TH TO ABOUT THE 17TH OF MAY. IN
24 SOME OF THOSE BURGLARIES WE IDENTIFIED A SMALL SPORT
25 UTILITY VEHICLE BEING DRIVEN BY A WHITE FEMALE DRESSED IN

1 A NURSES UNIFORM AND SHE WAS ACCOMPANIED BY A BLACK MALE.
2 WE WERE ABLE TO DEVELOP A CODEFENDANT OF A KELLY MCCORMICK
3 AS A SUSPECT IN THIS CASE AND WE ELECTED TO PULL SOME
4 SURVEILLANCE ON HER AND SHE, IN FACT, LED US TO A KENTUCKY
5 FRIED CHICKEN IN BATESBURG WHERE MR. SUMMERS WAS AN
6 EMPLOYEE. SHE MET WITH HIM BRIEFLY, WE MADE A TRAFFIC
7 STOP ON MS. SUMMERS AND ASKED HER IF SHE WAS MS. MCCORMICK
8 AND ASKED HER IF SHE WOULD COME DOWN AND HAVE A CHAT WITH
9 US ABOUT THESE CRIMES. SHE AGREED TO DO SO VOLUNTARILY.
10 WE PICKED UP MR. SUMMERS ALSO AND WE TOOK THEM TO THE
11 BATESBURG POLICE DEPARTMENT. AFTER MIRANDIZING THOSE TWO
12 INDIVIDUALS AND ASKING THEM SOME QUESTIONS THEY ADMITTED
13 THEIR PART IN THESE BURGLARIES. AND MR. SUMMERS GAVE US
14 CONSENT TO SEARCH A HOUSE HE WAS RESIDING IN IN BATESBURG
15 AND WE WERE ABLE TO RECOVER A VAST AMOUNT OF PROPERTY
16 INCLUDING FIREARMS THAT WAS STOLEN IN MULTIPLE RESIDENTIAL
17 BURGLARIES. THE FIREARMS IN QUESTION WERE STOLEN FROM
18 SHERRY BRADLEY ON MAY THE 14TH THIS YEAR HERE ON PENNCREEK
19 ROAD IN SALUDA COUNTY. THERE WAS A .9 MILLIMETER HANDGUN
20 AND MR. SUMMERS ADMITTED TO BREAKING INTO THAT HOUSE ALONG
21 WITH SOME CODEFENDANTS AND STEALING THAT GUN. THAT GUN
22 WAS RECOVERED FROM THAT BURGLARY.

23 MR. MAYE: THAT IS THE BURGLARY WITH WHICH HE IS
24 ACTUALLY PLEADING FROM BASICALLY THAT WE SELECTED AT
25 RANDOM, THAT IS THE FACTUAL BASIS FOR THE ONE IN WHICH HE

1 IS PLEADING FROM.

2 INVESTIGATOR: AS FAR AS RESTITUTION, YOUR HONOR, WE
3 HAVE NINE DIFFERENT VICTIMS, DO YOU WANT ME TO NAME THEM
4 INDIVIDUALLY OR DO YOU JUST WANT A GRAND TOTAL RIGHT NOW?

5 THE COURT: JUST TOTAL AMOUNT.

6 INVESTIGATOR: THE TOTAL RIGHT NOW, THE TOTAL IS
7 \$14,707.00 DOLLARS AND WE ARE ASKING FOR THAT JOINT AND
8 SEVERALLY WITH, I THINK IT IS FIVE CODEFENDANTS THAT WE
9 WILL DISPOSE OF THEIR CASES AT A LATER TIME. I HAVE TWO
10 OF THE VICTIMS PRESENT IN THE COURTROOM. ALL THE VICTIMS
11 ARE AWARE OF THESE PROCEEDINGS AND ARE ALL IN AGREEMENT
12 WITH IT.

13 THE COURT: IS THE AMOUNT OF RESTITUTION THAT YOU
14 HAVE JUST GIVEN TO THE COURT, DOES THAT TAKE INTO
15 CONSIDERATION THE WEAPONS THAT HAVE BEEN RECOVERED.

16 INVESTIGATOR: THAT IS TAKEN INTO CONSIDERATION.

17 THE COURT: ALL RIGHT. PRIOR RECORD, SOLICITOR.

18 MR. MAYE: YOUR HONOR, HE DOESN'T HAVE ANY
19 SUBSTANTIVE PRIOR RECORD.

20 THE COURT: ALL RIGHT, THAT IS A SUFFICIENT FACTUAL
21 BASIS FOR THE CHARGE TO WHICH MR. SUMMERS HAS PLEAD. THIS
22 COURT WILL ACCEPT THAT PLEA, IT HAS BEEN ENTERED FREELY
23 AND VOLUNTARILY WITH THE ADVICE AND THE ASSISTANCE OF
24 COUNSEL WITH WHOM MR. SUMMERS HAS INDICATED THAT HE IS
25 SATISFIED. MR. ELLISOR, I WILL BE GLAD TO HEAR FROM YOU

1 AND MR. SUMMERS AND I WILL ASSUME MR. SUMMERS FAMILY IS
2 STANDING HERE.

3 MR. ELLISOR: THAT IS CORRECT, YOUR HONOR, AND I
4 WOULD LIKE AT SOME APPROPRIATE TIME FOR THEM TO ADDRESS
5 YOU AND STATE THEIR CONCERNS. YOUR HONOR, THIS GENTLEMAN
6 AS STATED EARLIER IS 21 YEARS OLD. HE CAME TO SOUTH
7 CAROLINA TO WORK, HE WAS LIVING AT HIS GRANDPARENTS HOUSE.
8 THIS IS THE FIRST TIME THAT HE HAS EVER BEEN IN PROBLEMS,
9 HE GOT HOOKED UP WITH THIS KELLY MCCORMICK AND LIKE THEY
10 SAID, THERE WERE FIVE CODEFENDANTS IN THIS CASE, YOUR
11 HONOR. AND HE ADMITTED THAT HE DID THESE THINGS, HE
12 RETURNED THE WEAPONS TO THESE VICTIMS, YOUR HONOR. HE HAS
13 ADMITTED HIS GUILT AND YOU KNOW, HE COULD BE SENTENCED
14 FROM 15 YEARS UP TO LIFE BUT YOUR HONOR, WE ASK THE COURT
15 TO BE AS LENIENT AS POSSIBLE. IF HIS MOTHER COULD COME
16 HERE. YOU NEED TO IDENTIFY WHO YOU ARE.

17 MS. SUMMERS: MY NAME IS SHARON SUMMERS. I LIVE IN
18 CHATTANOOGA, TENNESSEE. SENTARI ONLY LIVED HERE LIKE
19 THREE OR FOUR MONTHS BEFORE ALL OF THIS HAPPENED. HE
20 DIDN'T KNOW WHERE THESE PEOPLE STAYED AND EVERYTHING. HE
21 WAS LED ASTRAY BY THIS YOUNG LADY AND TO HER OWN FAMILY
22 HOUSES AND HE WAS JUST FOLLOWING BEHIND HER WHICH HE
23 SHOULD HAVE KNOWN BETTER. BUT HE IS TRYING TO TAKE
24 RESPONSIBILITIES FOR HIS ACTIONS TO TELL THE TRUTH, TO
25 RETURN ALL THE THINGS AND TO DO THE RIGHT THING.

1 THE COURT: THANK YOU.

2 MR. CLARK: YES SIR, YOUR HONOR, MY NAME IS DAVID
3 CLARK AND I AM SENTARI'S FATHER. YOUR HONOR, WHAT SENTARI
4 WAS DOING, HE WAS IN THE DARK, IT FINALLY CAME TO THE
5 LIGHT. I WAS GOING DOWN THE HIGHWAY AND I WAS HEADED TO
6 WORK AND I ACTUALLY HAD TO PULL OVER BECAUSE I REALIZED
7 EVERY TIME YOU BREAK THE LAW IT IS A SERIOUS OFFENSE. BUT
8 THE MAGNITUDE OF WHAT HE WAS DOING, IT DEVASTATED ME. AND
9 WAS I EVER GOING TO BE ABLE TO SIT DOWN AND HAVE DINNER
10 WITH MY SON AGAIN. AND YOU KNOW, YOUR HONOR, I HAVE
11 PRAYED, LIKE HIS MOTHER STATED THAT HE HADN'T BEEN HERE
12 BUT A COUPLE OF MONTHS. AND I PRAYED A LONG TIME BECAUSE
13 I HAVEN'T REALLY BEEN A FATHER FOR HIM BUT I PRAY FOR A
14 LONG TIME THAT I WOULD HAVE AN OPPORTUNITY TO BE A FATHER
15 TO HIM AND IT SEEMED LIKE JUST AS HE WAS BEGINNING TO
16 DEVELOP A RELATIONSHIP BECAUSE I KNOW ANY TIME YOU DEVELOP
17 A RELATIONSHIP IT TAKES A LOT OF WORK. BUT I WAS WILLING
18 TO DO THAT WORK AND DO WHATEVER IT TOOK FOR ME TO BE A
19 FATHER TO HIM. THEN ALL OF A SUDDEN ALL OF THIS COME TO
20 THE LIGHT. BUT, YOUR HONOR, I AM HERE FOR SENTARI AND I
21 REALIZE HE IS A YOUNG MAN AND I REALIZE WHAT HE HAS DONE,
22 IT IS SO SERIOUS. AND I KNOW AFTER SITTING OVER HERE NOW,
23 HE HAS HAD TIME TO REFLECT ON WHAT HE HAS DONE AND I KNOW
24 HE DON'T WANT TO SPEND THE REST OF HIS LIFE NOT BEING PART
25 OF SOCIETY. AND ALL I ASK OF YOU, YOUR HONOR, IS TO SHOW

1 HIM MERCY. AND ONE DAY HE CAN BE PART OF SOCIETY THAT GOD
2 HAS FOR EACH AND EVERY ONE OF US TO BE.

3 THE COURT: THANK YOU, SIR.

4 MR. ELLISOR: THIS IS HIS GRANDFATHER, IF YOU WOULD
5 COME FORWARD.

6 GRANDFATHER: I AM SENTARI'S GRANDFATHER, SENTARI
7 LIVES WITH ME. HE IS NOT BAD, HE GOT WITH THE WRONG CROWD
8 AND MADE MISTAKES, SOMETIMES GO WRONG. WE CARE ABOUT HIM.
9 THANK YOU.

10 THE COURT: HAS HE BEEN IN TENNESSEE WITH HIS MOTHER
11 BEFORE HE CAME HERE, IS THAT RIGHT?

12 MS. SUMMERS: YES, HE WAS. AND HE WAS MAKING
13 ARRANGEMENTS TO ENTER THE NATIONAL GUARD BUT HE WAS
14 WANTING TO DO A DUTY TO HISSELF AND HIS COUNTRY AND THEN
15 HE STARTED TO HAVE SOME BABY MAMA DRAMA SO I THOUGHT HE
16 MAY NEED A BREAK AWAY FROM THEM. AND HE CAME DOWN HERE
17 AND AFTER TWO OR THREE MONTHS ALL OF THIS HAPPENED, I JUST
18 COULD NOT BELIEVE IT. AND IN THE MEANTIME I HAVE HAD TO
19 COME DOWN HERE TO TRY TO SUPPORT HIM, I HAVE HAD TO QUIT
20 MY JOB JUST TO BE A MOTHER AND HELP HIM OUT IN THIS
21 SITUATION WHICH IS, I DON'T KNOW, HOPELESS. SEND HIM TO
22 THE ARMY.

23 MR. ELLISOR: WELL, I AM AFRAID THAT IS NOT AN OPTION
24 NOW. YOUR HONOR, AGAIN THIS MAN IS 21 YEARS OLD. I WOULD
25 ASK THAT YOU CONSIDER A MINIMUM SENTENCE IN THIS THING AND

1 RE-SALVAGE THIS MAN'S LIFE. AGAIN, HE HAD NO RECORD, HE
2 HAS TURNED THE STUFF OVER, MAKE THE VICTIMS AS WHOLE AS HE
3 COULD MAKE THEM AND YOU HAVE FIVE OTHER CODEFENDANTS IN
4 THIS THING, YOUR HONOR, HE IS NOT THE ONLY ONE THAT IS
5 CULPABLE IN THIS MATTER. BUT HE STOOD UP BECAUSE WHEN WE
6 INTERVIEWED HIM AND KELLY MCCORMICK HE ADMITTED OR TOLD
7 THEM WHAT HE HAD DONE, I DON'T KNOW IF IT WAS A WRITTEN
8 CONFESSION BUT HE TALKED WITH THEM. AND HE STANDS BEFORE
9 YOU WILLING TO ACCEPT WHATEVER THE PUNISHMENT OF THIS
10 COURT IS.

11 THE COURT: ALL RIGHT. THANK YOU, MR. ELLISOR. MR.
12 SUMMERS, ANYTHING THAT YOU WOULD LIKE TO ADD.

13 MR. SUMMERS: I WOULD LIKE TO APOLOGIZE TO ALL THE
14 VICTIMS. I MEAN, THERE IS NOTHING THAT I CAN DO, I
15 RETURNED THE THINGS AND I JUST, I WANT TO LET THEM KNOW
16 THAT I AM REMORSEFUL FOR WHAT I DID AND I AM VERY SORRY.

17 THE COURT: THANK YOU. DO ANY OF THE VICTIMS WANT TO
18 ADDRESS THE COURT?

19 INVESTIGATOR: NO, SIR.

20 THE COURT: ALL RIGHT. I HAVE ACCEPTED MR. SUMMERS'
21 PLEA. THIS IS, I THINK, THE THIRD BURGLARY FIRST THAT I
22 HAVE TAKEN IN THE LAST HOUR OR HOUR AND A HALF OF YOUNG
23 MEN. I HAVE HEARD FROM MR. SUMMERS' FAMILY AND HE IS NOT
24 A BAD PERSON, I UNDERSTAND THAT. HE GOT MIXED UP WITH THE
25 WRONG PEOPLE AND AT SOME POINT AND TIME BEING IN THE WRONG

1 PLACE AT THE WRONG TIME WITH THE WRONG PEOPLE RUNS OUT. I
2 THINK EVERYBODY UNDERSTANDS THAT HE HAS GOT TO PAY HIS
3 DEBT TO SOCIETY AND LOTS OF INSTANCES SEEMS TOO HARSH AND
4 I AM SURE FROM THE VICTIMS SIDE SOMETIMES THAT ISN'T HARSH
5 ENOUGH. I HAVE TO FIND WHERE I THINK THE PUNISHMENT OUGHT
6 TO BE. THE HARDEST THING THAT A JUDGE DOES IS HAVE TO
7 SENTENCE INDIVIDUALS. TAKEN ALL THE FACTORS AND THE
8 STATEMENTS FROM THE FAMILY AND FROM THE SOLICITOR AND
9 EVERYONE ELSE THAT HAS BEEN MADE TO AND IN CONSIDERATION,
10 ALSO THE FACT THAT A NUMBER OF OTHER SERIOUS CHARGES ARE
11 BEING DISMISSED AS A RESULT OF THE PLEA, KEEPING IN MIND
12 THAT THERE ARE OTHER DEFENDANTS WHO ARE GOING TO, WHOSE
13 CASES WILL HAVE TO BE DISPOSED OF. THE SENTENCE OF THE
14 COURT FOR MR. SUMMERS, WHEN I TAKE ALL OF THESE FACTORS
15 INTO CONSIDERATION, KEEPING IN MIND HE COULD BE FACING
16 WHAT, SIX LIFE TERMS IF HE WAS MAXED OUT ON ALL OF THEM.
17 THE SENTENCE IS 18 YEARS WITH CREDIT FOR TIME SERVED SINCE
18 MAY THE 17TH OF '07. AND I WISH ALL OF YOU GOOD LUCK,
19 THIS IS A LONG TIME BUT THIS IS NOT NEARLY AS LONG AS WHAT
20 IT COULD OF BEEN. GOOD LUCK TO YOU.

21 MR. ELLISOR: THANK YOU SO MUCH, YOUR HONOR.

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
23
24
25

CERTIFICATE OF REPORTER

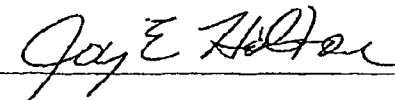
STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

I, JOY E. HOLSTON, OFFICIAL COURT REPORTER FOR THE
EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
SALUDA COUNTY, SOUTH CAROLINA, ON THE 22ND DAY OF JANUARY,
2008.

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

FEBRUARY 26, 2009



JOY E. HOLSTON, COURT REPORTER

MY COMMISSION EXPIRES: MARCH 13, 2016

FORM 5

MAR 19 2009

Referred to

PCR ds

Answered

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

COUNTY OF Saluda)

Sintari A. Summers, #326274
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

2009-CP-41-11

APPLICATION FOR

POST-CONVICTION RELIEF

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 Lee C.I., Darlington S. #2205, 990 Wisacky Hwy., Bishopville, S.C., 29010
2. Name and location of Court which imposed sentence The Court of General Sessions, Saluda S.C.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) J 140707 Burglary 1st
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1/22/08, 18 years imprisonment.
 - (b) _____

Revised 3 2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X _____
- (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 requested an appeal but there was never a Notice of Appeal filed. _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of Counsel.

(b) _____

(c) _____

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

(a) See attachment

(b) See attachment

(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? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

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

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

(a) the specific nature thereof:

i. _____

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. _____

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) This P.C.R. application is the proper way to raise

(b) these grounds for relief.

(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? _____
- (c) your sentencing? Yes.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No.

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. N/A
- ii. Michael Ray Ellisor
- iii. _____

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

- i. 17a
- ii. 17c
- iii. _____

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

For Guilty Plea to be vacated, or a new trial ordered.

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

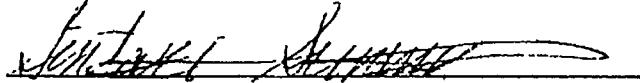
No.

STATE OF SOUTH CAROLINA)

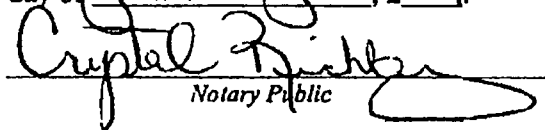
County of Saluda)

VERIFICATION

I, Sintari A. Summers #326274, 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.



SWORN to and subscribed before me this 15
day of January, 2007.

 (L.S.)
Notary Public

My Commission Expires: 10-31-2015

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

I, Sintari A. Summers #326274, 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 thereof.


Applicant

SWORN or affirmed to and subscribed before me this
14 day of January, 2009.


Notary Public

My Commission Expires: 10-31-2015

Attachment- P.C.R.

11.(a) I requested that my attorney file a direct appeal on my behalf, and he said that he would. However, he never filed it.

(b) My attorney failed to provide me with an accurate idea of the State's case against me. Had I been sufficiently informed, I would not have pleaded guilty, and would have insisted on proceeding to trial.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVNETH JUDICIAL CIRCUIT
COUNTY OF SALUDA	)	
	)	
	)	2009-CP-41-11
Sintari A. Summers. #326274.	)	
	)	
Applicant.	)	
	)	
v.	)	RETURN AND REQUEST FOR
	)	APPOINTMENT OF COUNSEL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 22, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Saluda County Clerk of Court. The Applicant was indicted at the July 2007 term of the Saluda County Grand Jury for Burglary—1st Degree (2007-GS-41-376). He was represented by Michael Ray Ellisor, Esquire. On January 22, 2008, the Applicant pled guilty as indicted. He was sentenced by the Honorable James W. Johnson, Jr., to confinement for a period of eighteen (18) years. The Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Saluda County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

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

- I Ineffective assistance of counsel;
 - a. "I requested that my attorney file a direct appeal on my behalf, and he said that he would. However, he never filed it."
2. Involuntary guilty plea.
 - a. "My attorney failed to provide me with an accurate idea of the State's case against me. Had I been sufficiently informed, I would not have pleaded guilty, and would have insisted on proceeding to trial."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient.

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

Here, the Applicant specifically claims that he was denied effective assistance of counsel because his trial attorney did not appeal his conviction. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Jones v. State, 677 S.E.2d 20 (2009). The decision of the South Carolina Supreme Court, in White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), holds that even though the post-conviction relief court finds that the Applicant had never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. However, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Respondent submits that this allegation is totally frivolous and demands strict proof thereof. The Respondent further submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably

raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E. 2d 679 (1977).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305

S.E.2d 247.

V

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

VI

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

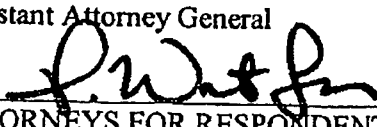
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 29, 2009.

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF SALUDA)

Sintari Summers,)
)
)
 PLAINTIFF,) PCR HEARING
) 2009-CP-41-00011
)
 -VS-)
)
 State of South Carolina,)
)
 DEFENDANT.)
 _____)

BEFORE THE HONORABLE WILLIAM P. KEESLEY, JUDGE

MAY 19, 2011

LEXINGTON, SOUTH CAROLINA

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

John E. Duncan, Esq.
 For the Plaintiff

Kaelon E. May, Esq.
 For the State

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

I N D E X

PAGE NO.

Exhibit List.	3
Testimony of Witnesses	
Sintari Summers	
Direct.	6
Cross	16
Redirect.	22
Recross	24
By the Court.	24
Closing Remarks	32
Court Reporter's Certification.	34

E X H I B I T S

THERE WERE NO EXHIBITS MARKED TO THIS PROCEEDING.

1 (The defendant, together with counsel, was
2 personally present in the courtroom.)

3 THE COURT: Do you all need some time to
4 talk?

5 MR. DUNCAN: No, sir, we're ready. We're
6 prepared. We're ready to go.

7 THE COURT: Okay, go ahead.

8 MS. MAY: May it please the Court, Your
9 Honor, this is Sintari Summers v. State, Case Number
10 2009-CP-41-11. This case comes from a PCR
11 application filed January 22, 2009, by Sintari
12 Summers. He came before the Honorable Judge Johnson
13 on January 22, 2008.

14 Mr. Summers was charged with burglary in
15 the first degree. He pled guilty and was sentenced
16 to 18 years' confinement. There was no appeal. But
17 before I turn it over to Mr. Duncan, I would like -
18 the State would like to make a motion.

19 Our witness, Mr. Ellisor, is not here, and
20 we would like to make a motion to keep the record
21 open so that we may obtain by deposition information
22 regarding this issue with Mr. Ellisor based mainly
23 on the fact of his recent health issues. I know
24 he's had a stroke, and his speech is somewhat
25 inhibited.

1 MR. DUNCAN: Your Honor, for the record on
2 that matter, I did speak with Mr. Ellisor about a
3 month or so ago. And he had some severe problems in
4 communicating with his speech. And I asked him
5 about this file, and the gist of the conversation
6 was, "I don't think I'm going to be able to get it."
7 And that's the only contact I've had with him.

8 THE COURT: Well, we'll do what we can
9 today, and then you all can report to me as to the
10 availability of Mr. Ellisor, whether he will be able
11 to testify or not.

12 MS. MAY: Thank you, Your Honor.

13 THE COURT: All right, are you all ready
14 to proceed?

15 MR. DUNCAN: Yes, Your Honor.

16 THE COURT: Do you want to start, Ms. May,
17 or have you finished what you need to say?

18 MS. MAY: Yes, Your Honor.

19 THE COURT: You've finished, okay.

20 MR. DUNCAN: I'd call Mr. Summers.

21 THE COURT: Come around, please.

22 MR. DUNCAN: Your Honor, he's got some
23 paperwork that he needs to manipulate. Can he have
24 one hand free?

25 THE COURT: Why is he in a yellow suit?

1 BAILIFF: From our lockup unit, sir.

2 THE COURT: Are you right-handed or
3 left-handed?

4 MR. SUMMERS: Right-handed.

5 THE COURT: Can you all release his right
6 hand?

7 BAILIFF: Yes, sir.

8 (The witness was sworn.)

9 CLERK OF COURT: Please be seated and
10 state your name for the record.

11 MR. SUMMERS: Sintari Summers.

12 SINTARI SUMMERS, having first been duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DUNCAN:

16 Q Mr. Summers, how old are you?

17 A I'm 24.

18 Q And what's your highest educational level
19 completed?

20 A I have my GED. I completed the 11th
21 grade.

22 Q All right. And you are from Saluda, South
23 Carolina?

24 A Yes, sir.

25 Q All right. Mr. Summers, you were arrested

1 back in 2007, is that correct?

2 A Yes.

3 Q And these were several burglary, first
4 degrees, correct?

5 A Yes, sir.

6 Q And, Mr. Summers, you were assigned Mr.
7 Michael Ellisor as your attorney?

8 A Yes, sir.

9 Q And he represented you through your guilty
10 plea?

11 A Yes, sir.

12 Q All right. And you pled guilty before
13 Judge Johnson, correct?

14 A Correct.

15 Q All right. And, now, you were charged
16 with four other individuals?

17 A Yes, sir.

18 Q Okay. And just for the record, what
19 sentences -- they were charged with the same crimes?

20 A Yes, sir.

21 Q And what sentences did the four of them
22 receive?

23 A All four of them received YOA sentences.
24 They're on the streets now.

25 Q All right. And you've been locked up

1 continuously since essentially May of 2007?

2 A Yes, sir.

3 Q And you have filed this PCR. Now, you
4 presented me with a motion to dismiss that --

5 I'm sorry, Your Honor, it was filed with
6 the Clerk in Saluda last week, and I don't see the
7 clocked-in copy. We had presented a copy to the
8 Attorney General, and I don't think they have any
9 objections to his amendment.

10 MS. MAY: No objection.

11 MR. DUNCAN: All right.

12 Q And, Mr. Summers, your motion to dismiss
13 is based upon Article 5, Section 4 of the South
14 Carolina Constitution?

15 A Yes, sir.

16 Q All right. And tell me about that
17 provision that you believe applies in this case.

18 A All General Sessions common plea cases
19 should be disposed of within 365 days.

20 Q All right, now when you say General
21 Sessions, you meant Common Pleas?

22 A Common Pleas, ye, sir.

23 Q Okay. And, I'm sorry, go ahead.

24 A They shall be disposed of within 365 days
25 unless motions were provided that gave a reason for

1 them not to have been disposed of.

2 Q Motions for continuance?

3 A Yes, sir -- or any motion saying why a
4 case should exceed 365 days' timing.

5 Q All right. And your case was filed --
6 this case was filed January 22, 2009?

7 A Yes, sir.

8 Q And your position is that that deprives
9 this Court of jurisdiction to --

10 A Yes, sir.

11 Q -- hear your case and that your conviction
12 should be reversed because of that?

13 A Yes, sir.

14 Q All right. Now, Mr. Summers, in addition,
15 you had indicated that you felt the Grand Jury did
16 not indict you?

17 A I got the research on that. It was -- I
18 didn't think that they convened when my indictments
19 were true billed, but I found that they did convene.

20 Q Okay. So your original ground was that
21 the Court of General Sessions did not have
22 jurisdiction over your case because either the Grand
23 Jury had not been convened or that you had not been
24 indicted and there was no filing a waiver of your
25 right to the Grand Jury presentment?

1 A Yes, sir, that was one of them.

2 Q And you don't -- you're withdrawing that
3 at this time, is that correct?

4 A Yes, sir.

5 Q All right. Now, Mr. Summers, I had
6 presented you with a packet of discovery that was
7 provided to me by the Solicitor's Office, correct?

8 A Yes, sir.

9 Q All right. And you have gone through that
10 packet of discovery?

11 A Yes, sir.

12 Q To your knowledge, was this provided to
13 Mr. Ellisor?

14 A I'm certain it should have been, yes, sir,
15 but not to my knowledge, because he never showed it
16 to me if it was provided to him.

17 Q Okay. And you've been through that
18 discovery?

19 A Yes, sir.

20 Q Okay. And that discovery contains written
21 statements by your co-defendants?

22 A Yes, sir.

23 Q And it contains statements by the police
24 officers in dealing with you?

25 A Yes, sir.

1 Q And it contains search warrants and
2 evidence that was found at your residence, is that
3 correct?

4 A Yes, sir.

5 Q All right. And so you were aware of those
6 facts?

7 A Yes, sir.

8 Q Okay. You have alleged that Mr. Ellisor
9 failed to properly investigate this case. Can you
10 tell me your basis for that?

11 A I feel like that was not effective
12 assistance of counsel during my case due to the fact
13 that my court-appointed attorney, his representation
14 fell below the objective standard of reasonableness
15 when he failed to do basic legal research and to
16 review the testimony of key witnesses, including
17 mine, and being familiar with readily available
18 documents necessary to the understanding of my case.
19 Mr. Ellisor's lack of preparation and research could
20 not be considered a result of deliberate, informed
21 trial strategy. His performance instead was based
22 on ignorance instead of facts of the law.

23 Q Okay. Did you have any discussions with
24 him prior to your guilty plea?

25 A No -- no, sir.

12

1 Q Okay. So you're saying that he did not
2 talk to you at all?

3 A The one time he came, he told me that the
4 State was going to give me a YOA sentence. Other
5 than that, no, sir.

6 Q Okay. You have alleged that Mr. Ellisor
7 did not review and you did not review the interviews
8 with the defendant, co-defendants, witnesses, or the
9 items that were seized from your residence?

10 A Yes, sir.

11 Q And your basis for that is?

12 A I never saw them.

13 Q Okay. But you've seen them now?

14 A Yes, sir.

15 Q Okay. Do you have any other complaints
16 about Mr. Ellisor's actions or lack of actions?

17 A I mean, other than him telling me with the
18 State's case, the adversarial testing -- after my
19 plea, during, he told me that he would be able to
20 get the Greenwood charges ran concurrent.

21 I was aware of the two-strike law -- but,
22 I mean, I was aware of the three-strike -- I thought
23 it was three strikes. I wasn't aware that it was
24 two strikes. So I pled to first-degree burglary,
25 and I still had three first-degree burglaries that

1 carried life.

2 And if I'm convicted of those in
3 Greenwood, I would get a life sentence regardless.
4 But I was under the impression if it's 18 years when
5 they were ran concurrent, it would be all the time I
6 had. But based upon his advice, I pled when still I
7 would still be facing a life sentence.

8 Q Okay, Mr. Summers, did Mr. Ellisor
9 represent you on the Greenwood charges?

10 A No, sir, they're still pending.

11 Q Okay. Do you have counsel on those cases?

12 A No, sir.

13 Q Okay. You never requested counsel?

14 A No, sir.

15 Q Okay. And were you aware that Mr. Ellisor
16 was a -- at the time was a Public Defender for the
17 Eleventh Judicial Circuit, which did not include
18 Greenwood County?

19 A No, sir.

20 Q Okay.

21 Excuse me just one second, Your Honor.

22 Okay. Do you have any other complaints
23 about Mr. Ellisor's actions or inaction?

24 A Other than him reviewing the motion for
25 discovery with me, I feel like he could have -- the

14

1 evidence that was presented in the motion could have
2 been suppressed. A lot of it proved my innocence.

3 Q Let's take that one by one, if you could.

4 A All right.

5 Q You're saying that you had a -- that the
6 search warrants should have been suppressed?

7 A Yes, sir.

8 Q Okay. Now, were those search warrants
9 executed at your residence or the residences of
10 other people?

11 A It was my residence. I stayed there, but
12 it wasn't technically my residence.

13 Q Okay. So you were not a resident of that
14 house?

15 A Yes, sir.

16 Q Okay. And you're saying Mr. Ellisor
17 should have moved to suppress that search?

18 A Yes, sir.

19 Q Okay. And that was at what location, what
20 physical location?

21 A I don't know the address. It was on
22 Howard Street in Batesburg.

23 Q And who lived there? Who was the
24 resident?

25 A That was my father's house.

1 Q It was your father's house. And your
2 father's name is?

3 A David Clark.

4 Q David Clark. And you're saying that you
5 were not a resident of that?

6 A No, that's not what I'm saying. I'm
7 saying that it should have been suppressed. It was
8 searched illegally due to -- basically the evidence
9 obtained from my home was illegally and unlawfully
10 gathered.

11 I was never Mirandized or aware of my
12 rights. And due to the course and nature of my
13 confinement, the police extracted unlawful consent
14 that would have not been given in an unrestrained
15 environment.

16 Q Okay. So you're saying that you gave
17 consent but that it wasn't a knowing and intelligent
18 consent?

19 A Yes, sir.

20 Q All right. Anything else you want to
21 bring to the attention of this Court?

22 A No, sir.

23 Q All right. Answer any questions that the
24 Attorney General's Office may have, please.

25 A All right.

1 CROSS-EXAMINATION

2 BY MS. MAY:

3 Q Hi, Mr. Summers.

4 A Hello.

5 Q First, let me ask you about the witnesses
6 that you asked Mr. Ellisor to interview.

7 A Uh-huh.

8 MS. MAY: Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 Q Your co-defendants, did you ask Mr.
11 Ellisor to interview them?

12 A I'm saying no, ma'am, not in particular.
13 I figured that's part of the thing that he should
14 have interviewed the key witnesses' testimony
15 against me to prove my innocence.

16 Q Did you ask him -- did you want him to
17 interview any of your co-defendants?

18 A Yes.

19 Q Okay. Are you aware that in the event
20 that those could have been -- he would not be able
21 to interview them?

22 A No. But he could have reviewed their
23 testimony, their statements.

24 Q With respect to the Greenwood charges that
25 you have pending, at your guilty plea Judge Johnson,

1 he addressed those charges with you?

2 A Yes, ma'am.

3 Q He did, okay.

4 A But Mr. Ellisor told me it was likely that
5 they would be ran concurrent.

6 Q Okay. When Judge Johnson asked you -- he
7 asked Mr. Ellisor if he had explained that those
8 other county charges would still be out there, and
9 he asked Mr. Ellisor, "Did you explain that to him?"
10 Mr. Ellisor, "I have explained that to him." And
11 the Court asked you, "Do you understand?" And did
12 you answer, "Yes, sir"?

13 A Uh-huh.

14 Q Is that correct?

15 A Yes.

16 Q And that was the truth?

17 A Yes. But he told me that he would be able
18 to get them ran concurrent. Though the Court didn't
19 have any jurisdiction over those pleas, he told me
20 that more likely they would be ran concurrent. If I
21 took the 18 years, then they would be ran
22 concurrent.

23 Q And at the guilty plea, just like you were
24 sworn here to tell the truth today, you were sworn
25 to tell the truth that day. And you did tell the

1 truth that day?

2 A Yes.

3 Q Okay. And when the Judge, Judge Johnson,
4 at your guilty, when he went through a few
5 questions, he asked you if you had enough time to
6 speak with Mr. Ellisor. And you answered, "Yes,
7 sir"?

8 A Yes.

9 Q Were you truthful?

10 A I had enough time to speak with him
11 pertaining to that plea. At the time, I didn't know
12 of the full motion, the Rule 5 motion of discovery
13 and that I could review the evidence that was
14 supposedly against me. I didn't know of that.

15 So at the time, I was under the impression
16 that he represented me to the best of his ability.
17 But I didn't know of being able to suppress
18 evidence. I didn't know that we could review the
19 testimony or these statements or witnesses'
20 information or the police reports.

21 I had seen none of these. These police
22 reports have fingerprints, and none of those are
23 mine. These police reports have witnesses and do
24 not convict me in any way. And the testimonies
25 conflict themselves.

1 Q Okay. And then the Court, Judge Johnson,
2 asked you, "Is there anything that you have asked
3 him to do that he has failed to do"? And you
4 answered, "No, sir." Was that truthful, your
5 answer?

6 A Yes.

7 Q Yes?

8 A But like I say, I was unaware that he
9 could do those things. I was unaware of a motion of
10 discovery. I was unaware of him being to review the
11 statements against me.

12 Q Had you been convicted before this
13 conviction arose?

14 A No.

15 Q No? So you did not have a prior record?

16 A No, not a felony record.

17 Q And I believe the Judge asked you if you
18 provided Mr. Ellisor with any -- with all the
19 information that you had, and you answered, "Yes,
20 sir"?

21 A All the information that I had. I didn't
22 have my motion for discovery.

23 Q Okay. And Judge Johnson asked you if
24 there was anything else, any questions that you had
25 for him, and you answered, "No, sir"?

1 A Yes, ma'am.

2 Q Did you have questions that day that were
3 still on your mind?

4 A No, ma'am. I've learned all these things
5 since my incarceration.

6 MS. MAY: Beg the Court's indulgence for a
7 moment, Your Honor.

8 THE COURT: Yes, ma'am.

9 Q Mr. Summers, at the very end of your
10 guilty plea you apologized to all the victims for
11 what you had done. Was that truthful and honest?

12 A An apology does not imply that I was
13 guilty of the charges. If your mother was shot
14 right now, and I said, "I'm sorry," that doesn't
15 mean I shot your mother.

16 It just means I'm sorry for what happened.
17 I was sorry that I accepted the stolen goods, but
18 that doesn't mean I stole them.

19 Q You said, "I want to let you know that I
20 am remorseful for what I did, and I'm very sorry."

21 A I accepted stolen goods.

22 Q I'm sorry.

23 A I accepted stolen goods. I'm sorry. I'm
24 very sorry.

25 Q Okay. But at this plea, you were pleading

1 guilty to first-degree burglary. So you were
2 apologizing for something different?

3 A Yes, ma'am.

4 MS. MAY: One moment, Your Honor.

5 THE COURT: Yes, ma'am.

6 Q Mr. Summers, just one more question. I
7 just want to be sure that you're aware in addition,
8 while you're allowed to plead guilty to the
9 first-degree burglary, there were five counts --
10 five additional counts -- of first-degree burglary,
11 three counts of burglary in the second degree, six
12 counts of grand larceny, four counts of petit
13 larceny, and another count of contraband in the
14 jail, and all of those were not proessed by the State
15 in allowing you to plead guilty. Are you aware that
16 all of those can come back if you're successful in
17 this PCR?

18 A Yes, ma'am. I plan on going to trial.

19 Q Do you understand that you're looking at a
20 number of life sentences with all of those charges?

21 A Yes, ma'am.

22 Q Okay.

23 MS. MAY: I have no other questions at
24 this time.

25 THE COURT: Redirect?

1 REDIRECT EXAMINATION

2 BY MR. DUNCAN:

3 Q One last point, Mr. Summers. I was
4 looking through my notes, and you had raised the
5 question of restitution. And you understand that
6 that's not something that this Court can address?

7 A Yes, sir.

8 Q Okay, I just wanted to -- you had asked me
9 to bring it up.

10 A But I was under the impression -- the
11 restitution imposed is completely wrong during my
12 sentence.

13 Q Okay.

14 That's all we have, Your Honor.

15 THE COURT: Do you want to say anything
16 else, sir?

17 MR. SUMMERS: Pertaining to Mr. Ellisor
18 and reviewing my motion for discovery, if he had --
19 all the evidence points toward my innocence. And he
20 -- at my plea hearing, he says I admitted -- what is
21 that, page 15? -- line 11 through 15.

22 He says, "He admitted that he did these
23 things. He returned the weapons to this victims.
24 He admitted his guilt." And he says that he
25 reviewed my statements. But there are no statements

1 from me whatsoever.

2 If he'd have reviewed the motion for
3 discovery, he'd have known that, because I never
4 signed any statements. And if you review the
5 statement from the police officer, he states that I
6 never said I had anything to do with those
7 burglaries. I just turned the stolen goods over.

8 That's on page 18, 5 through 10 -- line 5
9 through 10. But he stood up -- "because when we
10 interviewed him and Kelly McCormick, he admitted or
11 told them what he had done. I don't know if it was
12 a written confession, but he talked with them." I
13 never did that. I never told them anything.

14 And as far as that consent to search, the
15 officers obtained the search warrant on the 18th.
16 But they gathered this evidence on the 17th.
17 Furthermore, they say I gave consent, but I have all
18 the consent forms from my co-defendants where they
19 consented to talk and where they consented to
20 interview.

21 But there are none from me, because I
22 never signed any consent or Miranda forms. I was
23 never Mirandized during the time when they gathered
24 that evidence.

25 THE COURT: Why do you think you have to

1 be Mirandized to get consent to search?

2 MR. SUMMERS: Because that's my right,
3 because with --

4 THE COURT: Where do you get that?

5 MR. SUMMERS: Because it's my right
6 against self-incrimination. Had I known I could
7 have refused the search, they would have never
8 obtained any evidence against me.

9 THE COURT: Was Mr. Ellisor representing
10 you then?

11 MR. SUMMERS: I requested a lawyer. I
12 never received one.

13 THE COURT: Is that a "yes" or a "no"?

14 MR. SUMMERS: No, sir.

15 THE COURT: So what is it in this
16 discovery that would have exonerated you?

17 MR. SUMMERS: There was witness testimony,
18 and none of it pertains to me. Like some of the
19 burglaries were committed while I was incarcerated.
20 Some of them were committed while I was at work.
21 And the police reports --

22 THE COURT: What about the ones that
23 you're convicted of?

24 MR. SUMMERS: The ones I'm convicted of --
25 I don't know particularly that one. All of them

1 were dropped to the one burglary that I got
2 convicted of.

3 THE COURT: You understand, Mr. Summers,
4 you've got the burden of proof here?

5 MR. SUMMERS: Yes, sir.

6 THE COURT: You understand if you just
7 come in here and start making general allegations
8 that "If I'd have had my discovery, I would have
9 been found not guilty, or I would have gone to
10 trial," that's meaningless to me. I have no
11 specific information upon which to evaluate whether
12 it's true or untrue, whether it's meritorious or
13 unmeritorious.

14 MR. SUMMERS: I understand that, sir. And
15 if I had received my trial, I would have received
16 the trial. But there's --

17 THE COURT: Well, that's fine. You can
18 tell me that, but you've got the burden of proof.
19 You've got to show me that there was discovery there
20 that likely could have changed the outcome.

21 And just coming in and saying that there
22 was discovery and "I didn't see it," and "I would
23 have gone to trial" is not going to be enough to
24 meet your burden of proof.

25 MR. SUMMERS: I mean, I could show you in

1 the police reports where they said they got
2 fingerprints. The only prints of mine, there's
3 nothing to convict me -- to connect me to the crime.
4 I only pled due to Mr. Ellisor's advice that those
5 statements and the evidence obtained would have
6 convicted me and guaranteed me a life sentence.

7 If I had seen those, I wouldn't. I'm
8 thinking based upon him telling me that these would
9 have got me convicted that I would have been
10 convicted. Even though I was innocent of the crime,
11 the way he tells me, that that was enough evidence
12 to convict me alone when really that evidence would
13 have been inadmissible. So they wouldn't have had
14 any evidence. I would have received a trial.

15 THE COURT: What would have been
16 inadmissible?

17 MR. SUMMERS: The evidence that they got
18 from my house.

19 THE COURT: Do you understand what I mean
20 by "specific"?

21 MR. SUMMERS: Oh, oh, the weapons that
22 were seized from my home that made it first-degree
23 burglary. Well, as I say, there's -- there were
24 prints gathered from the scenes of the burglary.
25 None of those prints were mine.

1 THE COURT: All right, none of the other
2 prints were yours. That part I got. What about the
3 weapons?

4 MR. SUMMERS: None of -- I mean, they were
5 seized from my home, but they were seized -- they
6 were from those burglaries, but I took no part in
7 the burglary.

8 THE COURT: Anything else? I've told you
9 what I need to be able to try to help you and that I
10 can't do it on general assertions and general
11 allegations. If you think you have to be Mirandized
12 before you give consent to search, I think you've
13 got an issue that maybe you don't quite understand
14 what the law is.

15 So what I'm asking you is, do you have
16 anything specific about particular pieces of
17 evidence like you just told me about weapons? You
18 said they were seized in your home.

19 MR. SUMMERS: Yes, sir.

20 THE COURT: And you're saying you did not
21 commit the burglary. Presumably, you would have
22 known at the time that you did not commit the
23 burglaries.

24 MR. SUMMERS: But I didn't know that there
25 was any evidence that -- exculpatory evidence.

1 THE COURT: What is the exculpatory
2 evidence, aside from the fact that there are no
3 fingerprints that match yours?

4 MR. SUMMERS: I was in jail when one of
5 these burglaries was committed. And I was at work,
6 and I have my clock-in sheet to prove that I was at
7 work when they was committed.

8 THE COURT: That's why I asked you which
9 one.

10 MR. SUMMERS: Oh, all right.

11 THE COURT: If it's not one you're
12 convicted of, how is that helping you on this case,
13 unless the statements say you were involved in all
14 of them?

15 MR. SUMMERS: That's what the statements
16 say.

17 THE COURT: I don't know what the
18 statements say.

19 MR. SUMMERS: Okay.

20 THE COURT: You haven't put them in front
21 of me.

22 MR. SUMMERS: All right, I see what you're
23 saying. But all of my co-defendants' statements are
24 saying that I was there at these times when I
25 wasn't. And there's a statement of a burglary that

1 happened on the 19th. I was in jail since the
2 sentencing. Let's see here.

3 And then -- how do I say it? The
4 statements are implicating me in all of these
5 burglaries, but they're conflicting with each other.
6 Like my co-defendant Daniel Wright says, "Sintari
7 kicked in the door, and then he went in the house
8 past the high school.

9 "Sintari kicked in the door. He came out
10 with some shotguns and a TV," while my other co-
11 defendant says, "Daniel kicked the door in," and
12 they went in the house while she sat in the truck.
13 And Daniel's saying I did it, I went in the house
14 while he sat in the truck. He said, "After that, I
15 went home. I did not go in none of these houses at
16 all."

17 I mean, if Mr. Ellisor had of reviewed
18 these statements at all, he'd have known this. I
19 told him of my innocence. But originally I was
20 under the impression I was going to get a YOA, and I
21 was scared to go to trial, because he told me of all
22 the evidence against me, saying that the statements
23 alone were enough to convict me and get me a life
24 sentence.

25 So just upon fearing getting a life

1 sentence, he basically was guaranteeing me that I
2 would get life if I went to trial. We had never
3 talked with any adversarial -- put it to adversarial
4 testing or anything, discussed anything prior to
5 trial.

6 The day that I pled, I originally didn't
7 want to plead because my original plea he told me it
8 would have been 15 years. And when he changed it
9 from the YOA and we got over there, we were sitting
10 in the back and he told me that it was now 15 years.

11 And I told him I didn't want to go out
12 there and take the plea. And the Solicitor came
13 back there and basically said if I didn't take the
14 15, I would get life. He was telling me six first-
15 degree burglaries, if I went to trial, all he would
16 do was convict me of one and stop the trial.

17 And I asked Mr. Ellisor, and he was saying
18 we'd go to trial that day. And I didn't know about
19 voir dire or picking a jury selection. He had never
20 -- you know what I'm saying -- tried to put the
21 State's against me.

22 He assumed I was guilty, basically is what
23 I'm saying. I told him, but he said -- when he told
24 me about the YOA, I assumed 14 months was better
25 than a life sentence and it's better than taking a

1 gamble.

2 THE COURT: Anything else you want to tell
3 me?

4 MR. SUMMERS: I mentioned the two strikes,
5 that I didn't know about that. That means if I go
6 to Greenwood, I'm still facing a life sentence now.
7 No, sir, other than the fact -- I mean, it was five
8 or us all together, and my four co-defendants are on
9 the streets right now, and --

10 THE COURT: That's not going to help you.
11 It may not be right or fair, I don't know. But
12 that's not going to help you.

13 MR. SUMMERS: All right.

14 THE COURT: That's not going to be a
15 ground upon which I can change your condition.

16 MR. SUMMERS: No, sir.

17 THE COURT: Okay.

18 Do any of you have questions in light of
19 the Court's questions -- Mr. Duncan?

20 MR. DUNCAN: No questions, Your Honor.

21 THE COURT: Ms. May?

22 MS. MAY: No, Your Honor.

23 THE COURT: Okay, thank you, Mr. Summers.
24 You can step down.

25 Do you have any other evidence, Mr.

1 Duncan?

2 MR. DUNCAN: No, sir, Your Honor.

3 THE COURT: All right. So we'll just
4 declare the hearing in recess until you all can get
5 information back from Mr. Ellisor.

6 MS. MAY: Thank you, Your Honor.

7 THE COURT: All right. Mr. Summers, do
8 you understand what they're doing? Mr. Ellisor
9 apparently had a stroke.

10 MR. SUMMERS: Uh-huh.

11 THE COURT: And we're just going to
12 adjourn the hearing right here.

13 MR. SUMMERS: Uh-huh.

14 THE COURT: So if you think of anything
15 else, you make sure you let your lawyer know about
16 it, all right?

17 MR. SUMMERS: Yes, sir.

18 THE COURT: Thank you.

19 MR. DUNCAN: And, Your Honor, just for Mr.
20 Summers' edification, any communication with Mr.
21 Ellisor will be communicated to me also. So it's
22 not going to be anything that you're not aware of.

23 MR. SUMMERS: All right.

24 THE COURT: All right, thank you very
25 much. Where are you housed, Mr. Summers?

1 MR. DUNCAN: He's at Cary.

2 THE COURT: Cary. Anybody else here from
3 Cary?

4 BAILIFF: Just us.

5 THE COURT: Okay, you all can take him
6 back. Thank you.

7 Have you had enough time to talk to him?

8 MR. DUNCAN: Yes, sir.

9 THE COURT: All right.

10 MR. DUNCAN: Thank you, Your Honor.

11 THE COURT: Thank you.

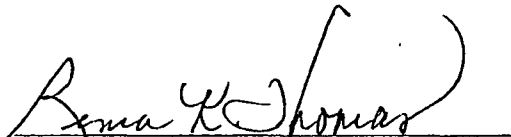
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF
THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
ABOVE-CAPTIONED CASE ON MAY 19, 2011, IN LEXINGTON,
SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
FIFTH DAY OF MAY, 2012.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

The State of South Carolina >
 County of Saluda >
 Vs. >
 Sintari Summers # 326274 >
 Applicant >

In the court of Common Pleas
 Case : 2009-CP 41-00011

Motion to Dismiss
 Rule (b) (1)

This applicant now comes before the court, respectfully requesting an immediate reversal of conviction, due to lack of subject matter jurisdiction. The applicant submits that this court lacks subject matter jurisdiction to conduct a hearing because statutory time frames as set forth in Article V, section 4 of the South Carolina Constitution states..

"It is ORDERED that all common pleas cases in the state of S.C. shall be disposed within 365 days from the date of the filing of the initial complaint in each case. Provided, however, that the Circuit Court may continue a common pleas case beyond 365 days by written order stating the reasons therefor if the court determines that exceptional circumstances exist in the case." This court has not provided the applicant with any type of justification as to why applicants case has went past the 365 day mandated time frame.

It is contestable that this complaint was filed January 22, 2009. Therefore this court has had ample time and jurisdiction to move on the case ~~reopen~~ by a hearing, or by providing applicant with a written notice exceptional circumstances causing state to exceed required time.

Being that this was not done, this court has no other recourse but to grant applicants requested relief due to court statutorily forfeiting its jurisdiction to convene on this case.

Moreover, the court of Appeals appropriately noted subject matter jurisdiction, the trial court should treat this motion as a Rule 12.(b)(1) motion to dismiss.. Woodard V. Westvaco Corp 460 S.C 2d 392. Therefore, if this court finds that applicant has raised wrong motion, it should be treated as (Directed Verdict 1118.1 or Default Judgement) or motion to dismiss the respondents right to contest applicants claim due to lack of subject matter jurisdiction stemming from the statue of limitations violation.

8039512389

Duncan Law Firm

33 p.m. 05-10-2011

3/5

State of South Carolina
County of Saluda

Vs

Sintavi Summers #326174

Applicant

In the court of Common Pleas,

Case 2009-C.P. 41-00011

Motion to amend P.C.R.

Under Rule 15(b)

Now comes the Applicant's motion to amend this application for P.C.R. that was filed January 22, 2009 for additional relief are set forth as follows. Applicant concedes that the solicitor's failure to effect a valid waiver of presentment to indictment 2007-G.S. 41-376, deprived the court of subject matter jurisdiction.

In this case at bar, Applicant's indictments were never before the Grand Jury nor effectively waived for presentment as required by 17-25-130 and 140. These statutes mandates that solicitors... "shall prepare an indictment and consent to a guilty plea, on a criminal charge that has not been presented by the Grand Jury... provided the defendant signs the written waiver of presentment."

In this case, the solicitor illegally manufactured a waiver of presentment and used fraudulent tactics to have applicant convicted.

South Carolina Code Ann § 17-25-130 (1985) provides that "the clerk shall have the defendant sign a waiver of presentment by the Grand Jury and his plea of guilty." Similar SC Code Ann. § 17-25-140 provides that upon signing the waiver of presentment "the defendant may plead guilty." We have held compliance with these sections is mandatory and further, that they require a written waiver.

Phillips v. State 281 SC 41, 314 S.E. 2d 313 (1984); State v. Martin 278 SC 256, 294 S.E. 2d 345 (1982); Summerall v. State 278 SC 255, 294 S.E. 2d 344 (1982); see also State v. Clarkson, 357 S.C. 518, 523 S.E. 2d 817 (Ct App 1999) reversed on other grounds, 317 S.C. 115, 553 S.E. 2d 450 (2001).

Generally, the circuit court does not have subject matter jurisdiction to hear a guilty plea unless (1) there has been an indictment that sufficiently states the offense; (2) there has been a waiver of presentment or (3) the charge is a lesser included charge of crime charged. *Adams v. State*, 350 S.C. 300, 302, 566 S.E. 2d 529, 529 (2000) holding

that in the absence of a valid waiver of presentment, the trial court is without jurisdiction of the offense. Not only does this statute require a valid waiver of presentment, but the law requires that such waiver must be endorsed on the back of indictment as a conditional precedent to a valid waiver of presentment. *Smalls v. Supra*, 354 S.C. at 503 581 S.E. 2d at 555.

In the absence of a valid waiver, the court is without subject matter jurisdiction. South Carolina case law describes the existence of a sufficient *coram* Bill indictment or a valid waiver of presentment as a prerequisite to a valid guilty plea. In case at bar, there is no such waiver.

Upon receipt by the solicitor of the warrant forwarded to him pursuant to the provisions of § 17-23-120, he may forthwith [prepare a formal indictment or now provided by law] in such cases and shall return it to the clerk of court. ~~So~~ The clerk of courts shall then notify the sheriff or one of his duly authorized deputies to bring the defendant with him, before the clerk of court at a ~~at~~ time and place to be stated in the notice at which the clerk shall have the defendant sign a waiver of presentment, by the Grand Jury and his plea of guilty; provided that no plea shall be entered or made under this [502] section.

Petitioner prays this Honorable court will view the sentencing sheet with a 'practical eye' and see that ~~the~~ ~~coram~~ has been wrongfully and illegally convicted.

Petitioner also prays this court will uphold the constitution of this state and grant him unconditional release, by reversing and vacating his sentence with an order ~~pro~~forbidding this case from being retried for a violation of his procedural Due Process Rights as so sought.

Respectfully Submitted.

Sintan Summers

May 7th, 2011

[Signature]

8039512389

Duncan Law Firm

C 07 p.m. 05-10-2011

5/5

Applicant submits that because of the unassailable facts listed in this motion, this court must find the respondents right to challenge applicants complaint was foreclosed when respondent failed to bring applicant to court within the 60 days violating statutory provisions. It is exceedingly evident that respondent has defaulted and applicant is entitled to judgement on his behalf as a matter of law. And his claim must be granted and conviction must be reversed for lack of jurisdiction.

Respectfully Submitted,

Sintari Summers #3262

~~xxx~~

May 9th 2011

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEXINGTON) IN THE COURT OF COMMON PLEAS
3 SINTARI A. SUMMERS) CASE NO.: 2009-CP-41-06011
4 Plaintiff(s),)
5 -vs-) DEPOSITION OF:
6 STATE OF SOUTH CAROLINA) ERVIN MAYE
7 Defendant(s))
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16 Given before Courtney Young, Court Reporter and
17 Notary Public, at the Lexington Detention Center, 521
18 Grisson Rd, Lexington, South Carolina, on Wednesday, June
19 22, 2011, commencing at 1:00 p.m.

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1 (Ervin Maye, having been duly sworn, testifies
2 as follows:)

3 DIRECT EXAMINATION BY MS. MAY:

4 Q. Okay. This is Kealon May, Solicitor for
5 the 11th Circuit. This deposition is in response -- we
6 left the record open for Sintari Summer v. State. That
7 is case number 2009-CP-41-00011. This deposition is to
8 suffice for Mr. Michael Ellisor who was Mr. Summer's
9 trial attorney, and, I guess, he is -- due to health
10 complications and reasons, he's not able to testify at
11 deposition or in trial.

12 Okay, with that, we'll go ahead. Oh, my name is
13 Kaelone May, and we are at the Lexington County Detention
14 Center.

15 MR. DUNCAN: We'll just identify everyone
16 who's here.

17 MS. MAY: Okay.

18 MR. DUNCAN: My name is John Duncan,
19 D-u-n-c-a-n. I am the applicant's -- the
20 claimant's attorney, Mr. Sintari Summers. He's
21 seated next to me.

22 MR. SUMMERS: Sintari Summer, S-i-n-t-a-r-i
23 Summers, applicant, PCR

24 MR. PETRANO: Also on behalf of the
25 respondent, Assistant Attorney General Brian

1 Petrano, P-e-t-r-a-n-o.

2 THE WITNESS: I'm Ervin Maye, E-r-v-i-n,
3 M-a-y-e-. No relation to Ms. Kaylon for the A.G.'s
4 Office that I know about. I am an assistant
5 Solicitor for the 11th Circuit.

6 Q. Okay. Mr. Maye, have you had a chance review
7 your file on this case, State v. Sintari Summers?

8 A. I have. I have reviewed my files State versus
9 Sintari Summers. Mr. Summers, along with several
10 co-defendants -- Mr. Summers, along with Danielle Wright,
11 Ervin Summers, Rakeem West, and Kellie McCormack, were
12 all charged with a string of burglaries that were over in
13 Saluda County, and some of them were in Greenwood County
14 that were investigated primarily by the Saluda County
15 Sheriff's Office. Mr. Summers faced five counts of
16 burglary first, three counts of burglary second, six
17 counts of grand larceny, four counts of petit larceny,
18 and a contraband charge at the time that he entered a
19 guilty plea before the Honorable James Johnson, Jr. on
20 January the 22nd of 2008. He was represented, at that
21 time, by Michael Ray Ellisor. Mr. Ellisor represented a
22 number of clients over, at that time, in Saluda County.
23 I first became aware of the representation of
24 Mr. Ellisor when I received a Rule 5 and communication
25 from Mr. Ellisor. He filed on January the 13th of 2007 a

1 Rule 5 request on behalf of Mr. Sintari Summers. Some
2 time shortly afterwards, an entire summation and all of
3 the paperwork that was provided to me was provided to
4 Mr. Ellisor. The standard practice that we employ in
5 Saluda County in dealing with discovery requests, the
6 police go through and make a packet both for me and for
7 the defense lawyers, in the case, if we have identified
8 them, if they are codefendants. While they do that, they
9 make me the same packet of information that they make for
10 the defense attorneys, and that was done in this case.
11 The information, all of it that I had, was also provided
12 to Mr. Michael Ellisor, Mr. Summers attorney in this
13 case. He had exactly the same packet of information that
14 I was provided, which was a summation of all of the
15 burglaries and larcenies that took place in Saluda County
16 and any other paperwork that we had. He had the same
17 file that I had. I also had occasion to review with
18 Mr. Ellisor numerous other items including some papers
19 that I brought that were correspondence that were taken
20 as a result of a cell shake down of Ms. Kellie McCormack
21 that has numerous items of correspondence between
22 Ms. McCormack and Sintari Summers as they were
23 incarcerated.

24 I went through and reviewed -- not only was
25 Mr. Ellisor provided with the discovery, I sat down with

1 him on several occasions in between the time that he was
2 initially provided his discovery, which was shortly after
3 July the 13th of 2007. We sat down with the discovery
4 and went through it, and he engaged me in conversation at
5 each insuring term of court that he appeared -- we have
6 court approximately four times a year. We also have
7 other occasions such as a grand jury meeting and first
8 appearances in which attorneys come. He spoke with me on
9 Mr. Summer's behalf. I know that he went to see him over
10 in the jail, and we had conversations, basically, going
11 back and forth as he would -- I would talk to him about
12 all of the discovery in the case and the progression of
13 us handling the codefendant's case and him attempting to
14 negotiate a more favorable result on behalf of Mr.
15 Summers. He was imploring me to try to get him to plea
16 to something less than a burglary first. Although he had
17 multiple counts of burglary first, most practicing
18 attorneys would realize that even being convicted of one
19 count of burglary first with a 15 year minimum to life
20 was a significant hurdle for him to try to get us to let
21 him plead to something less than a burglary first degree.
22 He engaged me on numerous occasions in an attempt to try
23 to persuade me to let
24 Mr. Summers plead to something less than burglary first.
25 I, a representative of law enforcement, told Mr. Ellisor

1 that we -- they and I both believed that Mr. Summers was
2 the ringleader in this case. We handled the disposition
3 of all of the codefendant's case with that in mind. All
4 of the codefendants were willing to cooperate against
5 him.

6 The one constant, Ms. Kellie McCormack, who was
7 represented by Mr. Chris Bradley -- and I'll say for the
8 record now the representation of all the codefendants.
9 Kellie McCormack, a codefendant, was represented by
10 Mr. Chris Bradley. Rakeem West was represented by the
11 public defender Mr. Greg Seigler. Ervin Summers was
12 represented by Mr. James Snell of Lexington. Danielle
13 Wright was represented by Mr. Andy Anderson of Aiken
14 County. All of these individuals were willing to testify
15 against Mr. Summers. Ms. Kellie McCormack, his
16 codefendant, the individual with which he was
17 corresponding in the jail, sat down and through her
18 attorney and law enforcement, went through and gave a
19 summary of the cooperation and with -- let me see, one,
20 two, three, four, five, six, seven, eight, nine, ten,
21 eleven, twelve -- 12 instances in which she participated,
22 Ms. Kellie McCormack, personally in this criminal
23 behavior, these burglaries and larcenies. She indicated
24 that she was -- they were boyfriend and girlfriend. The
25 one constant throughout all of these burglaries, although

1 there were multiple of these individuals were involved at
2 different times, Sintari Summer, was always, we believe,
3 the hub and the ringleader in this case. He was involved
4 in every one that we knew anything about in this case and
5 any of the codefendants that gave us information. All of
6 them, with the exception of Mr. Rakeem West, were
7 actively cooperating against Mr. Summers at the outset,
8 and Mr. West ultimately was willing to cooperate against
9 Mr. Summers in this case, and all pointed to him as the
10 ringleader in this case.

11 Accordingly, I told Mr. Ellisor that there was no
12 way that I was going to let him plead to anything other
13 than a burglary in the first degree. I know that he went
14 back and forth after we reviewed all of the discovery in
15 this case. I know that he went and spoke to Mr. Summers.
16 If he didn't, he was misleading in the information that
17 he gave me, but he at least indicated to me that he was
18 going back and talking with Mr. Summers, and I just told
19 him there was no possible way that I was going to allow
20 him to do anything other than plead guilty to burglary in
21 the first, and he would have to be sentenced accordingly,
22 but that I was willing to leave it up to the judge as to
23 what he got, but I was not going to come off the
24 burglary first. I would have not done that in the past,
25 and I would not do that if I had to negotiate in the

1 future. In the event that Mr. Summers had not plead
2 guilty to burglary first, I intended to try him for as
3 many as these cases as was necessary in order to insure
4 that -- I felt like he basically -- we got to a point of
5 diminishing return. I felt like a judge -- beyond a
6 certain amount time, wasn't going to give him any more
7 time no matter how many of these cases we convicted him
8 on. But there was a confession, they executed search
9 warrants, they recovered guns that were stolen from
10 multiple of these burglaries. After the confession at
11 Mr. Summers residence, there were numerous witnesses that
12 identified him as being involved. And like I said, all
13 of the information that we had is the one constant that
14 he was involved in every one of these, and we believed,
15 and I think justifiability, that he was the ringleader.

16 Accordingly, we treated this case differently than
17 we did the codefendants. Each of the codefendants -- and
18 I confirmed with the Clerk of Court in Edgefield County
19 this morning, plead guilty to a YOA sentence -- one to
20 six YOA, and they pleaded to burglary second. Even Kelly
21 McCormack, who -- and have summation as detailed as I
22 have ever seen from a codefendant that basically laid out
23 play-by-play of what occurred at each of these residences
24 and what was taken. I brought a copy of it here with me
25 here today, that was the summation of these cases that

1 she provided. Her attorney, Mr. Bradley tried everything
2 he could to negotiate something less than me making her
3 plead guilty to an act of YOA, as did all of the other
4 attorneys of -- numerous of these were very competent
5 lawyers, tried to negotiate something better for their
6 clients than the active YOA sentenced, and I refused and
7 made all of them plead to the active YOA. Like I said,
8 we dealt with Mr. Summers case differently, because we
9 believed that he was the ringleader in this case and that
10 was why we insisted that he plead to burglary first.

11 I know that Mr. Ellisor did everything that I had
12 seen any other attorney that was involved in this case
13 do. He met with me on numerous occasions, he had all of
14 the discovery that any of -- including me, had access to
15 in this case. I reviewed with him -- I know he met with
16 Mr. Summers on multiple occasions, and attempted to
17 negotiate a more favorable outcome. He was not able to
18 persuade me to do anything less than what we did in the
19 case. I would not have done so for any other attorney as
20 well. He basically faced what I felt like -- and I think
21 most competent practicing attorneys would feel like in an
22 insurmountable case. He had multiple cases of multiple
23 charges. All of the codefendants were going to implicate
24 him, he had confessed, they have a search warrant, they
25 recovered numerous items of stolen property that were

1 taken from multiple of these locations that corroborated
2 all of the information that the codefendants had given at
3 his residence in this case, and I even had some outside
4 witnesses that had implicated Mr. Summers in that they
5 had seen a young lady in a nurse's uniform, which would
6 have been Kellie McCormack, at multiple of these sites
7 and one black male at several of these, and on a
8 multitude of these burglaries are at least more than one.
9 It was just the two of them, just Ms. McCormack and
10 Mr. Sintari Summers. I reviewed with Mr. Ellisor
11 correspondence between Ms. McCormack and Mr. Summers
12 where he knew she was a cooperating witness. He speaks
13 about it multiple times in his correspondence with her
14 that he knows that she has basically ratted on him and
15 was going to testify against that, so I know that he was
16 aware, at the time that he indicated that he pleaded
17 guilty, that at least one of the codefendants was going
18 to fully implicate him in this case.

19 Mr. Ellisor related to me that he was aware of the
20 case, that Mr. Summers was aware of the case against him,
21 and that he had basically done, at the time that he
22 pleaded guilty, all of any competent attorney could have
23 done at that point in time. The only other alternative
24 was to go to trial on these multiple counts of burglary
25 first, with overwhelming evidence against Mr. Summers,

1 and I don't feel that any competent practicing attorney
2 would have bared to have subjected a client to that type
3 of punishment when he could have negotiated, essentially,
4 just letting him plead guilty to one charge, and I did
5 not insist that it was some 25 year sentence. I left it
6 open for the judge, and that's all I would have done for
7 any attorney no matter what he had done under the
8 circumstances. I can't see anything else when he was
9 facing such an overwhelming set of charges and facts and
10 circumstances against Mr. Summers that he could have done
11 other than try to negotiate on behalf, which he did, and
12 I can't think of anything else that he could have done
13 under the circumstances.

14 Q. Okay. And I just want to ask you some
15 specific questions. I think you've probably covered it in
16 your narrative just now. Prior to Mr. Summer's case, had
17 you worked with Mr. Ellisor before in an adversarial
18 setting?

19 A. Numerous times. I have been working with the
20 11th Circuit Solicitor's Office since 1994. The first
21 couple of years that I was working with the Solicitor's
22 Office, I had cases in Lexington County, and over the
23 years, I had numerous cases involving Mr. Ellisor. As he
24 no longer worked with the public defender's office during
25 this time period in Saluda, he had a number of active

1 cases, and we worked together at that time. I know that
2 he is suffering from a disability now, but at that point
3 in time, he was an experienced, season criminal
4 practitioner. I know that he basically knew his -- he
5 knew our practices. I knew the way he handled cases, as
6 we had worked on a number of other cases, and at the time
7 that he represent Mr. Summers, he had several other
8 criminal defendants that he was working on their cases at
9 the time, so he was, you know, a general practicing
10 attorney there, frequently coming before our office and
11 negotiating cases. We even tried a number of cases during
12 that time period when Mr. Ellisor represented individuals
13 at trial during that same time period, approximately, I
14. guess, 2007, 2008.

15 Q. Okay. And do you recall if you ever met with
16 Mr. Ellisor and Mr. Summers?

17 A. I know that Mr. Summers was brought over. I
18 did not sit in -- obviously, Mr. Ellisor would not have
19 allowed me to sit in on active communications, but I know
20 that I sat in -- well, I met with Mr. Ellisor, and I know
21 that he left, he met with Mr. Summers. I know that he
22 went to see him at the jail and talked with him, I know
23 that he was brought over to the courthouse on more than
24 one occasion as we attempted to reach some resolution in
25 this case.

1 He ended up pleading guilty on a Tuesday. One of
2 the last rounds of negotiations we had was -- would have
3 been Monday, which would have been the 21st before we
4 initially -- I had told Mr. Ellisor that in the event we
5 couldn't come to some conclusion on this case during
6 those conversations in Saluda, we were going to start
7 calling cases against Mr. Summers. We had been there the
8 week before, and I had met with Mr. Ellisor. I know he
9 was leaving and talking with Mr. Summers. As what he
10 spoke to him about at the jail, I do not know, but I know
11 that he had all of the discovery in this case, and I know
12 I even went through with him and sat down, and we went
13 through the correspondence between Ms. McCormack and
14 Mr. Summers, which I would deem as some of the statements
15 as incriminatory statements that we had in this
16 correspondence and certainly statements that recognized
17 on the part of Mr. Summers that Ms. McCormack intended to
18 testify against him and that he recognized that the
19 codefendants were going to testify against him in this
20 case.

21 Q. So did -- from the start, was it always --
22 the plea negotiations start from when the case first came
23 to you and Mr. Ellisor?

24 A. Absolutely. I reviewed it with law
25 enforcement. I met multiple of the other attorneys in

1 this case. I reviewed all of the statements of the
2 codefendants in this case. I talked with law enforce.
3 They and I all believe that Mr. Summers was the
4 ringleader in this. He was involved in every one of these
5 burglaries. Often times, it's just him and
6 Ms. McCormack. At other times, it was a different
7 combination of he, Rakeem West, Ervin Summers, Danielle
8 Wright, all of the codefendants in this case, but he was
9 the one constant. I really felt like, from my review and
10 looking at the case, that the rest of them were -- other
11 than Ms. McCormack, they were kind of hangers on. They
12 were not the ringleaders. They were not involved in
13 multiple of these cases together. Basically as a
14 constant, he was the one constant. We felt like he was
15 the center of the spokes of the wheel of this criminal
16 enterprise, and we intended, from the outset, to deal
17 with him differently than we did the codefendants in this
18 case. And I ultimately let all the rest of them plead
19 guilty to an act of YOA, but we stuck to our guns, as we
20 had always indicated to Mr. Ellisor, that we were going
21 to try
22 Mr. Summers for burglary first, and that he was going to
23 have to take an adult sentence and basically, get
24 whatever a judge gave him, but that would be a best case
25 scenario for him, and that was an unchanging constant in

1 all the negotiations that I had with Mr. Ellisor. And he
2 tried on numerous occasions to persuade me to do
3 something different than what I ultimately did in
4 Mr. Summers case, and ultimately he was unable to do so,
5 but I would not have done so for Mr. Ellisor, nor would I
6 have done so for any other attorney.

7 Q. Okay. So was there ever a YOA sentence
8 presented or on the table --

9 A. Never.

10 Q. -- at any time for Mr. Summers?

11 A. Never. There was never any other alternative
12 for him other than to go to trial or plead guilty to
13 burglary first. We never offered him anything else.
14 There were no negotiations in that regard with
15 Mr. Ellisor at any point in time. He was never offered a
16 YOA or never offered anything less than burglary first.

17 Q. And all of the plea negotiations with
18 Mr. Ellisor, do you have knowledge that he relayed that
19 to Mr. Summers?

20 A. He indicated to me that he was relaying all
21 of that to him, and I know he went back over to the jail
22 and met with him, and my review of the trial transcript
23 here, the trial judge, Judge Johnson, went through and
24 asked him if he was satisfied with Mr. Ellisor, if you
25 had time to talk with him, and all of the different

1 things in the plea -- I know that on page seven and page
2 eight, he said that he was adequately briefed on this
3 case, that he was explained his rights. Page eight
4 indicates -- I went through all the records at the time
5 that he pleaded guilty, and basically laid out most of
6 what I've done here with the summations, that the
7 codefendants in this case were all willing to testify
8 against him, that what -- a big portion of the evidence
9 was contained in my summation before Judge Johnson.

10 He indicated that he was satisfied with
11 Mr. Ellisor, and he indicated that he understood what he
12 faced in this case, which I understand is one of the
13 direct assertions of this PCR in this case, he was not
14 adequately informed. And my contention is that he was
15 informed by Mr. Ellisor before the time of the guilty
16 plea and certainly at the guilty plea, that he understood
17 the charges that he faced, and that's one of the reasons
18 I put as much time and effort into doing this guilty plea
19 was to put all of that out on the record, so that way it
20 was not an involuntary plea in this case, and I would be
21 unwilling to -- even if he was granted any relief in this
22 case, to do anything other than to proceed against him
23 again on burglary first. He would face all of the same
24 charges against him in Saluda County with the
25 codefendants being willing to testify against him, and it

1 just -- I can't see any other result that any other
2 attorney -- I know that's one of the basis for a PCR, not
3 only if an attorney's performance was deficient, would it
4 have made any difference in this case. I can't see that
5 it would, because he would still face all of the same
6 charges, and I would offer exactly the same thing again
7 that I offered to start with.

8 Q. Did Mr. Ellisor ever indicate to you that he
9 was considering going to trial or they were considering
10 going to trial based on the evidence?

11 A. Mr. Ellisor indicated to me that his advice
12 to Mr. Summers, as I believe any competent attorney would
13 have given him in advice, would have been to plead
14 guilty. I told Mr. Ellisor that in the event Mr. Summers
15 did not plead guilty, we were going to be forced to start
16 trying these cases against him, and that was basically,
17 we weren't going to deal with the codefendants in this
18 case until we dealt with Mr. Summers' case, or at least
19 we weren't going to deal with all of them. I was
20 certainly going to hold out Ms. McCormack's case and the
21 other testifying witnesses in order to let them testify
22 against Mr. Summers if he went to trial, but like I said,
23 I think that would have been an exercise of utility, even
24 if he prevailed at even one of the cases, he still faced
25 all the other counts of burglary first. It was just an

1 overwhelming set of facts for any defense lawyer to be
2 faced with, a confession, search warrants, multiple other
3 codefendants testifying against him. I can't think of a
4 more complete incircling of criminal defendant in this
5 case. I can't think of any other evidence or any other
6 type of evidence that would have been available. There
7 was direct, there was circumstantial, they executed
8 search warrants against him, they had eyewitness.

9 Now, Mr. Ellisor represented to me that in the
10 event that Mr. Summers insisted on going trial, he was
11 certainly going to do his best to represent his interest,
12 but neither he or -- nor do I think any other competent
13 attorney would have recommended any thing other than
14 Mr. Summers plead guilty to what was negotiated. It was
15 basically just seeking mercy, I guess, from our office to
16 the extent could he could and asking and trying to
17 negotiate the most favorable plea that he could. In the
18 event he couldn't do that, he was soon going to be faced
19 with going to trial, and he knew that.

20 Q. Okay. And I guess -- do you recall when -- I
21 say final plea offer, but was burglary first just the
22 first thing that on the table and the only thing that
23 remained on the table, or --

24 A. It's the only thing that I ever tendered or
25 anyone from law enforcement or anybody else thought was

1 an appropriate resolution of the case. We had basically
2 individuals going on a rampage. This was a huge case in
3 the community. It was known far and wide in the area.
4 There were guns stolen, there were houses broken in to
5 all over the place. This spilled over into Greenwood
6 County. There was no way that I was going to do anything
7 other than to force Mr. Summers either into my attempt to
8 convict him of burglary first or to extract a plea to
9 burglary first. That was the minimum that I was going to
10 accept in the case. I would not have done differently for
11 any other attorney under -- or any any other
12 circumstances. That was the bottom line, and I never
13 tendered any other offer.

14 Q. And just one last question, I think. Going
15 back to the statements given by Mr. Summers and the
16 codefendants, and correct me if I'm wrong, but, I
17 believe, at the PCR hearing, Mr. Summers was complaining
18 that their statements conflicted with each other? Did you
19 find that to be the case in reviewing the evidence?

20 A. I did not find that to be the case at all.
21 In fact, when I elided that you got this many people
22 involved in a case and the stories continue to overlap in
23 that regard, to me, that is an absolute ring of truth. I
24 did not find any conflicting evidence on any significant
25 factual details in this case. Ms. McCormack was smart.

1 She gave one of the most detailed summations of her
2 involvement and other individuals involvement that I've
3 ever seen. It was corroborated by items of stolen
4 property that were recovered at Mr. Summer's residence,
5 so we had physical evidence that corroborated with her
6 statement in this case, and I felt like all the
7 codefendant's -- the statements and information that they
8 had given the police, it does fit together appropriately,
9 because they were tendering and giving truthful
10 testimony, and I certainly believe that a jury would
11 think so as well. I do not think we would have any
12 trouble prosecuting these cases, because I felt like then
13 and now that it was an absolute overwhelming case against
14 Mr. Summers.

15 Q. And did you discuss with Mr. Ellisor how you
16 would proceed had you all went to trial?

17 A. Absolutely. I told him I was going to start
18 trying for burglary first, and I was going to pick the
19 strongest cases, and I was going to continue to try those
20 cases until I felt like we got to a point of diminishing
21 return. As a practical matter, judges are going to quit
22 giving him -- they're not going to give him so much
23 consecutive time. They're not going to just keep letting
24 him up. Beyond a certain point in time, we just get to a
25 point of diminishing returns. If I convicted him of one

1 or two counts of burglary first, it would all -- in all
2 likelihood, I feel like based on my experience would
3 resulted in a life without parole sentence for him, and
4 he would die in jail. I tried to fashion as such that
5 the plea that I offered gave him some chance at getting
6 out and reforming himself in prison. I did not try to be
7 excessive in this case. I felt like in dealing with him,
8 he was young enough to where he could serve his sentence
9 and get out and still have a good portion of his life
10 left. I felt like if he went to trial on multiple of
11 these charges and was convicted on multiple counts of
12 burglary first that would have resulted in a life without
13 parole sentence. I still believe that.

14 Q. Okay. And from your knowledge, what
15 Mr. Ellisor relayed to you, he talked to Mr. Summers
16 about, the codefendants willing to testify against him?

17 A. Absolutely he did, and it's reflected in
18 Mr. Summer's own handwriting here and his own
19 correspondence with his codefendants, and he knows that
20 they're going to testify against him, and he is aware of
21 the evidence that he faces in this case, and because he's
22 basically -- I felt like the tenor of the letters that
23 he's writing to Ms. McCormack, he's trying to charm her
24 and not get after her too severely about her ratting him
25 out. He mentions it in most of the correspondence that he

1 -- I know you ratted me out, I know you're working with
2 the police in this case, and that he recognizes that
3 she's going to testify against him. And like I said,
4 Chris Bradley, Ms. McCormack's attorney, was really
5 playing it up, that she was going to put it on
6 Mr. Summers. Like I said, she wrote one of the most
7 detailed and professional summations of all of the
8 burglaries here that I've ever seen in this case, and she
9 was chopping at the bit and testify against him. Of
10 course, she wanted to minimize the negative consequences
11 for herself, but I still gave her an active sentence.

12 Q. All right. And do you recall how, I guess,
13 close or how close before the plea these -- the
14 codefendants statements or the fact that they were
15 willing to testify, you alerted Mr. Ellisor to that?

16 A. It was a constant. He knew that at the
17 outset. Like I said, he confessed and so did she, and
18 just as soon as we picked these other individuals up, who
19 I thought numerous of the codefendants -- I'm going to be
20 charitable and saying I did not think they were the
21 height of sophistication. I felt like they were followers
22 rather than leaders. I felt like Mr. Summers was smart.
23 I felt like he was the ringleader. He was certainly the
24 one constant. He was involved in every one of these that
25 we were aware of, and I think it was obvious he was the

1 ringleader. I think his correspondence with
2 Ms. McCormack that he was sending back and forth in the
3 jail was indicative of that as well. He was trying, I
4 think, to soften her up and maybe getting her to -- tug
5 on her heart strings perhaps to where she wouldn't be
6 willing to testify against him. I felt like that was the
7 motive behind the correspondence he was writing her in
8 jail.

9 MS. MAY: Okay. Thank you. I don't have any
10 more.

11 (Whereupon a break was taken.)

12 Q. Okay. How old was Mr. Summers when these
13 crimes were committed, and what was the time span of
14 these charges?

15 A. I have -- let's see, dates of 5/07/2007 for
16 burglary at , 5/07/07 ,
17 5/08/07 , 5/08/07 --
18 . It looks like 5/14, one, two, three, four,
19 five burglaries. It looks like ,
20 , , and
21 , and there's an addition one on 5/14/2007
22 . Then we go in to 5/15/2007 at ,
23 5/15/2007 at . She's talking about
24 events on May 7, 2007 involving Sintari and she,
25 May 8, 2007 she and Sintari -- May 14, 2007 she gives a

1 summation of her involvement when she and Sintari -- this
2 is Kellie McCormack, and on May 15th of 2007. But like I
3 said, the one constant we had, he's always involved.
4 Some of the rest of them came and went, but he's involved
5 in every one of them.

6 Q. So based on what you just said, it seems like
7 in the month of May of 2007?

8 A. Basically, they just went on a spree.

9 Q. Okay.

10 A. And like I said, when he was arrested, he was
11 Mirandize. I did not feel like -- and Mr. Ellisor did
12 not -- there were going to be any problems that the State
13 was going to have regarding the suppression of the
14 statement. We had -- as any good practicing attorney
15 would attempt to do, he was attempting to poke holes in
16 anything and look at the evidence in this case. Neither
17 he or I saw any deficiencies that he let me know about,
18 at least as to the confession or as to any of the work
19 that the police did with the search warrants or any
20 problems with the case that I could see or Mr. Ellisor
21 could see. He tried to poke holes in what we had. He
22 tried to point out, as any good lawyer would do,
23 deficiencies or problems that he saw that we might have
24 proceeding to trial against Mr. Summers, but ultimately
25 he was unable to persuade me to do anything other than

1 what we ultimately offered.

2 Q. Was he over 18, or do you know how old he was
3 during this time span?

4 A. You know, I don't have his file in front of
5 me. Let me look at the paperwork I got and the documents.
6 I don't remember his date of birth. I don't know his
7 date of birth, and I don't have it in any of this
8 paperwork. That, I can't remember back. It's been --
9 I've reviewed some of what we had done in this case, and
10 I've certainly went back to see what I had done with the
11 codefendants, but I don't know his date of birth.

12 Q. I want to go back to the letters that you
13 mentioned --

14 A. Yes.

15 Q. -- I believe between Mr. Summers and
16 Ms. McCormack.

17 A. Yes.

18 Q. How did the discovery of those come about and
19 how did --

20 A. They shook down her cell, Kellie McCormack,
21 and they recovered all these letters that were between
22 him and her.

23 Q. And what would be -- who shook down the cell,
24 the correctional officer?

25 A. The correctional officers did. They shook

1 down her cell, and, of course, she willingly, you know,
2 let them have any anything as well. They didn't forcibly
3 take them from here, because she was cooperating. They
4 took all of these letters, and like I said, he talks over
5 and over again in these letters about how she's ratting
6 him out to the police, and he knows she's going to
7 testify.

8 Q. And when they confiscated the letters from
9 her cell, who were those give to?

10 A. Do what now?

11 Q. Who were those given to? Were they given
12 directly to you or --

13 A. They were given to law enforcement. The were
14 given to a jail administrator, and they were ultimately
15 given to investigator Robert Shorter. Investigator
16 Shorter shared it with me. I shared them with
17 Mr. Ellisor. I felt like they were statements of
18 Mr. Summers. He was entitled to see them, and we went
19 through them and talked about them at length, and these
20 were damaging to him and certainly damaging to any
21 assertion on now that he was unaware that she was going
22 to testify against him, because they're both in the jail.
23 She ultimately was able to -- or Mr. Bradley was able to
24 persuade a judge, I think, to release Ms. McCormack prior
25 to her being sentenced, but she was incarcerated for a

1 long period of time and they were writing back and forth.
2 He's aware of the case against him then. I don't even
3 know if he was represented by Mr. Ellisor at that time,
4 but he knows that she is basically -- the police or
5 whatever. In his letter, it's abundantly clear that he
6 recognized she's going to testify against him and that
7 she's provided detailed information and she was involved
8 in almost all of these, it looks like -- some of these --
9 these codefendants did along with Mr. Summers without
10 her. They used her automobile for some of those, but she
11 was aware of all of the -- like I said, gave detailed
12 summations of her participation, and she was -- she and
13 all of these codefendants and were inculcating themselves
14 with these statements, which to me gives the most ring of
15 truth to them, and they were all willing to testify
16 against Mr. Summers.

17 Q. Okay. I believe you mentioned this, but
18 those letters that were confiscated from her cell, they
19 were also provided to Mr. Ellisor?

20 A. We talked about it. We talked about how they
21 would damaged his case, and Mr. Ellisor and I had
22 numerous conversations about this case. He attempted to
23 negotiate on Mr. Summer's behalf, and we met multiple
24 times. I would say during this time period this was one
25 of the most significant cases that I had in Saluda

1 County. It was one that we were utterly committed to
2 disposing of on a fast track bases. I had all these
3 individuals that were incarcerated. I had one crime
4 waived basically that involved multiple defendants for us
5 to get this off the docket, was going to move multiple
6 multiple warrants against all of these defendants, and it
7 was something that we were fast tracked, and Mr. Ellisor
8 was aware of it. I felt like he gave it the gravity and
9 attention that it deserved, because, like I said, there
10 are not many times in the history of Saluda County that
11 anyone faced this many counts of burglary in the first
12 degree or this level of charges, and Mr. Ellisor treated
13 it with that sort of -- it was a big case, and he met
14 with me multiple times, and I don't know of anything else
15 that he could have done or any other lawyer could have
16 done under the circumstance, because it's just -- it was
17 and remains insurmountable.

18 Q. Okay. I'd like to move these letters into
19 evidence.

20 A. I don't have any objection. Whatever y'all
21 want to do.

22 MR. DUNCAN: I have no objection to making
23 them an exhibit. As I understand it, that would be
24 the letters that you also referred to as the cell
25 shake down materials. That's one in the same?

1 THE WITNESS: Everything that I've got came
2 from her cell is my understanding. I did not seize
3 them, but I've got a multitude of letters here that
4 were all in her possession, they're addressed to
5 her, they got his name on them. Some of them went
6 --

7 MR. DUNCAN: In addition --

8 THE WITNESS: -- I went back and forth with
9 their notes, and --

10 MR. DUNCAN: In addition, you also have -- it
11 looks like to me to be typed notes from --

12 THE WITNESS: I do. I have a summation that I
13 brought. I'd be happy -- if y'all would like to do
14 that, I'd be happy to leave this --

15 MR. DUNCAN: Okay. Make that part of the
16 exhibit --

17 THE WITNESS: These are summations from
18 Ms. McCormack's involvement. I want to say the first
19 line on this page of stapled -- says first house on
20 5/07/2007 at

21 MR. DUNCAN: In addition, I understand that
22 you have what -- the formal discovery that was sent
23 with an accompanying letter that was send to Mr. --

24 THE WITNESS: I did not bring all of the
25 discovery in this case.

1 MR. DUNCAN: Okay.

2 THE WITNESS: It is a mountain of discovery,
3 but I'm stating for the record that Mr. Ellisor was
4 provided with exactly the same discovery that law
5 enforcement provided me, because they made copies
6 of what they gave me at the same time they gave
7 Mr. Ellisor.

8 MR. DUNCAN: Okay.

9 THE WITNESS: I saw Mr. Ellisor with the
10 discovery. He and I discussed it on numerous
11 occasions. He brought it with him as we came and
12 went through it. We went through the
13 correspondence that was seized from the jail
14 basically right before we did his guilty plea,
15 because I brought all of this up, and basically
16 said, we're going to use some of this against him
17 in all likelihood if we go to trial, and you're
18 entitled to look and review all of this evidence,
19 and so I know Mr. Ellisor was able to see those
20 documents, and I know he had the discovery,
21 because, like I said, he had it with him at times
22 when he came to see me.

23 MS. MAY: Okay. So we can move those into
24 evidence?

25 MR. DUNCAN: Well, I'm not going to concede

1 them into evidence, but I think they should me made
2 an exhibit, yes.

3 THE WITNESS: Also, I already said who
4 represented all the codefendants and what the
5 disposition of the codefendants was, and I stated
6 the record in this case what we were willing to do.

7 MS. MAY: Just specifically with regard to the
8 letters from the shake down --

9 THE WITNESS: Yes.

10 MS. MAY: We would like to move those into
11 evidence as statement against interest and not
12 solely making them exhibits.

13 MR. DUNCAN: Are you through?

14 MS. MAY: Oh, I just -- with regard to these
15 letters from the shakedown, specifically, I mean, I
16 would like to move those into evidence and not
17 solely as exhibits as statement against interests.

18 MR. DUNCAN: Well, we don't have a judge
19 decide that, so I can't concede that.

20 THE WITNESS: And those are originals to all
21 of those. That's the one that I --

22 MR. DUNCAN: Okay.

23 (Whereupon Exhibit's 1 and 2 were marked for
24 identification.)

25 THE WITNESS: I felt like what Mr. Ellisor did

1 -- what evidentiary value it had, they may be of
2 some significance in this PCR hearing, but it was a
3 minimal significance giving the overwhelming amount
4 of evidence that he faced both direct and
5 circumstantial at the time of the guilty plea. It
6 was a lesser consideration at the time of the
7 guilty plea than it would be for the purpose of
8 this PCR assert or to go against any indication
9 that he had that this was a surprise, the evidence
10 against him, or that codefendants were testifying
11 against him was some sort of surprise.

12 MS. MAY: Those are all of the questions that
13 I have.

14 CROSS EXAMINATION BY MR. DUNCAN:

15 Q. Mr. Maye, your testimony is that the typed
16 summaries of Ms. McCormack were discussed with
17 Mr. Ellisor?

18 A. Yes. Everything that I had -- I was not
19 provided anything that Mr. Ellisor didn't have, because,
20 like I said, we both got the same packet of information,
21 and that's basically my practice on a case like this. I'm
22 provided with the same thing that the defense lawyers
23 get. I pulled though things that would be like jail --
24 what they had in their pockets when they got booked -- I
25 kind of stream through that and give it back to law

1 enforcement, but anything that was in substance, witness
2 statements, incident reports, any real substantive events
3 in the case. Mr. Ellisor had exactly what I had. He was
4 provided with the same information, and, like I said, on
5 multiple occasions, I saw him with items that have been
6 provided to you. We fully complied with Rule 5, and I
7 think he exercised due diligence to ensuring that he had
8 all the paperwork that we had, and that he would be
9 entitled to under Rule 5, and that continued throughout
10 his representation, like I said, right up until the time
11 of the guilty plea, we were talking about the letters. He
12 reviewed those with me. We talked about what
13 significance, if any, that it might have on the case
14 against him.

15 Q. And in addition to those summaries, the typed
16 summaries that have been made an exhibit, the -- you also
17 were provided or you obtained letters from Mr. Summers to
18 Kellie McCormack in the detention center, and you
19 discussed those and provided copies of the same --

20 A. I don't know that I provided all the copies,
21 because I had originals, but talked about them. I felt
22 like from a -- like I said, now at this PCR hearing,
23 they're of more significance than they were then.
24 Certainly the statements of a codefendant and the
25 mountain of evidence we had against him, aside from that,

1 was of greater significance than that, but I did talk
2 about it, because those were provided to me by law
3 enforcement. I felt like I had an absolute obligation,
4 because they were -- any statement -- under Rule 5, any
5 statement of a defendant and those were certainly, in my
6 belief, statements of Mr. Summers that were in the
7 possession -- custody of law enforcement. I made sure we
8 reviewed those with Mr. Ellisor prior to us doing any
9 guilty plea to insure that he had access to any and all
10 statements. As to whether or not the evidentiary nuances
11 of whether or not they would be admitted at trial against
12 him in these cases, you know, we didn't necessarily go
13 into, but I wanted to make sure he had all of that
14 information prior to Mr. Summers pleading, and we went
15 through it.

16 Q. Okay. And there is no doubt in your mind that
17 you discussed those with Mr. Ellisor?

18 A. I know he knew we had them. I told him -- we
19 didn't both sit down and read every word of them, but I
20 told him look, we got this information. I had that file
21 with me, I think in my hands that same manila envelope on
22 January the 22nd of 2008. I believe I did. I know I had
23 at least some of those letters at the time that he
24 entered the guilty plea, because law enforcement had
25 provided them to me prior to that time, and, like I said,

1 that's a huge conglomeration. I don't know if they
2 continued to accumulate in this file after the time of
3 that plea or law enforcement added anything, because I
4 was only recently provided -- again --

5 Q. Okay.

6 A. Investigator Shorter brought that big file
7 back to me. I don't know the dates of that
8 correspondence, but at least some of it would have been
9 during the time period that Ms. McCormack was in jail and
10 prior to this plea on January 22, 2008. If memory serves
11 me correctly, she eventually made bond. I think a judge
12 released her.

13 MR. DUNCAN: If you'll just hang on one minute
14 while I consult with Mr. Summers.

15 THE WITNESS: Sure.

16 Q. Okay. When you discussed -- in reference to
17 confessions, what -- of Mr. Summers, what are you
18 specifically referring to?

19 A. Well, law enforcement -- the information that
20 I was provided was that they both gave statements at the
21 time, and I put that on the record, if you go back to the
22 guilty plea, page 13, line 11, it begins after
23 Mirandizing these two individuals and asking them some
24 questions, they admitted their parts in these burglaries,
25 and Mr. Summers gave us consent to search a house that he

1 was residing in in Batesburg, and we were able to recover
2 a vast amount of property, including firearms, that were
3 stolen in multiple residential burglaries. That was at
4 the time of the guilty plea, and I know certainly his
5 confession was at issue in this case, and Mr. Ellisor and
6 I discussed it on other occasions, because we had
7 multiple discussions on the mountain of evidence that we
8 had against Mr. Summers prior to him entering this guilty
9 plea on January the 22nd of 2008. I had basically given
10 him, essentially, a cutoff date, if we didn't do
11 something at that term of court, that Mr. Summers -- that
12 we were going to start trying the burglary first against
13 him.

14 Q. Now, as I understand it, Mr. Summers did not
15 sign a written confession, but he did discuss matters
16 with one of the law enforcement officers and related
17 information to him orally; is that what you're referring
18 to?

19 A. I can't recall. It's been long, but I know
20 that he was Mirandized, and I know that they
21 characterized it as him giving a confession in this case.
22 I can't remember.

23 Q. Does this look --

24 A. Yes. It says it's a statement by Lieutenant
25 Freeman dates 5/21/2007. It said -- he's talking about

1 Lieutenant Shealy. I'm assuming that's Lieutenant Donovan
2 Shealy, and I know that's going to be right. It said I
3 then saw Lieutenant Shealy read and explain a piece of
4 paper to Mr. Summers, which contain Miranda rights.
5 Mr. Summers stated that he understood. We didn't feel he
6 should sign anything. Lieutenant Shealy asked on several
7 occasions, he didn't have to speak to us. He could stop
8 at any time. Mr. Summers said he understood. Lieutenant
9 Shealy began talking about Mr. Summer's work, home,
10 girlfriend, ec cetera. I apologize. I'm reading this
11 again. This is just basically the police talking about
12 his cooperation, and the fact that they didn't threaten
13 him or coerce him or didn't promise him anything that I
14 can tell from that summation.

15 Q. So it's -- it would be fair to say it was an
16 oral statement and not reduced to writing?

17 A. I don't recall anything in writing. I just
18 know that the multiple officers were involved and were
19 going to testify about his -- basically his level of
20 cooperation from the outset. But again, that was just
21 one piece of the puzzle against him. Even absent of
22 confusion on his part, Mr. Ellisor and I both felt it was
23 a huge body of evidence against him, in this case, with
24 all of the codefendants being willing to testify against
25 him and the physical evidence they recovered that linked

1 him to the crime.

2 MR. DUNCAN: Just so long there's a copy of
3 those letters and the summary made an exhibit --

4 THE WITNESS: Sure.

5 MR. DUNCAN: -- and provided, that's fine. We
6 don't have any other questions.

7 THE WITNESS: Sure.

8 MS. MAY: I have no further questions.

9 (Whereupon the deposition was concluded.)

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1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF RICHLAND)

4

5 I, Courtney Young, Court Reporter and Notary
6 Public, certify that I did have Ervin Maye to appear
7 before me on June 22, 2011 at 1:00 p.m at the Lexington
8 Detention Center at 521 Grisson Rd, Lexington, South
9 Carolina; that the witness was sworn and cautioned to
10 tell the truth, the pages constitute a true and accurate
11 transcript of the testimony given at that time and place.

12 I further certify that I am not of counsel or kin
13 to any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this 5th day of July, 2011.

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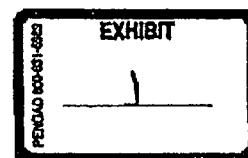

Courtney Young,
Notary Public for South Carolina
My Commission Expires: February 8, 2014

1st House on 5/7/07..

Around 12:30, Sint, Ervin, and Duke came to my job at Saluda Family Practice and picked me up. They were talking about going home with something that wasn't theirs, like a scooter or golf cart or something. I was driving, sint was beside me, Duke behind him and Ervin behind me. I believe sint had on a black shirt and I know for sure that Ervin had on a blue NY hat because I wore it. We began driving around and they kind of started telling me where to go. They had apparently already started picking out places to go because they kind of knew where they wanted me to drive. We got to _____ and they picked a big white house. I backed in the driveway while they got out and started taking things. Sint took a grill off the back porch, Ervin took a tennis racket and some golf balls, and Duke took a pogo stick. That was all from that house that was taken.

2nd House on 5/7/07..

Once we left _____ Street, we kept driving and they told me a few turns to take. We saw a little blue colored house beside a big horse farm. I was still driving, Sint in the front, and Duke and Ervin in the back. I pulled in and turned around so my truck was facing the road. Sint and Ervin went to the door while Duke and I sat in the car. One of them, (I believe it was sint), kicked the door in. They were in there a while so I sent Duke in to tell them to hurry up. I was not comfortable by no means. After a few minutes, they started bringing things out of the house. They had a waste basket full of DVDs, a small tv (I think), a jar of coins, a play station, and a portable DVD player. We drove away and I went back to work. They proceeded to go back to Batesburg and take the stuff to sint's house.



3rd House...5/8/07.

✓ When I went on my lunch break on Tuesday, Sint and I rode around. I didn't think we were going to rob or anything but I thought wrong. We saw the house on Street and he told me to pull in. I pulled in and turned around so that the back of my truck was under the garage. He told me to get out and go check the door. I went to the door underneath the garage and knocked. No one answered so I turned it and it was open. The door led to a small outside type dining room. I didn't enter the house at all, I had just opened the side door. I then got back in my truck and Sint went inside the house. He came out after a few minutes and loaded a television and safe box into the truck. That was all, there was no jewelry box loaded into the truck. We then pulled away and I went back to work.

4th House...5/8/07...

✓ After we left my job around 2:45, we came back towards Batesburg. I mistakenly mentioned that my ex-boyfriend had a lot of things. Sint asked me where he lived and I showed him. He asked me if anyone was home and I said no probably not. He told me to pull in the driveway because he wanted to see the house. He got out of the car and went into the side sliding door. It was opened. After a few minutes, he came out with a 12 gauge shotgun with a scope, and a laptop. I am pretty sure that is all he took from that house. We then went home.

5th House...5/14/07..

I don't know anything about this house. I was not with the boys when this happened. They were driving my car.

6th House...5/14/07... ad

I don't know anything about this house either. The boys were driving my car. I believe this is the house where the dog was stolen though.

7th House...5/14/07.. d

The boys had my car at this house too. I believe either this house or the one on JDM Road was a deputy's house. Out of the deputies house, I know guns were stolen. Including a .38 snub nose revolver (black), a .9 mm (chrome and wood plated), a .44 revolver (silver) and a Magnum or Desert (black).

8th House...5/14/07..

The house was on a gravel road. It was on the left hand side when we drove down the road. It was sitting back behind a field of tall uncut grass and weeds. In the front yard, there were children's toys and kittens. Sint, Danny, and Duke went on the porch and someone kicked the door in. I believe it was Danny this time but I could be wrong. They were in for a few minutes. I was sitting in my car taking a couple of hits off of Danny's black and mild he had given me to hold. When the boys came out, Danny had a handful of DVDs (porn) and a few games I think. I don't remember what Duke had. Sint had a silver revolver pistol. I think it was the .45. He also had a few games. I think a few shotguns might have come out of that house also and some bullets. We drove away, turning left as we pulled out of the driveway.

9th House...5/14/07..

This house sat up on a hill with a circular driveway. It was brick with a star of David wind chime. I pulled in and backed up into the carport. Sint, Danny, and Duke went inside. I couldn't see which one kicked in the door because of where I was sitting. A few moments later, Sint came out with a small television, Danny had a handful of shotguns and was wearing a camouflage hat, and Duke had a handful of shotguns and some bagel bites. We then left this house.

10th House...5/14/07...

I pulled around to the back of this house. I sat in the car and the boys went in. I'm pretty sure Danny kicked the door in on this house. They came out a few minutes later and all I remember them having was a few games or DVDs and a box of bullets for a .38 but other than that I cannot remember what they had out of that house. The police told me Danny told them that they took a shotgun but I don't recall seeing it.

11th House...5/15/07....

This was a large blue colored house I believe. It had construction equipment near it. I pulled in and turned around in the driveway. Sint went to the back door in the garage and couldn't kick it in. He then went to the side door and kicked it in. He told me to stand at the door while he went in and got some stuff. He piled it up on the porch and I took it to the car. It included a ipod, a lot of play station games, a play station, about 5 shotguns, and a computer I think. We loaded the rest in the truck and left.

12th House...5/15/07...

We pulled up under the garage at the house and I went to the front door to check inside. It was clear so Sint kicked the side door in. Inside, I went to the master bedroom and found the jewelry box. I only took the top drawer. Sint yelled for me to pick up the stuff in the living room that he had gotten. There was a blue clothes basked full of things. I just remember a camera and a few other things. He got a flat screen television and a small computer. There was also a robot vacuum and some board games. The house had cherry hardwood floors. We finished loading my truck and left the house.

Day of May 7th, 2007

Around 8:30, I went to Sint's house to pick him up so he could come to my house while I got ready for school. He came over got a shower and we got ready to leave. At approximately 9:35, Sint called Ervin off of his cell phone and asked him if he wanted to ride to Saluda with us. Ervin said yes so we left my house so I could go sign in. While I was in the school at approximately 9:50 till 10:10, Sint drove my car to pick up Ervin and Duke. We then started towards Saluda. When we arrived in Saluda, we went and got some chicken wings from China Garden then I went to my job. Sint got in the driver's seat, Ervin in the passengers seat, and Duke in the back. I went into the doctor's office and they sat out in my car for a while. After awhile they left to go ride around or do whatever. They never mentioned anything about robbing anybody or nothing. They were actually talking about going to the library so they could get on the internet. Around 12:35, I called them to come pick me up. They came and picked me up and we just started riding around. They started talking about this golf cart they had seen that they wanted. Then Duke started talking about a motorcycle or scooter he seen that he wanted. So we continued to ride around and they were kind of directing me where to drive. We passed the house on _____ Street so I turned around and we went to that house. When we left that house, we went riding around a little bit more. We found the house on firetower tower road. While the boys were in that house, I would call Sint's phone and tell them to hurry up. There were 2 small dogs outside of that house. When we left that house, they dropped me back off at work and Ervin drove my car back to Batesburg. While they were going to Batesburg, my phone was dead so I had Sint's phone. I would call Duke's phone to talk to Sint and find out where they were and if they were ok. They took the stuff back to Sint's house then they came back to my job to pick me up around 2:45 or 3:00. We then stayed at Sint's house and I left for work in Batesburg.

Day of May 8th, 2007

Around 8:30, I went to Sint's house and picked him again, as usual, so we could get a shower and get ready for school. Today he didn't call anyone to come with us. I think we might have been fighting and he wasn't even going to go with me but he ended up deciding to go. We left my house and drove to school around 9:45, just like everyday. (This was our normal routine) We drove to Saluda and I went to my job. While I was there, Sint sat out in the car and went to sleep. He didn't leave at all that day. I went on my lunch break around 12:30. We left my job and just started riding around. We weren't even going to rob that day; we were just spending time together. We then saw the house on Street and decided to do just that house for that day. So we pulled in at the Street house. I'm pretty sure I called him while he was in that house to tell him to come on. After we did that house, we left and just rode around for a while. Then we went back to my job and he sat in the car and went back to sleep. We left Saluda around 2:30. We drove back to Batesburg and decided to drive some of the back roads. That's how we got to my ex-boyfriends house. After we did that house, we went home and unloaded the stuff. Then I went to work in Batesburg.

Day of May 14th, 2007

I went and picked Sint up around 8:30. He came to my house and we got ready for school. He called Duke and Duke said he would go with us. On our way to the school, Sint called Danny. While I was in the school, Sint drove and picked up Danny and Duke. They came and picked me back up from school. When we got to my job, Danny got into the driver's seat with Sint beside him, and Duke in the back. Sint said something about them riding up to Johnston or somewhere. I thought they might rob so I would call them every 15 minutes or so to make sure they were ok. When they came to pick me up around 12:45, they had guns and some televisions. The back of my car was pretty full of stuff. The boxer was also in the car. I could tell the dog was sick so it rode in my lap the whole time. We went riding around some back roads. We found the house on [redacted] Drive. After they did that house, we went and found a secluded dirt road. While we were down that road, I shot the .38 snub nose black revolver and the .9 mm in the air. Duke shot the .44 revolver. We then drove back to town to get gas. The boys had gotten jars of coins and they took a small kitten from the house on [redacted] that needed fed, so we went to Reid's in Saluda. Danny sat in the car smoking a Black and Mild and Duke, Sint and I went into Reid's. They started doing the CoinStar machine while I looked for a preemie bottle. They didn't have any so I walked down to CVS. They didn't have any either so I picked out a smaller bottle and some milk. While I was standing in line, Sint came in and he bought the stuff in CVS. We left CVS and they took me back to work. They drove the car back to Batesburg and unloaded the stuff. They came back around 2:30 and we left. They didn't rob any houses while I waited on them at work. When they came back and got me, we headed back toward town. We found the house on [redacted] t and they went inside and got all those guns. After we left that house, we decided to go to [redacted] Road. We found the house on [redacted] Road and they went in and robbed it. After we left that house, we decided to go back to Batesburg. We took Danny back to his house and he took a couple of things out of the car. He took the .9 mm and I believe he took a few shotguns. Once we left Danny's house, we went home and Duke and Sint unloaded my car. I then went to work in Batesburg.

Day of May 15th, 2007

Sint came over same time as usual and we got ready for school. The doctor's office was having a staff meeting in Greenwood so we decided to spend the day by ourselves and not tell my teacher that my doctor's office was closed for half the day. We left the school and headed toward Saluda. We stopped at Saluda Family Practice so I could get some papers I needed for school. Once we left there, we headed for Greenwood. When we got in Greenwood, we didn't really know where to go, so we rode around most of the day. We found the house on _____ Road and decided to go there. When we left there, we rode around some more. We went everywhere in Greenwood. We then found the house on _____ and did that house. When we left there, we went to Wendy's to get something to eat. I think Sint paid for our food but I might have used my check card. It was around 3:00 when we were leaving Greenwood. He ended up being on the phone with one of his home girls and we got into a fight. We didn't speak the whole way home. We went straight home and unloaded the stuff. Then I went to work in Batesburg.

Mrs. Janice · 6/13/07 C-Shirt



Major . OFC Ethredge. Completed a Shakedown on I/m t. McCormick
here is a small list of the items she found.

- 1 uniform shirt
- extra towels
- 3 letters to or from S. Summers

"one letter appears to be old, appears to be
the same letter that was in control."

* Letter place on board in
control.

John McCay

Don't Be a fool ~~but~~
talk to Kell's Lawyer you
call me I am your
Jettie

SIGN UP FOR PAPER LESS BILLING
TODAY AT SCEG.COM

6-4-07

1:25 pm

Why-baby-i miss you so much you are at day's on me...
 mind i'm constantly thinking about whether you are doing
 okay and if your getting enough sleep. we got a crazy woman
 in there one really isn't crazy she just has a bad attitude.
 one in there got into it the other day. she was acting like
 a child and i told her to grow up and stuff and we got
 into it but she got locked down but not me. i called your
 grandma the other day. she said you had written me but
 i still haven't got it. i wrote you 1 for but your grandma
 said you said you didn't get it. she said she was
 reading your letter to me soon but i haven't gotten it.
 i started my period so i'm not pregnant but its
 killing me. i feel really sick and stuff. that crap they
 gave us for lunch was really gross. i gave mine away.
 i have lost some weight. especially in my legs, or at
 least they seem thinner. when i get out of here, i think
 i'm curing my hair cuz this water in there is killing
 it and its hard to take care of. i'm also getting rid of
 all the blonde that you hate. i hope you getting
 good sleep cuz i'm not. the real crazy woman in
 there talks and screams to herself all night. she
 even beats up on herself. i'm surprised you can't hear
 her. she really loud. so what did you find out at
 court friday? i went on wednesday but the judge
 hasn't made his decision yet. i'm still going to border
 but i have to live at home the first semester. the

judge said i couldn't live anywhere else. your
 grandma said i better come see her when i get out.
 she said. shes been worried bout me. she also said she
 wasn't feeling good. i told her just to get some rest.
 hows your hair looking? i've been braiding a girls hair
 for there and we had a crackhead come thro the other
 day and she used to own a beauty salon and she said i
 could make good money braiding my daddy is trying
 to find me a job for when i get out. i saw your room
 when i was up front the other day. its like 5x bigger
 than ours! we can even walk around without stepping on
 each others. our tv was broken for a week. its was
 torture cuz we had nothing to do. i wish i could
 see you. do they read the mail in there? cuz i'll be
 pretty pissed if they wouldn't give you my letters? ...
 vice versa. i miss you so much baby! i wish ...
 things were different and i could touch your
 beautiful face and hold you in my arms. or, in
 case you didn't know, when god wednesday, this bond
 was \$21,000. i'll love you forever, you have
 my heart and i love you very very much. i hope
 you realize that i hope im your #1 and only girl
 now & i love baby. with love!

i love you,

Kels
 10's 4/eva
 Sint

Mrs. K. Summers

Ridgell's

COLUMBIA SC 292

2007 PM-3 L

Recd 1/16/78



Sentari Summers
205 E Church St.
Savannah GA 31403

29136+1403



11 4

... the sweetest! ... and ...
 ... and ...
 ... to send ...
 ... to you ...
 ... and ...

... to you but ...
 ... and ...
 ... to a ... woman ...
 ... in ...
 ... to a woman ...

... come get ...
 ... and ...
 ... are you ...
 ... to ...

... I talk to ...
 ... as ...
 ...
 ... next to me ...

... and ...
 ... of time ...
 ...
 ...
 ...
 ...

Jay Jettie. they want to start up
 straight to the point. I'll be
 send this letter to him at...

205 E Church St.

Spartanburg, SC 29152

I would appreciate it if you could send my
 love to your family!

Thanks,

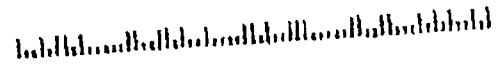
Kellie
 2

COLUMBIA SC 292
04 JUN 2007 PM 3 T



Mrs Kelly McCormack
Saluda, SC 29138

29138+1403



Dear Kels, W/B A.S.A.P.

What's up, boo? I miss you so, so, so much! I wonder if this time apart has been as hard for you, as it's been for me. Did you get the letter that I sent to my grandparents to send to you? I doubt it. My grandmother told me about it, but I didn't get it. And the trustees told me about the letter you tried to send me through Fred. And Fred said he gave it to Virginia (the head of the jail). Why did you think he was going to give it to me? Obviously, you haven't learned, "You can't trust the police!!!" This is the fourth note I've tried to send to you, and I doubt you've gotten any of them. I am going into visitation and I will be out in 15 minutes. So write me back quick and have it slid out of the door so I can get it on my way back to my cell. Answer all of my questions too.

So how have you been? Are you O.K.,
 considering the circumstances? Have you
 been working out for me? Are you preg-
 nant? It's all right!! JK, I love you
 baby. Did you get a bond? How much?
 Are you getting out anytime soon? I
 almost moved to Scotland but I didn't
 know I would have been able to talk
 to you through the walls. Can you hear
 through them? Do you want me to get
 moved over there? Do you miss me?

What's your last say? I think
 I'm gone be in here awhile (like 20
 years) are you going to wait on me?
 Faithfully? Well, no matter what, I'm
 gone always love you! And I'm sorry
 if you're pregnant! Are we still engaged
 how does a jailhouse wedding sound? Ha
 Ha lol. I think about you, and pray for
 everyday baby. I'm sorry this shit had to ha-
 ppen. Are you going to be able to still be
 a nurse, did you still graduate? I got us
 either way boo, just hold me down!!!

*(Your sign)
 Just a text*

I love you (even though
 you switched on
 me. Bonnie and Clyde)

Dear Shawty,

5-30-07.

Whats good? I'm sorry to hear about
you getting locked-up. I miss you so much
~~that I wish we could be together~~ I miss
it so how is everything? Are you working
on it? I hope so. I miss all the good times
we had. I'm even starting to miss the bad.

So when are you getting out? Soon
I hope. Write me back M.S.A.P. What
have your parents been saying? Jettie and
her family will visit you. I seen
them and David one day. I love you so
much and I'm really sorry you had to go
through this. Did you know you was on the
first page of the paper? I
wish I could see you, then I would
be so happy. You have a real good
I know, remember that Brand. You
probably will get out with money in your
pocket (at nothing). But I and

mod. But everybody else is. I still go - go
back, though.

Are you still going to be able to go
to the city? Are you still going to be able to
have your little sister? I hope so. I
want to see you so much. I want to see
you and our lives, as you can be. I
don't know what it is. Are we still eloped?
Are you pregnant? Is your mother so well?
I am so glad to hear of you. I am so glad
to hear of you. I am so glad to hear of you.
I am so glad to hear of you. I am so glad
to hear of you. I am so glad to hear of you.

Love

Allyson

Allyson

This letter is from
Helle McCormick in B
Unit to Sister Sumner
in Unit 2.

10.9.07

1030

Alia

COLUMBIA SC 292

1007 PM 3 7

Readilla, SC 29070

Sister Sumner

Sister, DE - 29138

2512541403 0001

|||||

Dear Dad,

What's up? Now are you doing? I'm ok just 'sittin' up here on my bunk rereading your letter. I just got my 12nd letter but I'm reading to Greenwood before I can go home. Did you get charged there too? The judge gave me some hope the other day at court. He said once I get out, if I prove the story for what I did and succeed, I can go home. I'm feeling pretty good about it. I'm feeling pretty good about it. I feel like going crazy, probably because I've been in here with me so crazy, as far as working out goes, sometimes I run in place. I do just a few jacks but our space is a lot smaller than yours. I agree with you about the good and bad times. I see things on TV or think of things we used to do and I wish to say I don't know when I'm getting out. All I know is when I get released in going to Greenwood. My parents have been super supportive. A lot of ppl are behind me. We gotten tons of letters and cards. My sis even told me the school and just get letters begging them to let her visit. My graduation today I love you so much too! Sometimes I just wonder why we did this because we were in a fight. We woulda made it then. I know we would've. I just don't know why we had to do this, you I know we were in the paper. A girl got booked the other day and told me she had a really change. We've also had a car theft, a DUI, and a assault come through. All of them got out the same day. I wish I can see you too baby. I feel like we're so close but it's not for many. I wanted to come to court on Friday just so I could see you. Yes, I'm going to college. Still going to London but not my other term. I am encouraging her to stay. Yes, I graduated. My lawyer brought me my charts and I see them and I'm just luck. So I got my diploma still.

2 Chide
 10 Pm
 @ 11:50am
 @ 6:50

Since I haven't been convinced of us yet, yes I still have
 my LNA degree. now you know when you get out you needa find a
 good job and do good with yourself so you won't get so much time. if
 not for yourself, at least do it for me, at least, in for your wife.
 and I always will be. WONT EVA GET THAT. so im not preggo. yes
 I kinda wish I was with you. I think I want to be with you. I think
 hopefully I'll have a sign of my baby on one day. we been thinking
 about start a lot since we been here. I dont know what to think.
 maybe because I wanted to have your baby. I know once I
 get out, we cant have any contact with each other. I miss you so
 much. I wish you could hold me. We please keep calling us the modern day
 Bonnie & Clyde. when I get out, I will write you everyday. I miss everything
 about you. I watched a pretty baby with the other boy and they were all
 in mind the whole time. you will always be my sexy baby. baby. baby.
 I even miss your nappy hood. and getting together with you. you would
 see the girls head I provided. She's been here for months. I like her
 heart beat we ever hear it. I got to be with you. I got to be with you.
 even get out last Wednesday. I used to talk to him. the whole time. have
 you got your board papers yet? what did they say? who with a
 surety. but you cant pay cash can you? tried to get a trustee
 to give you a letter but he wouldn't. maybe you should see if you can get to
 the work. no book. write longer. too late for I love you and you
 always have my heart.

I ♥ U
 /

Your loving
 Baby
 Baby

Dear Dad,

What's up now? I miss you & mom. I
 saw the letter that I sent to my grand-
 mother by hand to you. I didn't get your
 but she told me she sent it. I miss you.
 If you write us back in 15 minutes my
 mom's going back to pick it up, so leave
 it short and sweet.

X love, are you been? Are you O.K.? I've
 you written out for me? I heard it was a
 little up there pregnant, is it you? Were
 you on suicide watch? Did you get a letter?
 Are you getting out anytime soon? I almost
 moved to C pod but I didn't know if you
 were still here. And I didn't know I
 would have been able to talk to you through
 the vents. Do you miss me? What is your
 lawyer saying? I think I'm about to do
 20 years. Are you going to wait on me.
 Faithfully, Well, no matter how I'm gone
 always love you. And I hope you're still
 pregnant. Are we still getting married? U/S
 And don't tell the trustees to send me

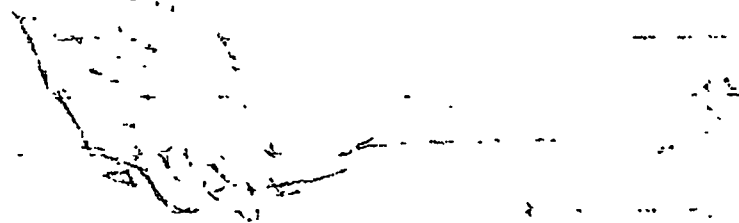
some people from the T. are very brave
(even though you are not)

p.s. I think about you and hope you
even get and more. I'm sorry you had to
go through this.

I am so glad.

Love, [unclear]

[unclear] [unclear] [unclear]



2:50 PM
 ♥ KELS
 @ 12:15 PM
 10/11/07

well hey there mr. sir! what ya doin? well im
 sittin' here on kick down in thank you! i ain't mad at
 ya. i think i'm gettin out today but im goin to
 g. wood jail. i think. unless my lawyer did sup. in
 me wed my sis. are going to go my inst. with
 get a. i jus got off of police with a
 secured. i'm gettin. i on my wrist and your
 superman thing on my foot. it took me awhile to
 figure. ut. i. lol. you know i kinda slow. my
 parents are a lil' pissed about me. but i can talk
 down. i just called them... i go 2 court in
 g. wood on tues. (next tues) hopefully i'll get out
 then. i'm doin' ok. considering circumstances. i
 wish i could see you. too! i miss you too baby! i
 every night i dream about you. i run sometimes in
 place but i have lost weight. i can tell. no i
 don't think i'm pregnant. i had my period a
 couple of weeks ago. but i keep gettin sick. i don't
 really eat anymore. i love you! you i got a
 bond. it's \$50,000. don't tell no one tho. and don't
 get mad piz. i heard you ain't get a bond. if you
 coulda get more 2 to C ASAR? dat is my. i
 me! dat's why i want to talk to you. i miss
 you. i want to see you. i want to see you. officer "X"
 went with me to my home and he told

I pretty much had no say in the future in
my hands. If I get out and to find then they will
probably let me go. I hope! So I also hear.

Also saying, you know! I'm not sure what's
in it for me. It doesn't do much of a
surprise, you denied me for the time before we
... I always will. I will wait on you! You know it!
Of course we are still engaged. We will have to
have a small wedding. If you would just
cooperate! I pray for you also since I know
the person you would be! Hopefully I will still get
to be a nurse, and you'll graduate! You know.
I always get you! You still get my name on your back?
We're back!

I love you,

My love

I love you

I love you

I love you

My love
Sincerely
Jimmie

My love

I love you

1 State of South Carolina Court of Common Pleas
2 County of Saluda

3
4
5 Sintari Summers)
6 Plaintiff,) Transcript of Record
7 v.) 09-CP-41-0011
8 State)
9 _____)

10 August 30, 2011
11 Lexington, South Carolina

12
13 B E F O R E:

14 The Honorable William P. Keesley, Judge.
15

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

17 John E. Duncan, Esquire
18 Attorney for the Plaintiff

19 Kaelon E. May, Assist. Attorney General
20 Attorney for the State

21

22

23

24

25

Stacy L. Sheppard, RPR
Circuit Court Reporter

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E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	C-1	Deposition	6	
4	C-2	Letters	6	
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1 (The following proceedings were held on
2 August 30, 2011.)

3 **MS. MAY:** Your Honor, the next case is Sintari
4 Summers v. State. The last term in May, I read the
5 procedural history into the record. I can go ahead
6 and do that again if you'd like or -- this is
7 essentially just -- between that time and this time,
8 as we put on the record in May, Mr. Mickey Ellisor,
9 who was the Applicant's plea attorney, he has had
10 some health problems and was not able to come to the
11 hearing and testify.

12 Both Mr. Duncan and myself have tried to
13 contact him and were not able to and I think due to
14 his continuing health problems. So we scheduled a
15 deposition of the Solicitor who handled the
16 Applicant's case, Mr. Ervin Maye. And with Your
17 Honor's permission, we were able to do that and that
18 occurred on Wednesday, June 22nd. And in your
19 packet, Your Honor, you have a transcript of that
20 deposition.

21 And today we're just here for a reply from the
22 Applicant to the deposition. And the first thing
23 that I would like to do, if it pleases the Court, is
24 to move the deposition and the attached exhibits
25 into the record.

1 **THE COURT:** Mr. Duncan.

2 **MR. DUNCAN:** Yes, sir. We did take the
3 deposition, so we have no objection to that.

4 **THE COURT:** Do you have the original?

5 **MS. MAY:** Yes, Your Honor.

6 Your Honor, these are the original exhibits
7 that were photocopied and made a part...

8 **THE COURT:** Are the exhibits in there?

9 **MS. MAY:** These are copies of the exhibits and
10 these are the originals that the Solicitor provided.
11 We'd like to go ahead and move the originals. I
12 guess there's some clarity issues with the copies.

13 **THE COURT:** Mark the deposition as Court's
14 Exhibit 1. Mark the original exhibits to the
15 deposition as -- do you want them marked separately
16 or together?

17 **MS. MAY:** It's a series of letters. We can do
18 it separate -- whatever's easiest.

19 **THE COURT:** Mark them as Court's Exhibit 2
20 together.

21 **MR. DUNCAN:** The issue, Judge, is the
22 photocopies are just so bad that -- I believe some
23 of them might be written in pencil and so that's --
24 the originals do need to be in the record.

25 **THE COURT:** That's fine.

1 (Court's Exhibit Number 1, deposition, and
2 Court's Exhibit Number 2, letters, marked for
3 identification purposes.)

4 **THE COURT:** All right. Anything else we need
5 to put on the record from the State?

6 **MS. MAY:** No, Your Honor.

7 **THE COURT:** The Applicant?

8 **MR. DUNCAN:** Your Honor, I'd call Mr. Summers.

9 **THE COURT:** Come around, please, sir.

10 SINTARI SUMMERS,

11 having been duly sworn, testified as follows:

12 **THE CLERK:** Have a seat and state your name for
13 the record, please.

14 **MR. DUNCAN:** And, Your Honor, this is a little
15 out of order, but so I don't forget, I had written
16 Mr. Ellisor concerning reviewing a file or talking
17 to him about this case. That was approximately a
18 month ago. And I received no response. I had
19 spoken to him prior, probably six months ago, and he
20 had great difficulty in speaking at that time, but
21 that's the only contact I have had with him.

22 **MS. MAY:** Your Honor, I also attempted to
23 contact Mr. Ellisor by letter sent to his home
24 address. That letter is dated August 12th. And I
25 have not received a reply to it.

1 **THE COURT:** I think he had a stroke, if I
2 recall, and I don't -- I'm not sure of that. It may
3 be something different, but in any event, I haven't
4 seen him in any court in the Eleventh Circuit in
5 quite some time.

6 **MR. DUNCAN:** Your Honor, he confirmed for me in
7 the telephone conversation that he had had a stroke.
8 That was approximately six months ago and he was
9 having difficulty. He said he was getting along all
10 right, but he had difficulty with his speech. And
11 then I told him I would be back in touch and he had
12 indicated he would look for his file. Then I wrote
13 him about a month ago and did not -- and called and
14 left a message and have not received any responses.

15 **THE COURT:** Okay. Go ahead, Mr. Duncan.

16 DIRECT EXAMINATION

17 BY MR. DUNCAN:

18 **Q** Mr. Summers, your original complaint has always
19 been that, and correct me if I'm wrong, has been
20 that Mr. Ellisor did not discuss the case with you,
21 correct?

22 **A** Yes, sir.

23 **Q** All right. Now, since the -- since I've been
24 representing you --

25 **MR. DUNCAN:** If I can approach the witness for

1 a second, Your Honor?

2 **THE COURT:** Yes, sir.

3 BY MR. DUNCAN:

4 **Q** I'm going to show you several hundred pages of
5 warrants and police reports. Can you identify what
6 those items are, not each one specifically, but in
7 general?

8 **A** Yes, sir.

9 **Q** And what is that?

10 **A** My Rule 5 motion discovery.

11 **Q** That's your discovery, all right. And had you
12 previously received a copy of this?

13 **A** No, sir, not until you gave it to me.

14 **Q** Okay. Now, have you had the opportunity to
15 review -- strike that -- you were present for
16 Mr. Ervin Maye, the Assistant Solicitor's
17 deposition, correct?

18 **A** Yes, sir.

19 **Q** All right. And you consulted with me during
20 that and prior to my questioning him after Ms. May
21 questioned him?

22 **A** Yes, sir.

23 **Q** And you're aware that even though they have the
24 same last name, they are not related?

25 **A** If she says so.

1 Q All right. To your knowledge, they're not
2 related, okay. And there is a different spelling.

3 Now, Mr. Summers, you've read the transcript of
4 the deposition?

5 A Yes, sir.

6 Q And this is your opportunity to respond to
7 that.

8 A I'm saying the whole argument is I was going
9 against the voluntariness of my plea because I never
10 intended to plead guilty. And on the transcript,
11 him -- Mr. Ervin Mayes [sic] is saying that there
12 was -- I wrote statements and I confessed to these
13 crimes when it's not true.

14 On page 10 -- Mr. Duncan, do you have that same
15 copy of the transcript? Can I see your copy?

16 Q Sure.

17 A Because I don't think it's numbered the same.

18 All right. Page 25, I'm saying -- Mr. Mayes is
19 saying that I confessed and he continually say that
20 -- say, he was arrested, he was mirandized, but I
21 don't have -- there's no statements in the motion.
22 I never signed any statements, erroneous statements,
23 or confessed to any of those crimes.

24 But that's all that I'm going against is the
25 confession. I never confessed to these crimes

1 because I didn't commit them. And, furthermore, I
2 never saw -- if I had saw my motion to discovery
3 originally, I would have never confessed. I would
4 have never -- I mean, I would have never pled
5 guilty.

6 That's what it is. Page 38 line number 15, So
7 it would be fair to say it was an oral statement and
8 not reduced to writing. And he says he doesn't
9 recall anything in writing. But he repeats
10 throughout the transcript that it is a written
11 statement, but there is no written statement period.

12 **Q** Anything else, Mr. Summers?

13 **A** No.

14 **MR. DUNCAN:** All right. Answer any questions
15 that the Attorney General might have.

16 **MS. MAY:** The State has no questions, Your
17 Honor.

18 **THE COURT:** Is that all you need to tell me,
19 Mr. Summers?

20 **MR. SUMMERS:** I'm saying I'm going up because I
21 never saw my motion of discovery. If Mr. Ellisor
22 was here, I'm sure he would affirm that. Mr. Ervin
23 Mayes is trying to speak on his behalf when he was
24 never there or he cannot say that Mr. Ellisor ever
25 gave me that motion of discovery.

1 Furthermore, I pled to a life sentence and I'm
2 still facing a life sentence when Mr. Ellisor told
3 me that it would be ran concurrent with the time
4 that I already have.

5 **THE COURT:** I don't understand what you mean.

6 **MR. DUNCAN:** Your Honor, if I can interject. I
7 think Mr. Summers is referring to he has charges
8 that are still pending, burglary charges that are
9 still pending in Greenwood County.

10 Is that correct, Mr. Summers?

11 **MR. SUMMERS:** Yes, sir.

12 **MR. DUNCAN:** Okay. And he was under the
13 impression that those were going to be taken care of
14 at the same time, I believe, is what he's saying.

15 **MR. SUMMERS:** Yes, sir.

16 **THE COURT:** Is that addressed in the
17 deposition?

18 **MR. DUNCAN:** No, sir, Your Honor, because it's
19 another judicial circuit.

20 **MS. MAY:** Your Honor, if I may.

21 **THE COURT:** Yes, ma'am.

22 **MS. MAY:** Those other pending charges were
23 addressed on the record at the guilty plea hearing.

24 **THE COURT:** Do I have the packet from the
25 previous PCR hearing?

1 **MS. MAY:** Yes, Your Honor, I believe you do. I
2 believe that original trans -- well, I don't think
3 we have the transcript for that PCR hearing, but the
4 guilty plea transcript should be in your packet. If
5 not, I can provide you a copy.

6 **THE COURT:** What are all these attachments to
7 the deposition?

8 **MS. MAY:** Those are letters between Mr. Summers
9 and a defendant that were found in the
10 co-defendant's cell after a shakedown or something
11 of that sort, as well as looks like just a summary
12 of statements between -- I guess there are -- this
13 was a string of robberies -- burglaries, sorry,
14 excuse me. And the other attachments are summaries
15 of other statements made by the other co-defendants
16 in this case.

17 Your Honor, I believe on page 12 of the guilty
18 plea transcript is where the judge addresses the
19 Greenwood County criminal charges.

20 (Pause.)

21 **THE COURT:** Do you all want to address that on
22 page 12 of the transcript of the guilty plea,
23 Solicitor Mr. Maye is talking about the charges in
24 Greenwood County? It reads, I certainly don't have
25 any way to find them in any regard to anything that

1 might be pending in another county, but this would
2 clear the slate for Saluda.

3 I imagine he said bind them and not find them,
4 but the transcript reads find them.

5 But then the judge interrupts and states a
6 clarification about that. He asked Mr. Ellisor if
7 Mr. Ellisor has explained that the charges from
8 another county would still be out there.
9 Mr. Ellisor stated, I have explained that to him and
10 he understands that. And then the judge asked
11 Mr. Summers, Do you understand that, Mr. Summers?
12 And the response is, yes, sir.

13 Do y'all want to address that now or not?

14 **MR. SUMMERS:** Mr. Ellisor had assured me and
15 affirmed that he'd be able to get those charges ran
16 concurrent with the charges once I took that plea
17 right there. He said we would have to go to court
18 again, but they would be ran concurrent with the
19 time that I caught on the 15 to life. If he was
20 here, I'm certain he'd admit to giving me that
21 assurance.

22 **THE COURT:** Mr. Ellisor was representing you on
23 the Greenwood charges, too?

24 **MR. SUMMERS:** He said he'd be able to get those
25 charges ran concurrent.

1 **THE COURT:** Was he appointed or retained?

2 **MR. SUMMERS:** Appointed.

3 **THE COURT:** Well, how did he represent you on
4 Greenwood charges?

5 **MR. SUMMERS:** He didn't represent me. We never
6 went to court on the charges. He told me we would,
7 that they'd be ran concurrent. Had I known that
8 they wouldn't be ran concurrent, I would have never
9 pled to a life sentence and still be facing three
10 life sentences.

11 **THE COURT:** How do you know that they aren't
12 going to be run concurrent?

13 **MR. SUMMERS:** Because my people has called
14 Greenwood and they said the charges are still
15 pending. I have a hold in Greenwood County as of
16 right now.

17 **THE COURT:** Do you have a lawyer on those
18 charges?

19 **MR. SUMMERS:** No, sir.

20 **THE COURT:** Are they from 2007 as well?

21 **MR. SUMMERS:** They were all -- the crimes were
22 committed in the same time, yes, sir.

23 **THE COURT:** Do y'all have anything else?

24 **MR. DUNCAN:** No, sir, Your Honor.

25 **THE COURT:** Anything else?

1 **MS. MAY:** Your Honor, we would just stand by
2 the transcript. Mr. Ellisor stated that he
3 explained to him that the charge would still be out
4 there. The court asked Mr. Summers if he understood
5 that. He indicated he did understood [sic] that
6 they would still be out there and pending. So I
7 would just stand by what the transcript says.

8 **THE COURT:** Do you have anything else you need
9 to tell me, Mr. Summers?

10 **MR. SUMMERS:** No, sir.

11 **THE COURT:** Okay. Thank you.. You can step
12 down.

13 Mr. Duncan, you discussed with Mr. Summers the
14 fact that if he is granted his post-conviction
15 relief application, he goes back and faces six
16 burglary charges?

17 **MR. DUNCAN:** Six burglary first charges, yes,
18 sir, Your Honor, I have.

19 **THE COURT:** And plus the Greenwood charges?

20 **MR. DUNCAN:** Yes, sir.

21 **THE COURT:** So he understands he's got the
22 possibility of getting six life sentences plus
23 whatever's in Greenwood County?

24 **MR. DUNCAN:** Yes, sir. And that was addressed
25 in the deposition, also.

1 **THE COURT:** Okay. Thank you.

2 I'll review the transcripts and notify you of
3 my decision in writing. Thank you.

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5 END OF PROCEEDINGS

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Saluda County, South Carolina, on the 30th of August, 2011.

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

August 17, 2012

A handwritten signature in cursive script that reads "Stacy L. Sheppard". The signature is written in dark ink and is positioned above the printed name.

Stacy L. Sheppard, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

Sintari A. Summers, 326274,

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case No. 2009-CP-41-00011

ORDER ON POST-CONVICTION RELIEF

The Applicant seeks Post-Conviction Relief (PCR). The application is denied. The Attorney General's office is to submit a proposed order within 30 days.

After the court heard the Applicant's testimony, the hearing was adjourned, at the request of counsel, for an extended period to allow the parties to develop additional evidence. This was due to the fact that the attorney who represented Mr. Summers at his guilty plea had suffered a stroke and was unavailable to testify. That attorney's condition apparently did not significantly improve. The parties agreed to take the deposition of the Assistant Solicitor who prosecuted the cases in Saluda County against Mr. Summers. The court has been advised that the parties do not desire to reconvene the hearing, but to have the court decide the case on the testimony, including the deposition, and the records of the case.

The Applicant has failed to meet his burden of proving ineffective assistance or prejudice. The underlying case was one of a string of burglary charges lodged against Mr. Summers and several co-defendants in Saluda County. There is an issue concerning outstanding charges in Greenwood County for burglaries allegedly committed in the same crime spree. The defendant entered a plea bargain whereby he tendered a plea of guilty to one count of burglary in the first degree, and all the other charges pending against him in Saluda County arising from the string of burglaries were dismissed. The sentencing was to be in the discretion of the judge. The record of the plea colloquy makes it clear that the defendant understood that he was facing a mandatory minimum sentence of 15 years imprisonment, with the possibility of a sentence up to life imprisonment.

(The record clearly states that the defendant understood that the sentence would be treated as one for a violent offender, that it would constitute a strike, and that it required Mr. Summers to serve at least 85% of the sentence before being eligible for release.) In addition, the judge clearly notified Mr. Summers that the disposition of the Saluda case did not cover what was to happen to the Greenwood charges. Mr. Summers' testimony concerning the Greenwood charges is not credible.

He was not eligible for a Youthful Offender sentence, and the Assistant Solicitor's testimony makes it abundantly clear that Mr. Summers was considered the ring-leader of the crime spree and that the State did not and would not have entered into a plea bargain whereby he would receive a Youthful Offender sentence. Some or all of the co-defendants were willing to testify against Mr. Summers. He confessed to the crime. Proceeds of the crimes, including guns, were found and linked to Mr. Summers.

The court does not find Mr. Summers to be a credible witness. He received a sentence of 18 years, and the evidence presented demonstrates that his attorney obtained as favorable a result for Mr. Summers as could be expected under the facts. It is apparent that the sentencing judge took into consideration the youth of the defendant, his family support, and his relatively minor prior criminal record. The transcript of the plea does not indicate that the Solicitor attempted to "pile on" aggravating factors. Plea counsel had family members of the defendant present who stated their support for the Applicant, and the record reflects that the sentencing judge was not deeming the Applicant to be a particularly bad individual, but someone who allowed himself to be caught up in a bad situation. The judge obviously felt that mitigating factors had been put forward. There is no evidence of actual innocence.)

THEREFORE, IT IS ORDERED that the application for PCR is denied. The Attorney General is to submit a proposed order within 30 days.

IT IS SO ORDERED.

Date: March 1, 2012

William P. Keesley, Judge

Court Reporter: R. Thomas

Attorney for Applicant: John E. Duncan, Esq.

Attorney for State: Asst. A.G. Kaelon E. May

SC Attorney General
RECEIVED

MAR 08 2012

Referred to

Answered

K. Nix
K. Nix

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

Sintari Summers, #326274,

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.

2009-CP-41-11

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

John E. Duncan, Esquire, Bar No.

Address:

137 E. Butler St., Ste. 3 Lexington, SC 29072

phone:

fax:

e-mail:

other:

Defendant's Attorney:

Kaelon E. May, Bar No. 80469

Address:

Post Office Box 11549 Columbia SC 29211-1549

phone: (803) 734-3747 fax: (803) 734-4113

e-mail:

other:

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

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached☒ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

March 30, 2012

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☒ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

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

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

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

The Supreme Court of South Carolina

Sintari A. Summers,

Petitioner,

V.

State of South Carolina,

Respondent.

The Honorable William P. Keesley
Saluda County
Trial Court Case No. 2009-CP-41-00011

ORDER

Petitioner has served and filed a notice of appeal from an order dated March 1, 2012. Twice in this order, the Attorney General's Office is directed to submit a proposed order within thirty days.

Since another order will be prepared, the March 1, 2012, order is not the final decision in this matter. Accordingly, the notice of appeal is hereby dismissed without prejudice to petitioner's ability to timely serve and file a notice of appeal once a final decision is entered in this matter. *Cf. Lewis v. State*, 368 S.C. 630, 630 S.E.2d 464 (2006) ("only a final decision or

judgment in a post-conviction relief action is subject to review"). The remittitur will be sent as provided by Rule 221, SCACR.

IT IS SO ORDERED.



FOR THE COURT A.C.J.

Columbia, South Carolina

April 2, 2012

cc: John Earl Duncan, Esquire
Assistant Attorney General Kaelon E. May

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

FILED

2012 APR 12 PM 11:27

CLERK OF COURT
SALUDA CO. S.C.IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2009-CP-41-11

Sintari A. Summers, #326274,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

C. J. #1

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed January 22, 2009. Respondent made its Return on June 29, 2009. An evidentiary hearing into the matter was convened on August 30, 2011, at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by John E. Duncan, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, the Applicant offered the deposition testimony of Ervin May, Esquire. This Court also had before it the records of the Saluda County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Saluda County Clerk of Court. The Applicant was indicted at the July 2007 term of the Saluda County Grand Jury for Burglary—1st Degree (2007-GS-41-376).

He was represented by Michael Ray Ellisor, Esquire. On January 22, 2008, the Applicant pled guilty as indicted. He was sentenced by the Honorable James W. Johnson, Jr., to confinement for a period of eighteen (18) years. The Applicant did not appeal his guilty plea or sentence.

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

1. Ineffective assistance of counsel;
 - a. "I requested that my attorney file a direct appeal on my behalf, and he said that he would. However, he never filed it."
2. Involuntary guilty plea.
 - a. "My attorney failed to provide me with an accurate idea of the State's case against me. Had I been sufficiently informed, I would not have pleaded guilty, and would have insisted on proceeding to trial."

II. SUMMARY OF EVIDENCE AND TESTIMONY PRESENTED AT THE PCR EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing Applicant testified that Mr. Ellisor was appointed to represent Applicant and that Applicant was arrested in 2007. Applicant testified that his co-defendants were charged with the same crimes and all received YOA sentences. Applicant testified that he was not sure if a discovery packet was provided to plea counsel; that Applicant never saw his discovery materials; that the discovery materials contained written statements made by Applicant's co-defendants, statements made by the police in their dealings with Applicant, and search warrants and evidence obtained at Applicant's father's residence. Applicant testified that plea counsel failed to investigate, failed to conduct legal research, and failed to review the statements of Applicant's co-defendants with

Applicant. Applicant testified that he spoke with plea counsel one time prior to the guilty plea hearing and that they discussed the possibility of Applicant receiving a YOA sentence. Applicant testified that plea counsel failed to put the state's case to an adversarial testing, that after the guilty plea hearing plea counsel told Applicant he would get the Greenwood charges run concurrent, and that Applicant entered his guilty plea without knowing about he would have two strikes against him.

Applicant testified that the search warrant should have been suppressed because the search warrant was for someone else's house, that the location was on Holly Street, that this was Applicant's father's house, and that the house was searched illegally. Applicant testified that he did not ask plea counsel to interview the co-defendants even though Applicant wanted plea counsel to do so. Applicant testified that the weapon seized from his father's house was used in the burglaries but that applicant took no part in the burglaries. Applicant testified that he was either in jail or at work when the burglaries were committed. Applicant testified that he pled guilty out of fear of a life sentence.

Mr. Maye's Testimony

Mr. Maye's testimony was taken by deposition on June 22, 2011, at the Lexington County Detention Center. The original transcript of Mr. Maye's deposition was entered into the record at the PCR hearing.

Mr. Maye testified that Applicant along with his co-defendants were all charged with a string of burglaries that were ~~over~~ ⁱⁿ in Saluda County, and some in Greenwood County. Mr. Maye testified that he is an assistant solicitor for the eleventh circuit and handled the prosecution of Applicant. Mr. Maye testified that he first became aware that Mr. Ellisor was representing Applicant on the charges when Mr. Maye received a Rule 5 motion and communication from plea counsel on January 13,

2007. Mr. Maye testified that the discovery materials were provided to plea counsel and that Mr. Maye had the occasion to review with plea counsel numerous other items including some papers that were correspondence between Applicant and a co-defendant. Mr. Maye testified that he had several meetings with plea counsel about the discovery in the case and the progression of the Solicitor's office handling the co-defendant's case, and plea counsel attempting to negotiate a more favorable result on behalf of Applicant. Mr. Maye testified that plea counsel engaged him on numerous occasions in an attempt to try to persuade Mr. Maye to let Applicant plead to something less than burglary first. Mr. Maye testified that all the co-defendants were willing to testify against Applicant, that one co-defendant gave a summary of twelve burglaries in which she indicated Applicant was the ring leader, and that Mr. Maye informed plea counsel of this information. Mr. Maye testified that he was not going to let Applicant plead to anything other than a burglary first, that plea counsel informed Mr. Maye that counsel spoke with Applicant, and that Mr. Maye informed counsel that if Applicant chose not to plead guilty then we would try Applicant for as many cases as was necessary.

Mr. Maye testified that the evidence and all the co-defendants pointed towards Applicant as the ring leader and Applicant's case was therefore treated differently than his co-defendants. Mr. Maye testified that he met with plea counsel on numerous occasions, that plea counsel had all the discovery materials, that Mr. Maye reviewed some of the discovery with plea counsel, and that Mr. Maye knew counsel met with Applicant about the discovery. Mr. Maye testified that Applicant gave an oral confession when he was arrested after being ~~Mirandized~~ ^{Mirandized}, that the correspondence recovered between Applicant and a co-defendant reveal that Applicant knew the co-defendant was a cooperating witness as Applicant in his letters indicated that he knows she snitched on Applicant.

Mr. Maye testified that he had worked with plea counsel in an adversarial setting prior to Applicant's case for a number of years, that plea counsel knew the solicitor's office practices, and that Mr. Maye was familiar with the way counsel handled cases. Mr. Maye testified that he always throughout the case indicated to plea counsel that they were going to try Applicant for burglary first, that Applicant was going to have to take an adult sentence, and that was an unchanging constant in all negotiations that Mr. Maye had with plea counsel. Mr. Maye testified that he never offered a YOA sentence to Applicant or plea counsel and that counsel informed Mr. Maye that counsel was relaying all plea negotiations discussions to Applicant. Mr. Maye testified that counsel indicated to him that counsel's advice to Applicant was to plead guilty, that it was just an overwhelming set of facts for any defense lawyer to be faced with, a confession, search warrants, and multiple co-defendants willing to testify against Applicant.

WPC
#5
Mr. Maye testified that with regards to some of the co-defendant's statements allegedly being inconsistent, he did not find that to be the case, that many people were involved in the string of burglaries, and that he did not find any conflicting evidence on any significant factual detail in the case. Mr. Maye testified that one co-defendant gave very detailed summations that were corroborated by the stolen items recovered at Applicant's residence and that it would not have been any trouble prosecuting these cases because it was ^{AN (WPC) (JJD)} absolute, overwhelming case against Applicant. Mr. Maye testified that Applicant was fully aware that his co-defendants were willing to testify against him and that this was reflected in Applicant's letters, ^(WPC) Mr. Maye testified that the burglaries took place over a month-long period. Mr. Maye testified that plea counsel attempted to poke holes in the evidence, that neither Mr Maye or plea counsel saw any deficiencies at least as to the confession or as to any work that the police did with the search warrants. Mr. Maye testified that he reviewed all correspondence

that was seized from a co-defendant's cell with plea counsel and that all typed summations given by a co-defendant were provided to plea counsel.

III. APPLICABLE LAW

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he

would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

WPA #7
Applicant asserts that plea counsel was ineffective for failing to review the discovery materials with Applicant; for failing to ^{MAKE SURE THAT} ensuring the Greenwood County charges would be dismissed or run concurrent to the Saluda County charges; and for failing to provide Applicant with an accurate idea of the State's case against Applicant. This Court finds that Applicant has failed to meet his burden of proving counsel's performance was deficient or ^{THAT HE SUFFERED} prejudice. The underlying case was one of a string of burglary charges lodged against Applicant and several co-defendants in Saluda County. Applicant entered a plea bargain whereby he tendered a plea of guilty to one count of burglary in the first degree, and all the other charges pending against Applicant in Saluda arising from the string of burglaries were dismissed. Applicant was not eligible for a Youthful Offender sentence, and Mr. Maye's testimony makes it abundantly clear that Applicant was considered the ring-leader of the

crime spree and that the State did not and would not have entered into a plea bargain whereby Applicant would receive a Youthful Offender sentence.

This Court finds that some or all of the co-defendants were willing to testify against Applicant. Applicant confessed to the crime. Proceeds of the crimes, including guns, were found and linked to Applicant. The correspondence between Applicant and a co-defendant demonstrate that Applicant was aware that at least one co-defendant was cooperating witness for the State. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover which would have caused him to proceed with a jury trial instead of pleading guilty. This Court does not find Applicant to be a credible witness. Applicant received a sentence of eighteen years, and the evidence presented demonstrates that plea counsel obtained as favorable a result for Applicant as could be expected under the facts. This Court finds the Applicant offered no evidence at the PCR hearing that counsel could have found that would have been likely to have any outcome more favorable to the Applicant. The Applicant did not produce any witnesses or offer any other evidence from which this Court could conclude that the outcome of the case would likely have been different, had that evidence been developed. This Court finds that Applicant failed

to show counsel's performance was deficient and any resulting prejudice. Therefore, this Court finds that these allegations are denied and dismissed.

With regard to the Greenwood County charges, this Court finds that Applicant failed to meet his burden of proof in showing plea counsel was ineffective for failing to ensure the Greenwood County charges would be either dismissed or run concurrent with the Saluda County charges. At the guilty plea hearing the judge asked plea counsel whether he explained to Applicant that the Greenwood County charges would still be ~~out there~~ ^{WPC} pending after the guilty plea, and ~~plea~~ ^{WPC} counsel ~~was~~ ^{WPC} responded that he did explain that to Applicant, and that Applicant understood. (Tr. p.12, lines 11-16). The plea judge then asked Applicant directly whether Applicant understood that the Greenwood County charges remain pending against Applicant, and Applicant indicated that he understood: (Tr. p.12, lines 11-18). This Court finds that Applicant was aware that the Greenwood County charges were not being dismissed or being run concurrent with the Saluda charge. The plea judge clearly notified Applicant that the disposition of the Saluda case did not cover what was to happen to the Greenwood charges. This Court finds that Applicant's testimony concerning the Greenwood charges is not credible. This Court finds that Applicant has failed to show plea counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

Involuntary Guilty Plea

Applicant asserts that plea counsel failed to provide Applicant with an accurate idea of the State's case against Applicant, and that had Applicant been sufficiently informed, Applicant would not have pleaded guilty, and would have insisted on proceeding to trial. This Court finds that Applicant failed to meet his burden of proof in showing that his guilty plea was involuntary. At the

guilty plea hearing, the judge asked Applicant if Applicant told plea counsel everything that Applicant knew about the case so that plea counsel could fully defend Applicant in the case; and Applicant indicated that he did. (Tr. p.7, lines10-13). Applicant indicated to the plea judge that plea counsel did everything Applicant asked of him and that Applicant was satisfied with plea counsel's representation. (Tr. p.7, lines14-19). The record reflects that the plea judge fully explained to Applicant; Applicant's constitutional rights, that Applicant would give up these rights by pleading guilty, and that Applicant indicated he understood and wanted to give up his rights. (Tr. p.8-10, line22). Applicant informed the plea judge that he made the decision to plead guilty freely and voluntarily. (Tr. p.7, lines2-6).

This Court finds that the record clearly states that Applicant understood that the sentence would be treated as one for a violent offender, that it would constitute a strike, and that it required Applicant to serve at least eighty-five percent of the sentence before being eligible for release. Applicant indicated to the plea judge that he was guilty of burglary in the first degree. (Tr. p.10, lines23-24). The sentencing was to be in the discretion of the judge. The record of the plea colloquy makes it clear that Applicant understood that he was facing a mandatory minimum sentence of fifteen years imprisonment, with the possibility of a sentence up to life imprisonment. This Court finds that the plea judge took into consideration the youth of Applicant, his family support, and his relatively minor prior criminal record. The transcript of the guilty plea hearing does not indicate that the Solicitor attempted to "pile on" aggravating factors. Plea counsel had family members of the Applicant present who stated their support for Applicant, and the record reflects that the plea judge was not deeming Applicant to be a particularly bad individual, but someone who allowed himself to be caught up in a bad situation. The plea judge obviously felt that mitigating factors had been put

forward. This Court finds that there is no evidence of actual innocence. This Court finds the overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). This Court finds no evidence in the record demonstrating that Applicant was forced or coerced into pleading guilty. Therefore, this Court finds that this allegation is denied and dismissed.

All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, 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. *THERE WAS NO CREDIBLE EVIDENCE THAT THE APPLICANT INSTRUCTED HIS PLEA ATTORNEY TO APPEAL.*

V. CONCLUSION

Based on all the forgoing, 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 for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty

(30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCR; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 11TH day of April, 2012.

#12


 William P. Keesley
 Presiding Judge

Edgefield, South Carolina

**AMENDED NOTICE OF APPEAL FROM A SENTENCE IMPOSED BY
THE COURT OF COMMON PLEAS**

THE STATE OF SOUTH CAROLINA
[In The Supreme Court]

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

WILLIAM P. KEESLEY, Circuit Court Judge

Case No. 2009-CP-41-11

SINTARI SUMMERS #
326274

Applicant

v

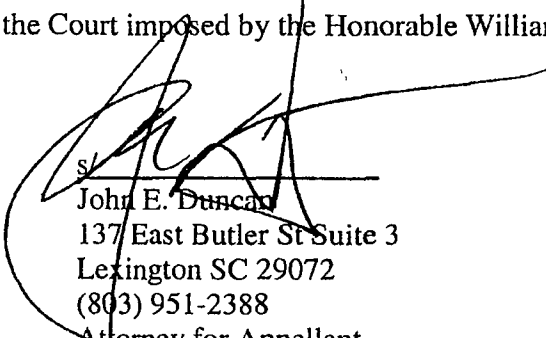
State of South Carolina

Respondent.

NOTICE OF APPEAL

Sintari Summers, appeals the Order of the Court imposed by the Honorable William P. Keesley received on April 19, 2012.

April 27, 2012


s/ John E. Duncan
137 East Butler St Suite 3
Lexington SC 29072
(803) 951-2388
Attorney for Appellant

Other Counsel of Record:
Kaelon May, Assistant Attorney General
Attorney for Respondent
P.O. Box 11549
Columbia, South Carolina 29211

FORM 7
AMENDED PROOF OF SERVICE OF NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
[In The Supreme Court]

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

WILLIAM P. KEESLEY, Circuit Court Judge

Case No. 2009-CP-41-11

Sintari Summers # 326274,

Applicant

v.

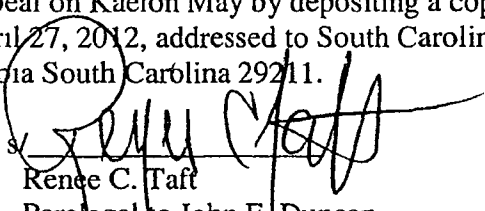
State of South Carolina,

Respondent.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Kaelon May by depositing a copy of it in the United States Mail, postage prepaid, on April 27, 2012, addressed to South Carolina Attorney General's Office, P.O. Box 11549, Columbia South Carolina 29211.

April 27, 2012


s/ Renee C. Taft
Paralegal to John E. Duncan
137 East Butler Street Suite 3
Lexington South Carolina 29072

STATE OF SOUTH CAROLINA

IN THE JRT OF GENERAL SESSIONS

COUNTY OF SALUDA
STATE VS.

INDICTMENT/CASE#:

2007-GS-41-376

SINTARI SUMMERS

AW#: J 140707

AKA:

Date of Offense: 5/14/07

Race: B

Sex: M

Age:

S.C. Code § 16-11-0311(8)

DOB:

SS#:

CDR Code #: 0079

Address:

409

City, State, Zip

DL#

SID#

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO Burglary 1stin violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$_____

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

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

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

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

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

\$73.3, 1B TP (Law Enforce Funding) \$25 \$ 25.00

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

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

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

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.25

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

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

pmts of \$_____ beginning _____

\$_____ paid to Public Defender Fund

Other: _____

Recommend restitution - joint present - be made condition of community supervision.☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

TRUE COPY

ATTES

D. D. D.

Clerk of Court

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

S. C.

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S. C.

S. C.

S. C.

S. C.

S. C.

PRESIDING JUDGE

Judge Code: 2Sentence Date: 2-22-08Court Reporter: Joy I. Holton

WITNESSES

Crouch

SCSO

ARREST WARRANT NUMBER

J 140707

ACTION OF GRAND JURY

TRUE BILL

Donald Boozer

Foreperson of Grand Jury

Date:

JUL 11 2007

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-41-

376

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

JULY TERM 2007

THE STATE

vs.

SINTARI SUMMERS

CDR# 0079

Indictment for

BURGLARY - 1ST DEGREE

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Doris B. Johnson

Clerk of Court
Saluda, S. C.

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF SALUDA

PERSONALLY APPEARED BEFORE ME, JUDGE OF THE COURT, THE AFFIANT, CPL CHRIS CROUCH, WHO BEING DULY SWORN, DEPOSES AND STATES THAT THE DEFENDANT, SINTARI SUMMERS, DID WITHIN THE COUNTY OF SALUDA, STATE OF SOUTH CAROLINA, COMMIT THE FOLLOWING OFFENSE

BURGLARY 1ST

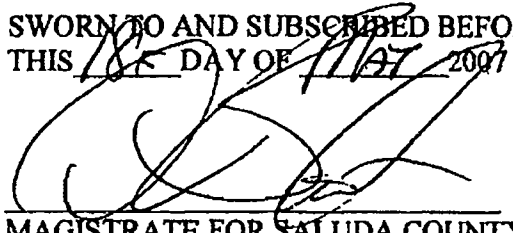
16-11-311

THE DEFENDANT DID ON MAY 14, 2007 VIOLATE THE LAWS OF THE STATE OF SOUTH CAROLINA BY ENTERING THE RESIDENCE OF RD. SAME BEING SALUDA COUNTY. THE DEFENDANT DID ENTER THE RESIDENCE WITH THE INTENT TO COMMIT A CRIME AND DID TAKE A 9MM SEMI-AUTOMATIC PISTOL. THIS IS IN VIOLATION OF THE SECTION CODE 16-11-311 OF THE 1976 SOUTH CAROLINA CODE OF LAWS AS AMENDED.

SIGNATURE OF AFFIANT



SWORN TO AND SUBSCRIBED BEFORE ME
THIS 18TH DAY OF MAY 2007


MAGISTRATE FOR SALUDA COUNTY

ARREST WARRANT

J140707

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

SALUDA COUNTY

THE STATE

against

SUMMERS, SINTARI

Address: _____

Phone: _____ SSN: _____

M Race: B Height: 5' 8" Weight: 165

State: _____ DL #: _____

DOB: _____ Agency ORI#: SC0410000

Prosecuting Agency: SALUDA SHERIFFS OFFICE

Prosecuting Officer: C. CROUCH

Offense: BURGLARY 1ST DEGREE

Offense Code: G039F

Code/Ordinance Sec. 16-11-311

This warrant is **CERTIFIED FOR SERVICE** in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant **SUMMERS, SINTARI**

on _____

C. S. Byrd **5-18-07**

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

D. BRUCE HORNE

108 SOUTH RUDOLPH STREET

SALUDA, SC 291380000

STATE OF SOUTH CAROLINA)

☒ County/ ☐ Municipality of)

SALUDA COUNTY)

AFFIDAVIT

CASE #: 200705-564

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

Personally appeared before me the affiant **CPL. CHRIS CROUCH** who

being duly sworn deposes and says that defendant **SUMMERS, SINTARI**

did within this county and state on **MAY 14, 2007** violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **SALUDA COUNTY**)

in the following particulars:

DESCRIPTION OF OFFENSE:

BURGLARY 1ST DEGREE

16-11-311

I further state that there is probable cause to believe that the defendant named above did commit the

crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT:

Signature of Affiant

Cpl. S. Byrd for **Cpl. Chris Crouch**

Affiant's Address **100 LAW ENFORCEMENT DRIVE**

SALUDA, SC 29138

Affiant's Telephone **(864) 445-2112**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on **MAY 14, 2007** defendant **SUMMERS, SINTARI**

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of **SALUDA COUNTY**) as set forth below:

DESCRIPTION OF OFFENSE:

BURGLARY 1ST DEGREE

16-11-311

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said

defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to

the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on **MAY 18, 2007**

(L.S.)

Signature of Issuing Judge

Judge Code: **606**

D. BRUCE HORNE

ORIGINAL

Judge's Address **108 SOUTH RUDOLPH STREET**

SALUDA, SC 291380000

Judge's Telephone **(864) 445-4500**

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

FILED

Clerk of Court

Saluda Co. SC

MAY 23 2007

ATTEST THE COPY

C. S. Byrd

Clerk of Court

Saluda, S.C.