

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Sumter County

William Jeffrey Young, Circuit Court Judge

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**RECEIVED**

JUN 28 2012

**S.C. Supreme Court**

DARNELL GETTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

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1 MR. MCLEOD: Your Honor, this is the State  
2 of South Carolina versus Darnell Getter. Indictment  
3 2008-GS-43-439. On the charge of Count 1, burglary  
4 second violent. Count 2, burglary second violent.  
5 Counts 3 through 9, breaking and entering into an  
6 automobile. Count 10 forgery. And Count 11  
7 burglary in the second violent. Mr. Getter is  
8 pleading guilty to burglary third, two counts.  
9 Burglary second nonviolent. The forgery. And when  
10 you look at this is counts 3 through 9 is B & E  
11 auto. He's actually pleading guilty to Count 3,  
12 Count 5, Count 6 and Count 9. Count 4, 7 and 8 are  
13 being dismissed. And there is a recommendation of a  
14 cap of 8 years.

15 (Whereupon, the defendant is sworn.)

16 THE COURT: Mr. Wilder, you represent Mr.  
17 Getter?

18 MR. WILDER: Yes, Your Honor, I do.

19 THE COURT: There are four counts of  
20 breaking and entering into a motor vehicle.  
21 Burglary one, and burglary second, non-violent.  
22 Burglary third. Another burglary third that  
23 covers it all?

24 MR. WILDER: Yes, Your Honor.

25 THE COURT: Does he understand all of the

1 charges, what the state would have to prove,  
2 and all his constitutional rights?

3 MR. WILDER: I believe he does, Your  
4 Honor.

5 THE COURT: Okay, who is the lady here  
6 with you today?

7 MR. MCLEOD: This is Ms. Sara Elmore. She  
8 is the victim's wife on the forgery and the B &  
9 E auto, I'm sorry.

10 THE COURT: How about the burglary second?

11 MR. MCLEOD: I made contact with every  
12 other individual. And no one other than  
13 Ms. Elmore wanted to be present. I said she is  
14 the victim of forgery. Forgery itself, it was  
15 her checkbook. And it was taken from one of  
16 the vehicles which was broken into.

17 THE COURT: Let me get it straight then.  
18 Just so the record can reflect it. Which  
19 burglary second nonviolent? Which count is  
20 that?

21 MR. MCLEOD: The burglary second  
22 nonviolent would be Ms. Tiffany Geddings.

23 THE COURT: That's Count 1.

24 MR. MCLEOD: That is Count 1. The reason  
25 we are pleading them down, Your Honor, is

1           because these are the two prior burglaries  
2           which we indicted him under based on the prior  
3           convictions, were actually out of State. And  
4           upon receiving information, it was found that  
5           the pleas were actually pled to a lesser  
6           offense.

7           THE COURT: And Ms. Geddings, did not  
8           respond to your effort?

9           MR. MCLEOD: She responded. But actually  
10          her mother responded to tell me that  
11          Ms. Geddings lives in Georgia now, and would  
12          not be able to attend.

13          THE COURT: And the burglary second Count  
14          2, involving Due Process Designs, is that the  
15          burglary third?

16          MR. MCLEOD: That is, Your Honor. That is  
17          a business that was just broken into during the  
18          day.

19          THE COURT: So which?

20          MR. MCLEOD: So the burglary second  
21          nonviolent would be Count 1. Burglary third  
22          would Count 2.

23          THE COURT: How about that victim, Due  
24          Process Design?

25          MR. MCLEOD: I made contact with them as

1 well. And they just wanted to be notified  
2 about the outcome. They do not wish to be  
3 present.

4 THE COURT: The other burglary third,  
5 would that would be Count 11?

6 MR. MCLEOD: It would be, Your Honor.

7 THE COURT: And that is Bell's Appliance.

8 MR. MCLEOD: Yes, sir.

9 THE COURT: And they didn't want to be  
10 here?

11 MR. MCLEOD: No, sir.

12 THE COURT: The B & E motor vehicle, four  
13 counts, Counts 3 through 9, so which are the  
14 ones being nol-prossed?

15 MR. MCLEOD: 4, 7 and 8.

16 THE COURT: 4, 7 and 8. District 17 is  
17 the victim of all those and Dennis Elmore.  
18 Have they been contacted?

19 MR. MCLEOD: Ms. Elmore is here, and on  
20 behalf of Dennis Elmore. And I contacted  
21 District 17. They did not wish to be present.

22 THE COURT: All of the victim's rights  
23 have been protected. Of course, ma'am, you  
24 will be able to speak. It would probably be 80  
25 percent of the way through this hearing that

1           you will be entitled to speak, okay.

2           THE COURT: Mr. Wilder, do have any  
3           concerns about your client's competence?

4           MR. WILDER: No, Your Honor.

5           THE COURT: Do you think it is likely the  
6           State would be able to produce enough evidence  
7           such that your client would be found guilty of  
8           all of these charges to which he is going to  
9           plead?

10          MR. WILDER: Your Honor, on all these  
11          burglaries, I definitely feel that way. The  
12          forgeries and the B & E auto, because of the  
13          recommendation of the State. There was another  
14          co-defendant involved in some of the B & E  
15          autos. And when he got arrested, he gave a  
16          statement blaming it on Darnell. And that led  
17          to the State getting the Indictments and the  
18          charges. Once again, I believe, you know, the  
19          other co-defendant's word versus what  
20          Mr. Getter might say.

21          THE COURT: Is he prepared to admit his  
22          participation?

23          MR. WILDER: I think he is today, Your  
24          Honor. He wants to get this behind Him. And  
25          we understand that if he has a defense, he is

1 giving it up. And I have advised him of that.  
2 And I believe he understands that, and he wants  
3 to plead guilty.

4 THE COURT: Mr. Britton, your involvement?

5 MR. WILDER: Mr. Britton participates in  
6 the jail program out at the -- on Wednesday  
7 nights here at the local jail. And so he's  
8 here actually as a character witness for  
9 Mr. Getter.

10 THE COURT: Your name, sir. Just for the  
11 record.

12 MR. WILDER: This is Mr. Lucious Smith.

13 THE COURT: He was here yesterday.

14 MR. WILDER: Yes, sir, Your Honor. He  
15 works with the 180-degree program. And I will  
16 let, Mr. Getter has asked that he be here,  
17 because he wants to participate in that  
18 program. And has already begun to work with  
19 Mr. Smith.

20 THE COURT: And, Mr. Getter, before I can  
21 accept your guilty pleas, I have to ask you  
22 questions. So these questions are designed for  
23 me to make sure that you are entering your  
24 pleas freely, voluntarily, knowingly and  
25 intelligently. If you want to speak to your

1 attorney, you can. If at any time somebody  
2 says something you don't understand, you let  
3 Mr. Wilder know, and he will ask me for  
4 clarification. All right? How old you, sir?

5 THE DEFENDANT: 40.

6 THE COURT: 40? How far did you go in  
7 school?

8 THE DEFENDANT: I have got a year and a  
9 half college. I graduated PTT business school.  
10 And I am currently at ITT Tech.

11 THE COURT: Did you spend any time in jail  
12 on any of these charges?

13 THE DEFENDANT: Yes, 15 months.

14 THE COURT: 15 months? Have you ever been  
15 treated for alcohol problems or drug problems?

16 THE DEFENDANT: Yes. And I graduated  
17 the -- I took the drug course. I graduated  
18 that recently. I am enrolled in Voc. Rehab.  
19 again too.

20 THE COURT: What kind of programs did you  
21 complete?

22 THE DEFENDANT: The Sumter County Drug  
23 Program.

24 THE COURT: For drugs?

25 THE DEFENDANT: Yes.

1 THE COURT: What drug do you have a  
2 problem with?

3 THE DEFENDANT: Crack cocaine.

4 THE COURT: If you took the test for drugs  
5 today, would you pass the test?

6 THE DEFENDANT: Yes. Well I have  
7 painkillers on me. A car fell on my foot  
8 Saturday. And I am taking painkillers.

9 THE COURT: Are those prescribed?

10 THE DEFENDANT: Yes.

11 THE COURT: By a physician?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you take any other  
14 medication?

15 THE DEFENDANT: No.

16 THE COURT: Does that medication you are  
17 taking, does it have any impact on your ability  
18 to think clearly?

19 THE DEFENDANT: No.

20 THE COURT: Have you ever been treated for  
21 any mental illnesses?

22 THE DEFENDANT: No.

23 THE COURT: Do you have any condition  
24 today that would keep you from being able to  
25 understand what you are doing?

1 THE DEFENDANT: No.

2 THE COURT: Your lawyer tells me you  
3 understand all of these charges, is he correct?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Before I do that, let me tell  
6 you about some rights that you do have. You  
7 have the remain to silent. Which means you  
8 have the right to say nothing. You also have  
9 the right to a jury trial on these charges.

10 I don't know -- I would assume that some  
11 might be tried together. Some might be tried  
12 separately. But however they are called, you  
13 would have the right to have a 12 person jury  
14 assembled. Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: A jury with regard to a  
17 particular charge, would listen to evidence and  
18 deliberate. And then the jury would vote. In  
19 order for you to be convicted on any charge, a  
20 jury has to unanimously conclude that you were  
21 guilty beyond a reasonable doubt. It's a very  
22 high burden of proof that the state can meet.  
23 Do you understand that very important right?

24 THE DEFENDANT: Yes.

25 THE COURT: You also have the right to

1           confront or challenge witnesses the state calls  
2           against you. That means you have the right to  
3           be present when those witnesses testify. And  
4           you would have the right to listen to what they  
5           have to say. And Mr. Wilder would be permitted  
6           to cross examine those witnesses. And included  
7           within that right is your right to call your  
8           own witnesses in your defense.

9           Do you want to give up those rights that I  
10          have just explained to you and plead guilty to  
11          the charges?

12                 THE DEFENDANT: Yes.

13                 THE COURT: Do you understand if you have  
14          any defenses to any of these charges that when  
15          you plead guilty, you give up those defenses?

16                 THE DEFENDANT: Yes.

17                 THE COURT: And one of the questions that  
18          I am going to ask you in just minute, is  
19          whether or not you are guilty. And if you say  
20          that you are, I am going to ask you to tell me  
21          what makes you guilty. Are you prepared to do  
22          that?

23                 THE DEFENDANT: Can I speak, Mr. Wilder?

24                 THE COURT: Yes, sir.

25                 (Whereupon, the Defendant talks to Mr.

1 Wilder.)

2 MR. WILDER: Your Honor.

3 THE COURT: Yes, sir.

4 MR. WILDER: My client would like to  
5 request the Court for permission to enter an  
6 Alford Plea as to the B & E autos and the  
7 forgery. He wants to accept the recommendation  
8 that the State is making. But he is telling me  
9 that he is not guilty of the B & E autos, but  
10 he wants to enter the Alford Plea.

11 THE COURT: Mr. McLeod?

12 MR. MCLEOD: We have no objection.

13 THE COURT: Mr. Getter, in the case called  
14 North Carolina versus Alford, a U.S. Supreme  
15 Court case, it recognizes the right, I would  
16 say, I guess, of a criminal, accused such as  
17 you, to negotiate with the State. It's  
18 basically a situation where you would not  
19 acknowledge your guilt, but in some sense you  
20 acknowledge that there is evidence to convict  
21 you.

22 THE DEFENDANT: Like the Alford law?

23 THE COURT: And there has to be some  
24 bargaining that you would realize in that  
25 process, or some benefit of some bargaining

1           that you realize. And bargain, I assume,  
2           Mr. Wilder, would be dismissal of certain  
3           counts and pleading down of certain counts to  
4           lower offenses. Is that right, Mr. Wilder?

5           MR. WILDER: Your Honor, he's indicted for  
6           three counts of burglary violent. And they're  
7           reducing that to two counts to burglary third  
8           and a burglary nonviolent. So he was receiving  
9           the benefit of that, plus it's a concurrent  
10          recommendation sentence of a cap of 8 years.  
11          Also three of the B & E autos are being  
12          dismissed.

13          THE COURT: All right.

14          MR. WILDER: So he does have a benefit to  
15          realize as a result of the plea. And I do  
16          believe that he would be convicted on the  
17          burglaries. So as far as we are concerned  
18          there, he says that there is a likelihood that  
19          he would be convicted on what he is pleading to  
20          as well.

21          THE COURT: Do you understand all that,  
22          Mr. Getter?

23          THE DEFENDANT: Yes.

24          THE COURT: And of course the record would  
25          reflect that you did speak with your attorney

1 for a minute or two. Do you need any more  
2 time to talk to him before we go further?

3 THE DEFENDANT: No.

4 THE COURT: Sir?

5 THE DEFENDANT: No.

6 THE COURT: Mr. McLeod, any input on what  
7 Mr. Wilder just said?

8 MR. MCLEOD: No, Your Honor.

9 THE COURT: Do you want to give up those  
10 rights that I just---

11 THE DEFENDANT: Yes.

12 THE COURT: ---went over with you? And  
13 enter these pleas, whether they be called  
14 guilty pleas or Alford Pleas? Do you want to  
15 do that today?

16 THE DEFENDANT: Yes.

17 THE COURT: If you have made any  
18 incriminating statements to the police, do you  
19 understand That when you plead guilty or enter  
20 any type of plea, you give up the right to  
21 challenge the admissibility of any statement  
22 you may have made to the police?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And again, even though it  
25 might be a Alford Plea, you give up any

1 defenses you may have to these charges?

2 THE DEFENDANT: Yes.

3 THE COURT: With regard to the burglaries,  
4 are you prepared when I ask you the questions  
5 to tell me what you did that makes you guilty?

6 THE DEFENDANT: Yes.

7 THE COURT: The Indictment says not only  
8 the counts that are still in play. Count 1,  
9 burglary second, says that on May 5, 2007, you  
10 entered a dwelling at 25 Carolina Avenue  
11 occupied by Tiffany Geddings, at night without  
12 consent and with intent to commit a crime. Do  
13 you understand that you facing 15 years on  
14 that?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you guilty or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: What did you do?

19 THE DEFENDANT: Excuse me, it wasn't at  
20 night. It was at 11 o'clock in the afternoon.

21 MR. MCLEOD: I believe the language that  
22 we originally based the violent on was the last  
23 sentence.

24 THE COURT: It says nighttime, but it  
25 wasn't nighttime.

1 THE DEFENDANT: No, it was not at night.

2 THE COURT: 11:00 o'clock in the daytime.

3 THE DEFENDANT: Yes.

4 THE COURT: What did you do?

5 THE DEFENDANT: I bought something from a  
6 guy at the back door of the occupant. And I  
7 bought a silver candy dish from him at the back  
8 door, and they charged me with burglary.

9 THE COURT: Did you enter the dwelling?

10 THE DEFENDANT: Well they said I entered  
11 the threshold. So they said that is burglary.

12 THE COURT: I am not quite sure what he is  
13 talking about. Did you enter the -- did you  
14 cross the threshold?

15 THE DEFENDANT: Yes.

16 THE COURT: And did what?

17 THE DEFENDANT: And I bought a candy thing  
18 from the guy in the house.

19 THE COURT: You bought a candy thing?

20 THE DEFENDANT: Yes, a silver candy dish.  
21 I went to the thing, and I bought it from Him.

22 THE COURT: Who was it?

23 THE DEFENDANT: A guy named Spring.

24 THE COURT: Did he live there?

25 THE DEFENDANT: Not that I know of. Well

1           come to find out, no.

2           THE COURT: Did you cross that threshold  
3 without consent?

4           THE DEFENDANT: Yes.

5           THE COURT: Is that suitable, Mr. McLeod?

6           MR. MCLEOD: I believe so, Your Honor.

7           THE COURT: Did you think he lived there?

8           THE DEFENDANT: Yeah, I did think he lived  
9 there. But I didn't....

10          THE COURT: All right, that is  
11 questionable. Count 2, burglary third. What  
12 are you pleading to? The Indictment says that  
13 on or about August 1st 2007, you entered the  
14 9 Willow Drive occupied by Due Process Design  
15 without consent, with the intent to commit a  
16 crime therein. It says on the Indictment that  
17 you entered or remained in the building in the  
18 nighttime. What did you do there?

19          THE DEFENDANT: Again, that was in the  
20 morning, and I went to the window.

21          THE COURT: Are you guilty?

22          THE DEFENDANT: Yes.

23          THE COURT: Did you crawl in the window?

24          THE DEFENDANT: Yes.

25          THE COURT: Without consent?

1 THE DEFENDANT: Yes.

2 THE COURT: With the intent to steal  
3 something?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand you are  
6 facing 5 years on that?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. B & E auto counts 3, 5,  
9 6 and 9. It says on or about the dates of  
10 October 3rd, you broke into a Ford E-150 van at  
11 owned by District 17. Are you  
12 entering an Alford Plea to that charge?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Get close to the microphone, I  
15 can't hear you.

16 THE DEFENDANT: That's the one that is the  
17 Alford Plea.

18 THE COURT: Count 5, a Dodge Ram, owned by  
19 District 17. The same date, October 3rd,  
20 Are you entering an Alford  
21 Plea to that Charge?

22 THE DEFENDANT: Yes.

23 THE COURT: Count No. 6, a 1984 box truck,  
24 owned by District 17, . Are you  
25 entering a Alford Plea to that?

1 THE DEFENDANT: Yes.

2 THE COURT: Count 9, a 1994, Nissan pickup  
3 owned by Dennis Elmore at \_\_\_\_\_, are  
4 you entering an Alford Plea to that?

5 THE DEFENDANT: Yes.

6 THE COURT: Count 10, it says on or about  
7 October 9, 2007, with the intent to defraud,  
8 you did present a forged check drawn on the  
9 account of Dennis Elmore in the amount of \$325,  
10 made payable to Timothy Dingle with the Bank of  
11 America on Broad Street. Are you entering an  
12 Alford Plea to that?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that with  
15 regard to these Alford Pleas that I have just  
16 been over, that I am going to sentence you just  
17 as if you had actually pled guilty?

18 THE DEFENDANT: Yes.

19 THE COURT: And on the B & E auto, do you  
20 understand that you are facing up to 5 years on  
21 each one of those?

22 THE DEFENDANT: Yes.

23 THE COURT: And on the forgery, Count 10,  
24 you are facing up to 10 years. Do you  
25 understand that?

1 THE DEFENDANT: Yes.

2 THE COURT: The 11th Count, on or about  
3 October 27, 2007, the Indictment says you  
4 entered Bell's Appliance at  
5 occupied or at that address without consent,  
6 and with the intent to intent to crime therein.  
7 Are you guilty or not guilty of that?

8 THE DEFENDANT: Guilty.

9 THE COURT: What did you do that makes you  
10 guilty?

11 THE DEFENDANT: I took a lap top.

12 THE COURT: Did you go in the building?

13 THE DEFENDANT: Yes.

14 THE COURT: Without consent?

15 THE DEFENDANT: Yes.

16 THE COURT: Was anybody there?

17 THE DEFENDANT: No.

18 THE COURT: What time was that?

19 THE DEFENDANT: 3:00 o'clock.

20 THE COURT: A.M.?

21 THE DEFENDANT: P.M.

22 THE COURT: And with regard to the  
23 burglary, what was your reason for going --  
24 crawling in the window at Due Process Designs,  
25 and going in to Bell's Appliances? You just

1 wanted to steal something?

2 THE DEFENDANT: That's when I had really a  
3 bad drug habit, sir.

4 THE COURT: Let me go back to this  
5 burglary second, which is Count 1. Are you  
6 guilty of that, sir?

7 THE DEFENDANT: Excuse me?

8 THE COURT: Are you guilty of that, when  
9 you said you crossed the threshold, and bought  
10 the candle stick holder?

11 THE DEFENDANT: Yes.

12 THE COURT: Are you satisfied with that  
13 particular plea, Mr. McLeod?

14 MR. MCLEOD: We are, Your Honor.

15 THE COURT: Okay. Do you understand with  
16 regard to burglary third charges, if you get a  
17 second offense, you are facing more jail time?

18 THE DEFENDANT: Yes.

19 THE COURT: And with regard to all these  
20 burglaries, you're in line for worse treatment  
21 down the line, because you have this prior  
22 burglary conviction?

23 THE DEFENDANT: Yes.

24 THE COURT: And forgery, I know it's a  
25 property offense. Do you understand if you get

1 three or more of those, you are facing up to 10  
2 years?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you still want to give up  
5 all those rights that were referenced by me and  
6 enter these pleas today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay. Mr. McLeod, is the  
9 recommendation for all of these sentences to be  
10 concurrent, that there be a cap of 8 years?

11 MR. MCLEOD: Yes, sir.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Anything else you want him to  
14 do in the way of investigation, or speaking  
15 with any witnesses or doing anything he hasn't  
16 done?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you completely satisfied  
19 with his services?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any complaints  
22 about the police or the prosecutor?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you understood all of my  
25 questions?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You have 10 days to appeal any  
3 one or more or all of these pleas. Do you  
4 understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: It's not a very long time. Do  
7 you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. McLeod.

10 MR. MCLEOD: Yes, sir, Your Honor.

11 Beginning with Count 1, the burglary second.

12 This occurred on May 5th 2007. A Ms. Taylor

13 notified Law Enforcement that she observed a

14 black male walking behind

15 twice. Then coming back with a green box in

16 his hands. The subject walked up

17 toward Broad Street. Officers located

18 the subject and retrieved an object which was

19 in his hands, which is a sterling silver

20 serving bowl. The subject was identified as

21 Darnell Getter. And foot ware impressions that

22 were seen around the door were consistent with

23 those of Mr. Getter's shoes. They also noticed

24 the back window on the door was broken in,

25 where entry was gained.

1           Apparently the individual broke the  
2           deadbolt lock on the door. He was arrested at  
3           that time for that charge.

4           THE COURT: Is that all correct, sir?

5           THE DEFENDANT: Yes, sir.

6           THE COURT: All right.

7           MR. MCLEOD: On the Count 2, burglary  
8           second, which we are pleading to burglary  
9           third, this occurred on August 1st 2007.  
10          Officers with the Sumter Police Department  
11          responded to an alarm call at the Due Process  
12          Designs Beauty Salon. Upon arrival, officers  
13          found the front door open. They made contact  
14          with an unknown subject. I am sorry, they  
15          noticed that the subject attempted to kick in  
16          the front door. Cracking a small window.  
17          Subject cut a whole in the screen. It appears  
18          he cut himself at the time. Leaving a blood  
19          trail. He stole items; such as, a television  
20          set, a remote control to a DVD player, along  
21          with the DVD player.

22          THE COURT: Is all that right, sir?

23          THE DEFENDANT: Excuse me, all that was --  
24          nothing was stolen. They recovered everything.

25          MR. MCLEOD: I'm sorry. It was taken

1 from the building, but it was recovered after  
2 the fact.

3 THE COURT: Did you remove it from the  
4 building?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. The counts,---

7 MR. MCLEOD: Yes, sir.

8 THE COURT: B & E counts.

9 MR. MCLEOD: On the forgery, the breaking  
10 and entering of an automobile and the final  
11 burglary, this all was involved in the same  
12 investigation. This began when officers  
13 responded on October 9th 2007, to the Bank of  
14 America. In reference to a Timothy Dingle of  
15 being in the bank attempting to cash a check.  
16 The check had been stolen from a vehicle prior  
17 to Mr. Dingle attempting to cash it. That  
18 would be the vehicle belonging to Mr. Elmore.

19 Dingle was arrested. And during an  
20 interview, gave an officer a statement that he  
21 and someone named "Jersey," who was later  
22 identified as Getter, had written a check  
23 behind the Kangaroo Store at the Broad Street  
24 and Miller Road. Across the street from where  
25 the check was stolen. Dingle also stated that

1 he had witnessed "Jersey," break into the  
2 District 17 shop, and then ask him where he  
3 could sell the stuff.

4 On October 27th 2007, Mr. Getter was  
5 arrested after patrol officers responded to  
6 Bell's Appliance on , in  
7 reference to the suspect breaking a window on  
8 the side of the building, and reaching in to  
9 take a Dell lap top. And I believe that covers  
10 all the charges, Your Honor.

11 THE COURT: Is what he said about the  
12 Bell's Appliance break in, correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Ms. Elmore, you have the right  
15 to speak if you would like. I would be glad to  
16 hear from you. I do ask that you, however, to  
17 direct your comments to me and not to  
18 Mr. Getter.

19 MS. ELMORE: Yes, sir. Mr. Getter was not  
20 in it by his self. Mr. Dingle was in it with  
21 him. Because when we got to the bank,  
22 Mr. Dingle was trying to cash the check. He  
23 was not in it by his self. We know that. And  
24 even though he is here on trial, I still feel,  
25 yeah, he pulled 15 months. He got all the

1 certificates for his drug use. What else did  
2 he have to do while he sit in jail, but go to  
3 drug classes? He had nothing else to do. He  
4 had nothing else to do but go to church while  
5 he sit there.

6 That's all anybody that sits in jail has  
7 to do. But he's an habitual offender. And I  
8 don't feel that a habitual offender, who  
9 constantly bes in trouble with the law, should  
10 have grace put on them; that they do not get  
11 the sentence that they deserve. If it was his  
12 first time offense, I would say, yes, please  
13 have mercy. But when it is one that's  
14 constantly breaking the law, that has a long  
15 criminal record, they did not deserve to have  
16 mercy put on them.

17 THE COURT: Was any money removed from  
18 your account that you have not been reimbursed  
19 for?

20 THE DEFENDANT: When it was removed, when  
21 they went to cash the check, the lady at the  
22 bank knows us so well. They called my cell  
23 phone. And she told me, she said, "Ms. Elmore,  
24 there is a man down here, Mr. Dingle, saying  
25 that he had done some painting for you. And

1 he's trying to cash a \$325 check on you." So  
2 we were hunting the bag, because it had all my  
3 husband's medical records in it. My husband's  
4 eyeglasses and stuff in it. And a box of  
5 checks.

6 So we left from the restaurant, because we  
7 had went back to the restaurant. I had seen  
8 some people playing back and forth across the  
9 parking lot. So we went on down to the bank.  
10 And my husband walked in the bank, because my  
11 husband is in bad health. And now they have  
12 him on oxygen at night when he sleeps, because  
13 when he is sleeping, his heart stops. So at  
14 nighttime he has to sleep on oxygen. They just  
15 started that up this week with him.

16 So we went into the -- my husband went  
17 into the bank, and I was parking the truck.  
18 Well my husband walked in and tapped Mr. Dingle  
19 on the shoulder. Because Ms. Ann Logan pointed  
20 him out to him. Well as I parked the truck,  
21 and my husband brung him out of the bank, I  
22 come running. I dropped my pocketbook. And I  
23 hit him up side his head and knocked him to his  
24 knees. Reached over and took the check out of  
25 his hand. They was a green car backed in at

1 the front of the bank.

2 And Mr. Getter was standing there beside  
3 the green car. And they had some children in  
4 the car. And so the officers got there. And  
5 the officer put me in the police car and  
6 carried me down the road. Because I was fixing  
7 to hit him again. I didn't care if he was a  
8 man. He shouldn't have stole our stuff.

9 THE COURT: Mr. Getter was out there?

10 MS. ELMORE: Yes, sir. Standing up  
11 beside this green Oldsmobile. And they carried  
12 us -- carried me down the road---

13 THE COURT: So they didn't cash the check.

14 MS. ELMORE: No, sir. They didn't get  
15 that one cashed. But there is some checks that  
16 was written on us. But Mr. Getter could not  
17 have written the checks, because he was in jail  
18 at time. But there are some that---

19 THE COURT: Has Mr. Dingle been arrested  
20 or charged?

21 MR. MCLEOD: He's been -- his case has  
22 been deposed of, Your Honor.

23 MS. ELMORE: There are some checks that's  
24 out there on us. So they carried us -- carried  
25 me down the Thift Store that's right past the

1 China Palace, the officers did. And I went  
2 behind the store and we found the black bag.  
3 But all of the checks that was in the check  
4 box, was gone. A pair of Izod eyeglasses that  
5 costed me over \$800 something for my husband  
6 was gone out of the box. Out of his eyeglass  
7 case. Another pair of eyeglasses was gone.  
8 Because my husband can't read anything if he  
9 don't have eyeglasses on. And his watch was  
10 gone. But no cash was gone off, because we  
11 didn't have cash in there.

12 But I just don't feel that even though he  
13 pulled 15 months and he took those classes, he  
14 had nothing else to do when he was locked up.  
15 You know, he couldn't get no crack while he was  
16 there. Anyone else that's on crack that's  
17 locked away, you know, for so many days, they  
18 cannot get it because they are in jail.

19 THE COURT: Mr. McLeod, what is his  
20 record?

21 MR. MCLEOD: Your honor, he has a---

22 THE COURT: And I want you to listen  
23 carefully to what he says.

24 MR. MCLEOD: He has a theft of moveable  
25 property in 2000, from New Jersey. Receiving

1           stolen property from 2000. I believe also from  
2           New Jersey. A burglary, where it appears that  
3           it was pled down to a criminal trespass in  
4           2000. A burglary which is also pled down to a,  
5           I think, it was a theft from Georgia in 1999.  
6           Theft by shoplifting conviction from 99, from  
7           Georgia. Receiving stolen property in 99, in  
8           Georgia.

9           Shoplifting again in 99. And obstruction  
10          of law enforcement officer from Georgia. And  
11          that appears -- that appears to be --  
12          unfortunately I can't read whether or not he  
13          has convictions. It appears he was charged  
14          with possession of stolen property in  
15          Tennessee.

16                 THE COURT: Do you have a conviction from  
17          Tennessee? Yes or no?

18                 THE DEFENDANT: No. No.

19                 MR. MCLEOD: That's it, Your Honor.

20                 THE COURT: How long have you been living  
21          in South Carolina?

22                 THE DEFENDANT: Since 2002.

23                 THE COURT: Any convictions from South  
24          Carolina?

25                 MR. MCLEOD: None in South Carolina. I

1 believe probation says that they had a  
2 transfer.

3 PROBATION AGENT: We had a transfer case  
4 from New York for forgery.

5 THE COURT: How did he do?

6 PROBATION AGENT: He was -- the case was  
7 returned. I don't know if New York ever picked  
8 him up. But we sent him back -- we sent the  
9 case back for violations.

10 THE COURT: Okay.

11 MR. MCLEOD: I don't see any convictions  
12 in South Carolina, Your Honor.

13 THE COURT: Mr. Getter, I don't know if  
14 you've talked to anybody about any early  
15 release from a prison term. I don't know. But  
16 do you understand That whatever amount of time  
17 I sentence you to today, that you have to  
18 assume that you will serve that entire amount  
19 of time, less credit for time you have already  
20 served?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: In other words, I don't have  
23 anything to do with any early release  
24 prospects. I don't have anything to do with  
25 parole or parole eligibility. Do you

1 understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. There is a substantial  
4 factual basis for all the pleas. And all the  
5 victim's rights have been protected.  
6 Mr. Getter has entered all of his pleas,  
7 freely, voluntarily, knowingly and  
8 intelligently. Represented by an attorney with  
9 whom he is satisfied. I will accept all of his  
10 pleas. Mr. Wilder, I will be happy to hear  
11 from you and then Mr. Getter and Mr. Britton  
12 and Mr. Smith.

13 MR. WILDER: Thank you, Your Honor. Your  
14 Honor, we understand the feelings of the  
15 victims. And that is absolutely probably the  
16 way I would feel if somebody had taken  
17 something from me and out of my car and cashed  
18 my check and that sort of thing. And I am glad  
19 she chased down Mr. Dingle and whopped him. He  
20 certainly deserved it.

21 Your Honor, and one respect, she's right.  
22 It would seem like while sitting out at the  
23 jail, these folks have got nothing else to do.  
24 They ought to participate in something to  
25 better themselves. But you know what, 90

1       percent of them don't. So we have to focus on  
2       what Mr. Getter did while he was there, and  
3       what efforts he made to try to get his life  
4       straightened out. And as he was out there,  
5       originally had a very high bond and could not  
6       post it.

7               And we began to ask the state if we could  
8       have a bond hearing and come in front of the  
9       court to get bond lowered so that he could have  
10      an opportunity to get out. Word began to come  
11      from the jail ministry program, not just from  
12      Mr. Britton who is standing here, but through  
13      other folks who participate, that there was an  
14      individual out there who was very faithfully  
15      attending every Wednesday Night meeting that  
16      they had. Studying his bible. Participating  
17      in correspondence courses and things of that  
18      nature to read scripture and to try to use the  
19      time that he was there to better himself.

20             They ultimately found out that I had been  
21      assigned to represent Mr. Getter, so they came  
22      to me and asked me if there is something I  
23      could do to help him out. We asked the  
24      court to lower his bond. Eventually we got a  
25      \$15,000 surety bond. He was able to post that

1 after he had been in jail for 15 -- 14 and a  
2 half, 15 months. And, Your Honor, after he got  
3 out, he then began to take responsibility for  
4 some other aspects of his life. Education,  
5 work, behaving himself. Which as Mr. McLeod  
6 has pointed out, he had previous history of not  
7 being a good productive citizen.

8 But at this point, he began to do what he  
9 was supposed to. And reports kept coming back  
10 from the field that Mr. Getter was doing well.  
11 And that he was taking responsibility for his  
12 situation. Your Honor, I would like to hand up  
13 the certificates that he has given me, of all  
14 these courses and things he has taken. I  
15 cannot give you these on every case, because,  
16 you know, even though it would seem like they  
17 are all out to be doing something that's  
18 productive while they are awaiting their time  
19 in Court, as I say, they don't. And so, that  
20 distinguishes Mr. Getter in my opinion. And  
21 That's why I brought the folks here so you can  
22 hear from them directly, Your Honor, as to what  
23 he was doing to try to help himself while he  
24 was there.

25 So I would like to give Mr. Britton an

1 opportunity first, to speak on his behalf.

2 THE COURT: Mr. Britton.

3 MR. BRITTON: Your Honor, Mr. Getter has  
4 been a faithful attendee of the Wednesday Night  
5 men's bible study there at the jail. And he  
6 has been an active participant. And I have  
7 talked to him on a number of occasions there at  
8 the jail. He is -- I feel like he is walking  
9 with the Lord. And has changed his ways. And  
10 I told Him that I would stand with Him today.  
11 And he has committed his fate to you. And he  
12 asks the court to have mercy on him.

13 THE COURT: Thank you, Mr. Britton.

14 MR. WILDER: And, Your Honor, Mr. Smith is  
15 here from the 180-degree program---

16 THE COURT: Yes, sir.

17 MR. WILDER: ---I would like for him to  
18 have the opportunity to tell you about what he  
19 hopes to be able to accomplish in the future  
20 with him.

21 THE COURT: Thank you, sir.

22 MR. SMITH: Your Honor, I thank you very  
23 much for allowing me the privilege for speaking  
24 in this young man's behalf. The 180 program is  
25 designed to do just what this young man has

1 shown that it's -- that this program is about.  
2 Make 180-degree turn. Now I sympathize with  
3 the victims. She is no more than right to have  
4 the feeling that she has about what has been  
5 done to her.

6 Okay, Your Honor, what I would like to do  
7 is point out a few facts that we are  
8 overlooking as citizens of South Carolina. A  
9 man with a record like this, you will notice  
10 that it was a continuous pattern of doing  
11 wrong, because of an unorthodox attitude. Why?  
12 We could never know that. But what my program  
13 is designed to do is to let Him rehabilitate  
14 himself from within. And since I have been  
15 counseling this young man, he has seen, he has  
16 demonstrated, and he has continued to --  
17 continued to do that which is right. I can't  
18 say that well he should just walk away with  
19 nothing. But, Your Honor, the taxpayers, the  
20 burden of the taxpayers, a man like this,  
21 continue to lock him up, continue to put him  
22 away, we are storing that problem and getting  
23 it larger and larger.

24 But at this point, and I do say, at this  
25 point, if this man had a chance rather than an

1 opportunity to get his -- to continue to keep  
2 his life on the right track, to be a productive  
3 citizen and asset to the community. The  
4 taxpayers could save a few bucks. Everybody  
5 saves a few bucks with cases like this.

6 This is what my program is zeroing in  
7 people with very, very bad behavior and long  
8 criminal records; to get them to see their  
9 mistakes and turn their lives around. A man, a  
10 first offender, we don't know what he might do  
11 later on if you give him a chance or an  
12 opportunity. We don't know what he might do.  
13 But in this case with this man here, at this  
14 point, Your Honor, Your Honor, this is where he  
15 needs to be on the 180 program, on probation,  
16 paying something back to society. He broke  
17 the -- he didn't see a reason to continue a  
18 violent charge against this man. So it being  
19 nonviolent this is what I am looking at, the  
20 nonviolent people. Go to work and give back  
21 something to the community rather than we put  
22 Him away, and we have to continue to pay for  
23 his well being. Which some people don't mind.  
24 Some people might have the money to do so. But  
25 let's think about the little man that don't

1 have the money, trying to make ends meet with  
2 this economic.

3 Your Honor, I would appreciate it if you  
4 would consider giving this man a chance rather  
5 than an opportunity this morning. An  
6 opportunity, you will send him to jail. A  
7 chance you would sentence Him to probation in  
8 the 180-program for Him to continue to work and  
9 give back something to the society rather than  
10 put him away and you have to steady have to  
11 give to Him. So, Your Honor, please, and I did  
12 say please, consider that request, sir. Thank  
13 you very much sir.

14 THE COURT: Mr. Getter.

15 THE DEFENDANT: Yes. I would just like to  
16 say, first, I would like to apologize to the  
17 victims. And since I have been home, I have  
18 contacted my other victims and I have spoken to  
19 them. And I offered to pay them restitution,  
20 because I am working at Pilgrim's Pride at  
21 Waste Water. And I am currently enrolled in  
22 ITT Tech. The head man, he was supposed to  
23 come today, but he said he couldn't make it, to  
24 talk in my behalf. Like I said, it is time for  
25 me to make a change in my life, and that's what

1 I am trying to do.

2 THE COURT: Anything else, Mr. Wilder?

3 MR. WILDER: Your Honor, I would just ask  
4 you to consider the 8-year-cap, and perhaps  
5 take that as a, Your Honor, a chance to give  
6 him 8 years and suspend it on 15 months that he  
7 served. And give him a chance on probation.  
8 And make that the condition of probation that  
9 he be ordered to make the restitution to all  
10 the victims.

11 THE COURT: I haven't heard any statements  
12 as to who he owes restitution to?

13 MR. WILDER: Whatever they say, Your  
14 Honor.

15 THE COURT: I -- your recommendation is an  
16 8 years cap. Period.

17 MR. MCLEOD: Your Honor, I would add also  
18 just for clarification, I did find his South  
19 Carolina records. He does have a conviction  
20 for breaking into autos or tanks, fuel store.  
21 Which I assume is a B & E autos from 2005. He  
22 received a 4-year concurrent sentence. A  
23 violation of Protective Order from 2004... Petty  
24 Larceny from 2004. And he does have a  
25 burglary third conviction in 2005. It appears

1 to be. He must have pled to all of those at  
2 the same time, because he does have a 4-year  
3 concurrent sentence on that. As well as a  
4 conviction for contributing to the delinquency  
5 of a minor. That same year.

6 THE COURT: How long did you spend in  
7 prison on those?

8 THE DEFENDANT: Two and a half years.

9 THE COURT: And you got out some time in  
10 07?

11 THE DEFENDANT: 06.

12 THE COURT: 06. I appreciate the comments  
13 everybody has made.

14 THE DEFENDANT: Excuse me, Your Honor. I  
15 would like to also say one thing. Where she  
16 was saying about us having no time when we're  
17 in the county. That's true. A lot of people  
18 don't have time. But I also took the time out  
19 to help guys get their GED. I've helped four  
20 people in there get their GED while we were in  
21 there. So I did take my time to try to better  
22 myself and help others.

23 THE COURT: Well the interesting  
24 commentary in all of this; is that, Mr. Getter,  
25 according to Mr. Smith and obviously Mr.

1 Britton indicate that he has turned his life  
2 around. Part of turning your life around in my  
3 mind at least in this case, is accepting  
4 responsibility for what you have done.

5 It's commendable that Mr. Getter is  
6 exerted the efforts he has exerted. But that  
7 doesn't take away from the fact that he, at  
8 least admitted his guilt to the burglary  
9 crimes. And he understands that he is going to  
10 be sentenced on the Alford Pleas just as if he  
11 had actually pled guilty. And, Mr. Smith, I  
12 trust you are going to tell me that your  
13 program is going to be a good thing to the  
14 community. But in my mind, that Mr. Getter's  
15 actions on these crimes, coupled with his  
16 extensive record to me, makes the  
17 recommendation made by the State extremely  
18 generous.

19 I am not going to put him on probation. I  
20 just don't -- I think it is commendable. At  
21 least a light has gone off in his head, but he  
22 has got to be punished for what he has done.  
23 And ironically, if anybody should realize that,  
24 he should. Because he has done these things,  
25 should make him realize that people committing

1           these crimes pay. I am going to take care of  
2           the two burglary thirds first.

3           He is committed to the State Department of  
4           Corrections for a period of 5 years on each of  
5           those. Those are concurrent of course. He  
6           gets credit for the time he has served on all  
7           of these. Burglary second nonviolent, he is  
8           committed to the State Department of  
9           Corrections for a period of 8 years. But I am  
10          toying, Mr. Getter, as to whether or not those  
11          are going to be -- that's going to be  
12          concurrent or consecutive.

13          Breaking and entering into a motor  
14          vehicle, those four counts 3, 5, 6 and 9, 5  
15          years. Which of course, that's the maximum on  
16          that. Those will be concurrent with one  
17          another. Forgery Count 10, 8 years.

18          Mr. Getter, I am going to -- I am going to  
19          go ahead and make all of these concurrent. And  
20          serve all the time together. That was the  
21          struggle I had just a moment ago. And I  
22          appreciate your efforts and Mr. Britton being  
23          here. And Mr. Smith being here. And Mr.  
24          Wilder's excellent efforts on your behalf. If  
25          I had not seen that support from these

1 gentlemen, especially the nonlegal support from  
2 Mr. Britton and Mr. Smith, you would have  
3 gotten more time than 8 years. It would have  
4 probably been upward of 10 or 12 in some form  
5 or fashion, Ms. Elmore, thank you for being  
6 here.

7 Again, if I didn't say so, the victim's  
8 rights have all been protected. All the  
9 sentences will be concurrent. And you will get  
10 credit for the time he has served.

11 And, Mr. Getter, if you are truly sincere  
12 in everything you've told me, once you get out  
13 of prison, in the scheme of things, hopefully  
14 it won't be too long, keep on keeping on. Show  
15 your true colors which you have expressed to me  
16 today, and follow through with what you said.

17 MR. WILDER: Your Honor, may Mr. McLeod  
18 and I approach?

19 THE COURT: Yes.

20 --End of Requested Transcript of Record--

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CERTIFICATE

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I the undersigned, Margaret T. Sullivan, for  
the Third Judicial Circuit of the State of South  
Carolina, do certify that the foregoing is a true  
and accurate transcrip taken on February 26, 2009,  
in the County of Sumter, State of South Carolina.

I do further certify that I am of neither  
kin or party thereto.

*November 18, 2009* *Margaret T. Sullivan*

November 18, 2009

Margaret T. Sullivan,  
Court Reporter

STATE OF SOUTH CAROLINA

County of SUMTER

DARNELL GETTER 308791  
Full name and prison number (if any) of Applicant,

vs.

STATE of South Carolina  
Name of Respondent.

CERTIFIED TRUE COPY RECORDED  
OF ORIGINAL FILE

2009 MAY 18 PM 12:45

In the Court of Common Pleas  
SUMTER COUNTY  
SOUTH CAROLINA  
CLERK OF COURT  
SUMTER COUNTY, S.C.

2009-CP-43- 1167

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 it clear to which question any such continued answer refers.

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

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

1. Place of detention EVANS CORRECTIONAL 610 Highway 9 West  
Bennettsville SC 29512
2. Name and location of Court which imposed sentence SUMTER COUNTY COURT 401 N. MAIN  
St. Sumter SC 29150
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 2008-GS-43-0439
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) 2/26/09 Burglary 2nd 8yrs
  - (b) 2/26/09 2cts Burglary 3rd 5yrs
  - (c) 2/26/09 BEMV 4cts 5yrs      2/26/09 Forgery 5yrs

5. Check whether a finding of guilty was made

- (a) after a plea of guilty YES
- (b) after a plea of not guilty \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

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

YES

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

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

- i. SUMTER COUNTY COURT
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

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

(c) the date of each such result:

- i. 5/5/09
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

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

- i. PURSUANT TO RULE 22(b) OF THE SOUTH CAROLINA APPELLATE COURT RULES
- ii. THE REMITT. FOR IN THE CASE WILL BE SENT TO THE CLERK OF COURT FOR
- iii. SUMTER COUNTY AFTER (15) DAYS, EXCLUSIVE OF THE DATE OF FILING THIS ORDER

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

- (a) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) COURT LACK SUBJECT JURISDICTION MATTER
- (b) BRADY VIOLATION
- (c) INAPPROPRIATE COUNCIL

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

- (a) IMPROPER INDICTMENT DID NOT HAVE THE PROPER ELEMENTS TO THE OFFENCE
- (b) THE SOLICITOR WITHHELD INFORMATION THAT CAUSED ME TO LACK KNOWLEDGE TO MY DEFENSE
- (c) COUNCIL FAIL TO INVESTIGATE TO PREPARE FOR DEFENSE. IT TOOK 18 MONTH FOR JUDICIAL

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

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

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) lawyer did not advise me properly upon appealing
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

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

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

- (a) the name and address of each attorney who represented you
  - i. Mr. Arthur Wilder 401 N MAIN ST  
Sumter SC 29150
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

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

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

I SEEK 4 years non-violent / AND OR CASE VACATED AND REMANDED  
BACK FOR RE-SENTENCING

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

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of SUMTER

I, DARNELL GETTER, 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.

Darnell Getter  
Applicant

SWORN to and subscribed before me this 15

day of MAY, 2009

Oscar W. Bunch (L.S.)  
Notary Public

My Commission Expires: 08-06-2009

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

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

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

Darnell Getter  
Applicant

SWORN or affirmed to and subscribed before me this

15 day of MAY, 2009

Oscar W. Bunch  
Notary Public

My Commission Expires 08-06-2009

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2009-CP-43-1167
	)	
Darnell Getter, #308791,	)	
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 18, 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 Sumter County Clerk of Court. The Applicant was indicted at the December 2008 term of the Sumter County Grand Jury for three counts of Burglary 2<sup>nd</sup> Degree – Violent (Counts 1, 2 & 11), seven counts of Breaking & Entering Auto (Counts 3-9) and one count of Forgery (Count 10) (2008-GS-43-0439). Applicant was represented by Arthur Wilder, Jr., Esquire. On February 26, 2009, the Applicant pled guilty before the Honorable George C. James, Jr. Applicant was sentenced as follows:

- For Burglary 2<sup>nd</sup> Degree – non-violent (Count 1), Applicant was sentenced to eight (8) years imprisonment.
- For Burglary 3<sup>rd</sup> Degree (Count 2), Applicant was sentenced to five (5) years imprisonment.

- For Breaking and Entering a Motor Vehicle, Applicant was sentenced to five (5) years imprisonment.
- For Forgery (Count 10), Applicant was sentenced to five (5) years imprisonment.
- For Burglary 3<sup>rd</sup> Degree (Count 11), Applicant was sentenced to five (5) years imprisonment.

All sentences were to be served concurrently. Applicant did not appeal his conviction and sentence.

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

## II.

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

1. "Court lack subject jurisdiction matter."
  - a. "Improper indictment didn't have the proper elements to the offense."
2. "Brady violation."
  - a. "The solicitor withheld information that caused me to lack knowledge to my defense."
3. Ineffective assistance of counsel.
  - a. "[Counsel] fail to investigate to prepare for defense. It took 18 month for indictment."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of

vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

### III.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90. See also S.C. Code § 17-19-20. Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, supra.

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

A review of the record clearly indicates that there is no basis upon which to conclude that the trial court lacked subject matter jurisdiction. Further, the Applicant's indictments are facially valid and proper. An indictment is adequate and valid on its face if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent prosecution. State v. James, 472 S.E.2d 38 (S.C. 1996); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952). The respondent moves for summary dismissal pursuant to South Carolina Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that this allegation should be dismissed as a matter of law

#### IV.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the allegation that the court lacked subject matter jurisdiction be summarily dismissed and an evidentiary hearing be held on Applicant's remaining allegations.

Respectfully submitted,

HENRY D. McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

7/21, 2009.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

DARNELL GETTER, 308791\

Applicant

STATE OF SOUTH CAROLINA

Respondent,

RECORDED  
INDEXED COMMON PLEAS COURT

2010 MAY 26 PM 12:26

DOCKET NO.: 2009-CP-43-1167

JAMES C. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

AMENDED APPLICATION FOR POST  
CONVICTION RELIEF

The Applicant through undersigned Counsel states that the Amended Application for Post Conviction Relief was filed on May 18, 2009, and wishes to add the following to that application:

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant alleges that his counsel provided Ineffective Assistance violating his sixth and fourteenth amendment rights in numerous errors committed by Counsel. Strickland v Washington 466 U.S. 668,104 S.Ct. 2254 (1984) The Errors are as follows:

1. Counsel failed to put in for a Brady violation due to inadequate Motion of discovery.
2. Counsel failed to make motion to quash indictment due to the fact that it took fourteen (14) months to indict applicant.
3. Counsel failed to conduct adequate pretrial investigation.
4. Counsel failed to interview potential witnesses.
5. Counsel failed to object to the duplicity of the indictments.
6. Counsel failed to request an independent examination of evidence.

7. Counsel failed to fully inform applicant of rights of appeal and failed to put appeal in after he was informed to do so by applicant and applicant's family.
8. Counsel failed to have indictment quashed in accordance with S. C. code Ann §17-19-90 (2003) due to the fact that the indictment is neither clerk of court stamped, or true bill stamped. The Solicitor changed the time of charge or that solicitor said applicant has two or more convictions of burglary and applicant has none.
9. Counsel failed to fully consolidate the numerous offense "closely connected offenses".

#### GUILTY PLEA ILLEGALLY INDUCED AND COERCED

The Applicant contends his guilty plea is illegally induced and coerced due to counsel's ineffective assistance and erroneous advice to plead guilty. *Hill v Lockhart*, 474 U.S. 52, 106 S.Ct. 366 (1985). The errors of counsel are as follows:

1. Counsel's failure to conduct a reasonable pretrial investigation to ascertain critical facts and evidence rendered Counsel's advice to plead guilty prejudicial to applicant's defense.
2. Counsel's failure to obtain an independent examination of evidence interfered with counsel's advice concerning entering the guilty plea.
3. Counsel's failure to interview potential witnesses hindered applicant's ability to adequately prepare his defense.

### GUILTY PLEA UNLAWFULLY ENTERED

The Applicant contends his guilty plea was unlawfully entered due to counsel's ineffective assistance. *Boykin v Alabama* 395 U.S. 238, 89 S.Ct 1709 (1969).

VICTIM WAS NEVER MADE AVAILABLE SUPPORTING ALL ALLEGATIONS

Attorney failed to contact witnesses who would have supported applicant's alibi to prove innocence.

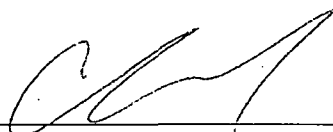
Due to counsel and solicitor telling applicant he could not take case by case to trial applicant was led into this plea.

In *State EX Rel. Daniel v Legursky*, 465 S. E. 2d 416 (W.Va. 1995), the fulcrum for any ineffective assistance of counsel claim is the adequacy of counsel's investigation. Although there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance, and judicial scrutiny of counsel's performance must be highly deferential. Counsel must at a minimum conduct a reasonable investigation enabling him or her to make informed decisions about how best to represent criminal clients. *Wickline v House* 188 W.Va. 344, 424 S.E. 2d 579(1992)(per curiam), *State ex rel Kid v Leverette*, 178 W.Va. 324, 359 S.E. 2d 344 (1987). Thus, the presumption is simply inappropriate if counsel's strategic decisions are made after an inadequate investigation. *Wajda v U.S.* 64 F 3d 385, 387(8<sup>th</sup> Cir.)(1995). As suggested in *Strickland*, "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. 466 U.S. at 691, 104 S.Ct. at 2066. 80 L.Ed.2d at 695. Courts applying the *Strickland* standard have found no difficulty

finding ineffective assistance of counsel where an attorney neither conducted a reasonable investigation nor demonstrated a strategic reason for failing to do so. See *Sanders v Ratelle*, 21 F.3d 1446(9<sup>th</sup> Cir. 1994).

In determining whether counsel's conduct falls within the broad range of professionally acceptable conduct, this court will not view counsel's conduct through the lens of hindsight. "(C)ourts are to avoid the use of hindsight to elevate a possible mistake into a deficiency of constitutional proportion." *Clanton v Bair*, 826 F.2d 1354, 1358(4<sup>th</sup> Cir. 1987) cert. denied, 484 U.S. 1036, 108 S.Ct. 762 98 L.Ed 2d 779(1988). Rather, under the rule of contemporary assessment, an Attorney's actions must be examined according to what was known and reasonable at the time the attorney made his or her choices.

RESPECTFULLY SUBMITTED ON BEHALF OF  
APPLICANT, Darnell Getter



---

Charles T. Brooks, III  
Attorney for Applicant  
309 Broad Street  
Post office Box 3512  
Sumter, South Carolina, 29150  
(803) 418-5708

May 25, 2010

STATE OF SOUTH CAROLINA ) IN THE COMMON PLEAS COURT

RECORDED

COUNTY OF SUMTER

2010 JUL 19 PM 12:31

DOCKET NO.: 2009-CP-43-1167

DARNELL GETTER, 308791

JAMES C. CAMPBELL

Applicant ) CLERK OF COURT )  
SUMTER COUNTY, S.C.

AMENDED APPLICATION FOR POST  
CONVICTION RELIEF

STATE OF SOUTH CAROLINA )

Respondent, )

The Applicant through undersigned Counsel states that the Amended Application for Post Conviction Relief was filed on May 18, 2009, and wishes to add the following to that application:

**SUBJECT MATTER JURISDICTION**

Applicant argues the trial court erred in allowing the State to proceed under the Amended Indictment arguing it provided insufficient notice and circuit court did not have subject matter jurisdiction to try him for 2<sup>nd</sup> degree burglary violent.

The subject matter jurisdiction of a court is fundamental and can be raised at any time. *Brown v State*, 343 S.C. 342, 346, 540 S.E. 2d 846, 848-49 (2001).

A trial court acquires subject matter jurisdiction to hear a criminal case by way of a legally sufficient indictment or a valid waiver thereof. *State v Johnston*, 333 S.C. 459, 462, 510 S. E. 2d 423, 424 (1999). See S. C. Const. Art. I § 11 (Supp. 2002) (Stating (n)o person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed).

An amendment to a legally sufficient indictment does not divest the trial court of subject matter jurisdiction so long as the amendment **does not change the nature of the offense charged..** (However if) such amendment shall operate as a surprise to the defendant...the defendant shall be entitled, upon demand, to a continuance of the cause).

Conversely, an amendment to an indictment that changes the nature of the offense charged or charges a different offense divests the trial court of subject matter jurisdiction. 41 AM Jur.2d Indictments and Informations § 174 (1995) (An indictment is impermissibly amended if the altered indictment charges a different offense or changes the nature of the offense). State v Lynch, 344 S. C. 635, 640-41, 545 S.E. 2d 511, 514 (2001)(holding the nature of the offense changed when an indictment for first degree burglary was amended to change the aggravating circumstance from entering during darkness to causing physical injury because "the proof required for each aggravating circumstance (was) materially different"). Hopkins v State, 317 S.C. 7, 9, 451 S.E. 2d 389, 390 (1994)(Holding the nature of the offense changed because the amendment to the indictment increased the maximum penalty for the crime; State v Riddle, 301 S.C. 212, 212, 391 S.E. 2d 253, 253 (1990)(holding the nature of the offense was changed when an indictment was amended from assault with intent to commit third degree criminal sexual conduct to assault with intent to commit first degree criminal sexual conduct because the punishment for the amended offense was different from the punishment for the original offense.) S. C. Const. Art. I § 11 (Supp. 2002)(Conviction on amended indictment substituting different offense is valid) State v Sowell, 85 S.C. 278, 283-84, 67 S. E. 315, 317-19(1910)(holding when an

amendment to an indictment substituted a different and distinct offense from the one charged, the trial court is divested of subject matter jurisdiction because the grand jury had not indicted the defendant on the substituted offense. See also *State v Gunn*, 313 S. C. 124, 132-36 437 S.E. 2d 75, 80-82 (1993)(holding the scope of the jurisdiction conferred by an indictment is limited to the charged offense).

A circuit court has subject matter jurisdiction if: (1) There has been an indictment which sufficiently states the offense; (2) there has been a waiver of the indictment; or (3) the charge is a lesser-included charge of the crime charged in the indictment. *Brown v State*, 343 S.C. 342, 540 S.E. 2d 846 (2001)(citing *Carter v State*, 329 S.C. 355, 495 S.E. 2d 773 (1998)). The true test of an indictment is not whether it could be made more definite and certain but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. "Id. (quoting *Browning v Sate*, 320 S.C. 366, 368, 465 S.E. 2d 358, 359 (1995) emphasis added by Brown.

An indictment is a notice document. Id. at 101, 610 S.E. 2d at 499. "The Primary purpose of an indictment is to put the defendant on notice of what he is called upon to answer, i.e., to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted. "Evans v State, 373 S. C. 495, 508, 611 S.E. 2d 510, 517 (2005). An indictment may be amended if (1) It does not change the nature of the offense; (2) The amended charge is a lesser included offense of the original crime charged in the indictment;

or (3) the defendant waives presentment to the grand jury and pleads guilty. *State v Myers*, 313 S.C. 391, 393, 438 S.E. 2d 236, 237 (1993).

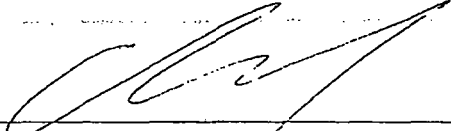
Here, appellant asserts that the substance and nature of the crime charged was affected by amending the indictment. Appellant conceded the language in the amended indictment was not the same as the crime charged. The changes made to the indictment concerned the (time)(Daytime or nighttime) and by adding that (appellant has two (2) or more convictions of burglary) and appellant can show proof that he has none. The appellant also asserts that the circuit court also lacked subject matter jurisdiction because the indictment in neither true bill stamped or clerk of court stamped. See *Diaze v Moore* 139 F. 3d 888 (S.C. App. 1995) and *State v Grim* 533 S.E.2d 329, 341, S.C. 63 (2000).

When confronted with whether the trial court had subject matter jurisdiction to accept defendants guilty plea when the indictment was not stamped "true bill" trial court has several alternatives: court may conduct an evidentiary hearing to determine whether the indictment was "true billed"; resubmit the indictment for grand jury consideration; effect a waiver of presentment of the indictment to the grand jury and again entertain the defendant's plea; and proceed anew. Therefore the amendment did prejudice appellant.

In taking our cue from *State v Gentry*, 363 S.C. 93 (2005) few jurisdictions combine the concepts of subject matter jurisdiction of the trial court and the sufficiency of the indictment. See e.g. *Cole v State* 842, S.D. 2d.605 (Ala.202)(When first degree robbery indictment fails to set forth essential element of offense of second degree robbery, insufficiency of factual basis for guilty plea to second degree robbery may be attached on basis court lacked subject matter

jurisdiction to accept the plea) State v Bullock 154 N.C. App 234, 574 S.E. 2d  
17(2007)(when indictment does not allege essential elements of crime charged,  
trial court does not have subject matter jurisdiction) State v Presler 112 Ohio App.  
437, 176 N. E. 2d 308 (1960)(Court did not have subject matter jurisdiction where  
indictment did not state element of the offense. "Consequently, defects in subject  
matter jurisdiction require correction regardless of whether the error was raised".

RESPECTFULLY SUBMITTED ON BEHALF OF  
APPLICANT, Darnell Getter



---

Charles T. Brooks, III  
Attorney for Applicant  
309 Broad Street  
Post office Box 3512  
Sumter, South Carolina, 29150  
(803) 418-5708

July 14, 2010

STATE OF SOUTH CAROLINA **RECORDED** COURT OF COMMON PLEAS

COUNTY OF SUMTER 2009 DEC -9 PM 12:55 THIRD JUDICIAL CIRCUIT

Darnell Getter, 308791  
Applicant

JAMES C. CAMPBELL  
CLERK OF COURT Case No. 2009-CP-43-1167  
SUMTER COUNTY, S.C.

vs

SUPPLEMENTAL ATTACHEMENT  
TO POST CONVICTION RELIEF  
APPLICATION

State of South Carolina

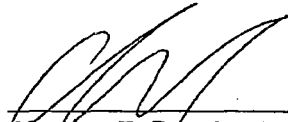
Respondent

The Applicant, DARNELL GETTER, through his undersigned Attorney wishes to add:

**INEFFECTIVE ASSISTANCE OF COUNSEL**

Applicant wishes to add that Counsel was ineffective to due Counsel not making motion to attempt to quash indictment due to the fact that all charges had the same indictment number. Also Applicant wishes to add that in his plea that all charges were to be lessor included offenses and sentence was not dropped to a lower offense as indicated on his sentencing sheet.

Respectfully Submitted  
On Behalf of Darnell Getter

  
Charles T. Brooks, III  
The Brooks Law Firm, LLC  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina 29151  
(803) 418-5708

Sumter, SC  
December 7, 2009

State of South Carolina )

County of Sumter )

Darnell Getter )  
Plaintiff )

2009-CP-43-01167  
PCR

vs.

The State of South Carolina,  
Defendants

April 25, 2011  
Sumter, S.C.

BEFORE THE HONORABLE W. Jeffrey Young, Judge.

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

Ms. Mary Williams,  
Attorney for the State

Mr. Charles T. Brooks,  
Attorney for the Defendant

Margaret T. Sullivan,  
Court Reporter

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<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Darnell Getter				
by Mr. Brooks	3			
by Ms. Williams		8		
Arthur Wilder				
by Mr. Brooks				

1 THE COURT: This is the case of Darnell Getter  
2 versus the State of South Carolina. Under Docket Number  
3 2009-CP-43-1167. Present and appearing is the Plaintiff  
4 with his attorney Mr. Charles Brooks of the Sumter  
5 County bar. The State is present and represented by  
6 Ms. Mary S. Williams. Are you ready to proceed?

7 MR. BROOKS: Yes, sir.

8 THE COURT: All right.

9 MR. BROOKS: We would call Mr. Getter to the  
10 stand.

11 Darnell Getter, being first  
12 duly sworn, testified as follows:

13 THE CLERK: State your name and spell your last  
14 for the record.

15 A Darnell Getter. G-E-T-T-E-R.

16 Direct Examination by Mr. Brooks:

17 Q Mr. Getter, I am going to ask you a couple  
18 little background questions. Let me talk about  
19 first to put on the record. And then we are going  
20 to get in to the allegations.

21 Now, you are currently serving a sentence for  
22 burglary and some other charges; is that correct?

23 A Yes.

24 Q And you are currently about to get out of  
25 jail in what, about 5 or 6 weeks?

Darnell Getter-direct by Brooks

1 A Yes.

2 Q Okay. And you understand that the only  
3 thing that the judge can do for you today, is to  
4 give you a new trial on all these charges.

5 A Yes.

6 Q And you understand that if that happens,  
7 you could potentially face, I think back up  
8 somewhere in neighborhood of potentially 60 years?

9 A Yes.

10 Q Okay. Knowing that, is it still your  
11 desire to go forward?

12 A Yes.

13 Q Now you had Mr. Wilder as your lawyer; is  
14 that correct?

15 A Yes.

16 Q And you ended up pleading guilty to these  
17 charges; is that correct?

18 A Yes.

19 Q Now you raised the allegation about as far  
20 as you pleading guilty; is that correct?

21 A Yes.

22 Q Can you go ahead and elaborate that to the  
23 court?

24 A Because I was told that if I pled, that my  
25 charges would be dropped to a lesser included

Darnell Getter-direct by Brooks

1 offense. But I was never shown my indictment  
2 where they changed the time of the day from  
3 nighttime to -- I mean from daytime to nighttime,  
4 which would push the charge up. Because when I  
5 pleaded, it dropped back down to a different  
6 charge. And then they told me if I pled, they  
7 would drop two of the charges. But then when I  
8 did get the indictment, I looked on it, and they  
9 doubled that charge that they said they would  
10 drop. They doubled them.

11 Q And when you say double, they put it on --  
12 they put it as a part of the plea, but they were  
13 concurrent.

14 A No, when I say they doubled it, okay, they  
15 told me that if I pled, they would drop two of the  
16 auto theft charges. But what they did was, they  
17 charged me the two charges twice; the same charge  
18 twice. So technically they dropped the charge.

19 Q Okay. And that's one of the issues you  
20 have in your allegation;---

21 A Yes.

22 Q ---is that correct? And one of the other  
23 issues you said---

24 A They changed it night -- from daytime to  
25 nighttime.

## Darnell Getter-direct by Brooks

1 Q Okay. And then one of your other  
2 allegations was Mr. Wilder didn't show you the  
3 indictment.

4 A The indictment. No, I -- okay, I kept  
5 asking him for 14 months for my indictment, and he  
6 never showed it to me until after I pleaded out.  
7 Then he brings me the indictment in the holding  
8 cell. And then I told him that I wanted to appeal  
9 it there, and he never even put the appeal in.

10 Q Okay. So you are also upset that you  
11 didn't get an appeal of this guilty plea; is that  
12 correct?

13 A Right.

14 Q Okay.

15 A Because if, like okay, they told me if I  
16 pled, it would be a lesser included offense.  
17 Okay. The charge was burglary second. If they  
18 had dropped it down, it would have been a burglary  
19 third. The max they would have gave me was  
20 5 years.

21 Q And what did you end up getting?

22 A 8 years.

23 Q So you got 8 years. If it would have been  
24 5, you would be happy.

25 A Yes.

## Darnell Getter-direct by Brooks

1 Q Okay. And if you had gotten 5, you might  
2 be out now.

3 A Yes. I would have been out.

4 Q Okay. And if you got that, you wouldn't  
5 be worrying about this PCR.

6 A I wouldn't be worrying about it now.

7 Q But as it stands now, you are getting out  
8 in about 6 weeks. And you still want this new  
9 trial.

10 A Yes, because I am on parole, and they  
11 double deck. They gave me a parole. Well I only  
12 had another 12 months left. Now they are going to  
13 double deck. Now I have 28 months left on  
14 parole.

15 Q Okay. Whereas if you had gotten 5 years  
16 that you wanted on burglary third, you would  
17 rather be off parole and everything; is that  
18 right?

19 A I would be off everything.

20 Q Okay. And I have to ask this again, Mr.  
21 Getter. You understand what you are risking.

22 A Yes.

23 Q If I convince the judge here to give you  
24 this new trial.

25 A Yes.

Darnell Getter-direct by Brooks

1 MR. BROOKS: No other questions.

2 THE COURT: Ms. Williams.

3 Cross Examination by Ms. Williams:

4 Q Now, Mr. Getter, you were told on the  
5 record that you were pleading to the lesser  
6 offenses of burglary second nonviolent instead of  
7 violent; is that correct?

8 A Yes, but that was the original charge  
9 anyway.

10 Q Are you sure that it was nonviolent  
11 originally?

12 A Yes, I have the paperwork. If I can get  
13 my paperwork, I can show it to you.

14 Q I have got a copy of it right here, where  
15 it says burglary second violent. Does this look  
16 right?

17 A That's after they changed it. That's when  
18 they changed it to nighttime.

19 Q But you understand you pled to burglary  
20 second nonviolent, which is a lesser included of  
21 that; right?

22 A Yes, what I was -- see what I was told  
23 was, in my warrant, he showed me my warrant. And  
24 it's already, I was arrested for burglary  
25 nonviolent. I have the warrant over there in my

## Darnell Getter-cross by Ms. Williams

1 paperwork, If I can show it to you. And they  
2 changed it to nighttime, and that moved it up to a  
3 violent.

4 Q And you even corrected the court when they  
5 said it was 11:00 p.m. You said: "No, no, it  
6 was 11 a.m." Right?

7 A Yes.

8 Q Okay. So that was in the record.

9 A And even the Solicitor on the transcript,  
10 he came back and said, oh, these charges happened  
11 in the daytime. But then he put it down at night.

12 Q And you pled to it happening in the  
13 daytime; right?

14 A Yes.

15 Q Other than that, you agreed with the  
16 facts; is that correct?

17 A Yes. If they wouldn't have it that way, I  
18 wouldn't have no problem with it.

19 Q And you said there was nothing else you  
20 wanted Mr. Wilder to do in the way of  
21 investigation, and speaking with witnesses. So  
22 you were happy with him about that?

23 A As far as that; yes. Here is one of them  
24 where it says May 5th 2007, at 12:28 p.m. That's  
25 in the afternoon. And the other one---

## Darnell Getter-cross by Ms. Williams

1 Q But that was all straightened out in the  
2 plea; is that correct?

3 A No, it wasn't.

4 Q You told him it was 11:00 a.m. not  
5 11:00 p.m.; right?

6 A If you read further, the judge left it at  
7 nighttime, because the Solicitor said----

8 Q And that was from a house; right? Not a  
9 business---

10 A Yes.

11 Q That was a house; right?

12 A Yeah. The Solicitor said that he did it  
13 that way because of some of the charges that I had  
14 in New Jersey.

15 Q Now tell me about that. Now Mr. Wilder  
16 got them to fix that too; didn't he? Because you  
17 had a bunch of charges from other states; right?

18 A All those charges was dropped.

19 Q You didn't have a burglary pled down to  
20 theft? Shoplifting by theft? Receiving stolen  
21 property? Obstruction of a law enforcement  
22 officer?

23 A No, I have a paperwork that will show  
24 those are dropped. Those charges were dropped. I  
25 have the paperwork in here for that too.

## Darnell Getter-cross by Ms. Williams

1 Q You don't have a 2000 theft, movable  
2 property, receiving stolen property, and a  
3 burglary that was pled out to criminal trespass in  
4 New Jersey?

5 A No, it was dropped.

6 Q You didn't agree with that in a plea  
7 transcript when they talked about it?

8 A I didn't know -- they were saying I had  
9 charges in Tennessee. I've never even been to  
10 Tennessee.

11 Q Now you told them you didn't have those.

12 A Yeah.

13 Q But you agreed with them about the New  
14 Jersey and the Georgia ones; right?

15 A Because when he showed it to me, he never  
16 showed me the thing. He just flashed it in front  
17 of me. And I know I did had charges in New  
18 Jersey, but I never had no burglary and stuff.  
19 And that's why I got the paperwork to prove that;  
20 that these charges was dismissed.

21 Q And that's why he got it fixed where you  
22 didn't have any prior; where they changed the  
23 indictment for the prior burglary.

24 A They never changed the indictment. They  
25 left it -- they pushed it up as a nighttime

## Darnell Getter-cross by Ms. Williams

1 burglary. They never changed it. They didn't  
2 change it until it was supposed to have been.  
3 They changed it upwards. They still enhanced it.

4 Q You've had burglary third in South  
5 Carolina before; right?

6 A Yes.

7 Q So you know what you are talking about.

8 A Yes.

9 MS. WILLIAMS: I think that's about all  
10 that we've got. The priors were in the  
11 transcript. So I'll leave it at that.

12 THE COURT: Mr. Brooks.

13 MR. BROOKS: No other questions.

14 THE COURT: You may step down.

15 MR. BROOKS: We would call Mr. Wilder to  
16 the stand.

17 ARTHUR WILDER, after being duly sworn,  
18 testified as follows:

19 THE CLERK: State your name and spell your  
20 last for the record?

21 A I am Arthur Harrison Wilder, Jr. My last  
22 name is spelled, W-I-L-D-E-R.

23 Direct Examination by Mr. Brooks:

24 Q Mr. Wilder.

25 A Good morning, Mr. Brooks.

Arthur Wilder-direct by Brooks

1 Q How are you today?

2 A Just fine. Thank you.

3 Q You represented Mr. Getter?

4 A I did.

5 Q And can you briefly surmise the State's  
6 case against him?

7 A He was indicted for several counts of  
8 breaking and entering an automobile. Also charged  
9 with multiple counts of burglary. And I was  
10 appointed to represent him through the Public  
11 Defender's office. I received the appointment on  
12 December 4th 2007. The same date I filed a Rule 5  
13 motion and a Brady motion. Requested a  
14 preliminary hearing. Filed several motions to try  
15 to get his bond reduced; went to see him at the  
16 jail. Visited him in D pod. A few jail visits  
17 with him during that time.

18 I was keeping track of him also, because  
19 Mr. Britton was working with him with a jail  
20 ministry that Mr. Britton does. And eventually we  
21 got his bond straightened out where he could get  
22 out on bond. It took a couple of attempts in  
23 front of Judge King to get the bond reduced, but  
24 eventually we did. And then spoke to him in the  
25 Public Defender's office on several occasions. I

Arthur Wilder-direct by Brooks

1 have those listed in my contacts with my  
2 defendant. And we eventually were able to get a  
3 plea offer from Trey McLeod who was prosecuting  
4 for the Solicitor's office. And they were willing  
5 to recommend a sentence of an 8-year cap.

6 During that time, Mr. Getter met up with a  
7 gentleman by the name of Lucious Durant, who was  
8 speaking with him about -- speaking for him  
9 during the plea. And Mr. Durant evidently  
10 promised to stand up there with Mr. Getter  
11 and make a recommendation of probation. I agreed  
12 to ask the court for probation, but with the  
13 understanding that the plea offer from the State  
14 was an 8-year cap; did not lead him to believe one  
15 way or another what the court might do.

16 But anyway, he decided to enter a plea of  
17 guilty. He had certain issues about whether or  
18 not the State could actually prove all of the  
19 elements of burglary. We discussed that. He  
20 decided that he wanted to enter an Alford Plea;  
21 feeling that it would most likely be that he would  
22 be convicted. One of the issues in the case which  
23 was on the face of the indictment was whether or  
24 not he had two previous convictions for burglary  
25 on the record. There were out of state

## Arthur Wilder-direct by Brooks

1 convictions listed on his rap sheet from Georgia  
2 and New Jersey indicating he had been convicted of  
3 burglary in those states. And we had also had a  
4 history in South Carolina of convictions to deal  
5 with, whether or not those would have stood alone  
6 is questionable. But all of those were what the  
7 State was relying on. They enhanced the burglary  
8 charges to a violent burglary for which they  
9 procured an indictment. He was indicted. It was  
10 true billed by the grand jury. And that was all  
11 in our file folder before he decided to go ahead  
12 and plead guilty. I met with him in the office on  
13 February 24th and 25th of 09. We had phone  
14 conversations on February 5th of 09.

15 A jail visit listed 9/26/08. Also jail  
16 visits on 5/07/08, 2/23/08. And an office visit  
17 on 2/24/09. All those are prior to the plea, in  
18 which we discussed this case and possible  
19 defenses. He made reference to the State dropping  
20 two of the charges. That was done because through  
21 discussion with the Solicitor's Office, they  
22 realized that they had to some extent, duplicated  
23 some of the charges. I didn't want him to plead  
24 guilty to something twice. So of course they  
25 dropped the ones duplicated. And it wasn't as

Arthur Wilder-direct by Brooks

1       though they were giving him something that they  
2       couldn't prove. But it was to straighten out the  
3       fact that they had charged him twice with  
4       something that he was only guilty of once.

5           Q       Now you have heard some mention about some  
6       things in New Jersey. Are you aware that some New  
7       Jersey stuff had gotten dismissed?

8           A       All right, here is a copy of a criminal  
9       rap sheet from New Jersey. It says that for  
10      offense date of September 28th of 2000, which is  
11      Count 1, 2(c): 18-2(a) charge, burglary.  
12      Deposition date 9/29/2000. Disposition: Guilty.  
13      Newark Municipal Criminal Court. Assess a fine.  
14      That's what is showing here. And I have a copy of  
15      that.

16                 Now remember, Mr. Brooks, he was pleading  
17      under Alford to a nonviolent burglary second. So  
18      the -- you know, the issue of enhancement of the  
19      charge I don't feel really plays into what he  
20      actually decided to plead guilty under. The  
21      threat of a possible enhancement was what I was  
22      concerned about since they had him indicted on the  
23      issue of whether or not there were two prior  
24      burglaries.

25           Q       I understand. Now did you discuss that

Arthur Wilder-direct by Brooks

1 with him?

2 A We went over his record at length. I have  
3 got both circles and arrows over what we discussed  
4 prior to his plea.

5 Q Now but if those are charges that you went  
6 over with him on the NCIC, if those charges had  
7 ultimately gotten dismissed, would that still have  
8 changed your approach to this case?

9 A You know, there is also the Georgia  
10 conviction for burglary, which also shows up on  
11 there, 6 months Atlanta Police Department, arrest  
12 date, Septmber 15th 1998. Showing as a  
13 disposition a conviction of burglary. And, you  
14 know, they are showing as a conviction on both the  
15 Georgia charges and the New Jersey charges.  
16 Ultimately, it was his decision to decide whether  
17 or not to plead guilty to the offense of burglary  
18 second degree nonviolent. He said all along it  
19 was the daytime. And may well have been. But he  
20 indicated to me that he had crossed the threshold  
21 of the location without permission from the owner  
22 with the intent to commit a crime.

23 On these multiple accounts they had  
24 sufficient evidence on more than one of them. I  
25 felt to convict him. So standing alone, they were

Arthur Wilder-direct by Brooks

1 going to get him on the burglary, I felt. And  
2 probably burglary second degree.

3 Q And did you relay all this to Mr. Getter;  
4 explain to him as articulate as you explained it  
5 today?

6 A I hope so. I feel I did.

7 Q Now, so basically, what you are saying,  
8 now the NCIC, that's all you had to go on; is that  
9 right? Or whether or not he has these prior  
10 convictions from these other jurisdictions.

11 A I certainly had no personal knowledge of  
12 that. And so I am basing it on what I was given  
13 in the discovery packet, you know, from the State  
14 as to his prior record. Now, you know, he has  
15 some issues about whether or not he was actually  
16 convicted of these things. And I believe at one  
17 point, I had the discussion with him that if you  
18 raise the issue and that became important that in  
19 most states when they take your fingerprint, they  
20 have a code that goes along with fingerprints,  
21 that they can use to track down whether or not  
22 that was actually you who was convicted.

23 And, you know, we weren't basing our plea  
24 on whether or not he had been convicted in these  
25 other states. Just whether or not we were running

Arthur Wilder-direct by Brooks

1 the risk of actually getting the charges enhanced  
2 in South Carolina based on these convictions. And  
3 I still feel he has got a substantial risk for  
4 enhancement.

5 MR. BROOKS: I beg the court's indulgence.

6 THE COURT: Yes, sir.

7 MR. BROOKS: No other questions, Judge.

8 THE COURT: Any questions, Ms. Williams?

9 MS. WILLIAMS: No, sir, Your Honor.

10 THE COURT: Mr. Wilder, you may step down.

11 Anything further, Mr. Brooks?

12 MR. BROOKS: Judge, that's the Applicant's  
13 case.

14 THE COURT: Ms. Williams, anything  
15 further?

16 MS. WILLIAMS: Nothing, Your Honor.

17 THE COURT: I will take this matter under  
18 advisement. I will notify the parties when I make  
19 my ruling. Thank you.

20 MR. BROOKS: Thank you, Judge.

21 --End of Requested Transcript of Record--

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

I, Margaret T. Sullivan, Court Reporter, for the Third 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 Court of Common Pleas/nonjury on April 25, 2011, Sumter County, Sumter, South Carolina.

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

1/30/12  
DATE

Margaret T. Sullivan  
COURT REPORTER

My Commission expires: 9/7/2021

RECORDED

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF SUMTER 2011 SEP 30 AM 11:52 FOR THE THIRD JUDICIAL CIRCUIT

JAMES D. CAMPBELL  
CLERK OF COURT  
SUMTER COUNTY, S.C.

2009-CP-43-1167

Darnell Getter, #308791,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY  
OF ORIGINAL FILED  
*Marie L. Hoff*  
DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 18, 2009, and amended May 26, 2009, and July 19, 2009. An evidentiary hearing into the matter was convened on Monday, April 25, 2011, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Arthur Wilder, Esquire ("counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Sumter County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was indicted at the December 2008 term of the Sumter County Grand Jury for three counts of Burglary 2<sup>nd</sup> Degree – Violent (Counts 1, 2 & 11), seven

counts of Breaking & Entering Auto (Counts 3-9) and one count of Forgery (Count 10) (2008-GS-43-0439). Applicant was represented by Arthur Wilder, Jr., Esquire. On February 26, 2009, the Applicant pled guilty before the Honorable George C. James, Jr. Applicant was sentenced as follows:

- For Burglary 2<sup>nd</sup> Degree – non-violent (Count 1), Applicant was sentenced to eight (8) years imprisonment.
- For Burglary 3<sup>rd</sup> Degree (Count 2), Applicant was sentenced to five (5) years imprisonment.
- For Breaking and Entering a Motor Vehicle, Applicant was sentenced to five (5) years imprisonment.
- For Forgery (Count 10), Applicant was sentenced to five (5) years imprisonment.
- For Burglary 3<sup>rd</sup> Degree (Count 11), Applicant was sentenced to five (5) years imprisonment.

All sentences were to be served concurrently. Applicant did not appeal his conviction and sentence.

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

1. "Court lack subject jurisdiction matter."
  - a. "Improper indictment didn't have the proper elements to the offense."
2. "Brady violation."
  - a. "The solicitor withheld information that caused me to lack knowledge to my defense."
3. Ineffective assistance of counsel.
  - a. "[Counsel] fail to investigate to prepare for defense. It took 18 month for indictment."

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

**Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this

prong, attorney performance is measured by its "reasonableness" under professional norms.

Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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 (4<sup>th</sup> Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4<sup>th</sup> Cir. 1976).

*Failure to Investigate and Failure to Object to Brady Violation*

The allegations made in the application and at the hearing all come down to the claim of ineffective assistance of counsel. Applicant has alleged that his plea was not entered voluntarily and knowingly as counsel failed to properly investigate his case to prepare a defense, failed to object to an erroneous and untimely indictment, and failed to bring a Brady violation by the solicitor to the plea court's attention. As stated above, an Applicant in PCR that pleads guilty on counsel's advice may only collaterally attack the voluntary and knowing nature of his guilty plea by showing (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, *supra*. Therefore, this allegation is essentially a claim of ineffective assistance of counsel that rendered a guilty plea involuntary.

At the PCR hearing, Applicant testified that counsel told him that if he entered a plea, it would be to a lesser included charge. Applicant went on to say counsel never showed him a copy of the indictment charging him with the commission of a burglary at night, and that on the record during the plea it was stated the robbery took place at eleven o'clock in the morning, not in the evening. Applicant added that he asked counsel to appeal his plea, but that an appeal was never filed on his behalf.

Counsel testified that after being appointed to represent Applicant in December of 2007, he immediately set to work getting Applicant's bond reduced, which was accomplished. Counsel went on to state he met with Applicant several times in prison before the bond hearing and several more times at the public defender's office after that, during which counsel advised Applicant of a plea offer from the state with an eight-year cap sentence. Counsel testified that during those meetings, he reviewed the indictments with Applicant including the state's burden

of proving each element of each crime contained therein. Counsel articulated that based on those discussions and his inclination that a conviction was likely at trial, Applicant decided to enter an Alford plea and accept the state's offer. He went on to say there was an issue during the plea as to whether Applicant had two prior charges from out-of-state as listed on his rap sheet, but that in the end, the charges that Applicant pled to were appropriate based on his criminal history. Counsel finished by stating that in the end, it was ultimately Applicant's decision to enter the plea and that he did so after being fully advised by counsel as to the plea offer and charges he was facing.

I find that counsel's performance was not deficient under the circumstances. Further, I find Counsel's testimony to be credible. Conversely, I find Applicant's testimony to not be credible. Counsel advised Applicant of all relevant issues regarding the charges he was facing, including the facts giving rise to the charges, the indictments, the elements of the offenses, potential sentences he was facing, and the consequences of rejecting this plea to proceed to trial. Additionally, counsel gave Applicant all the information and advice to make an intelligent and voluntary decision on whether to enter this plea. Applicant has failed to demonstrate what additional investigation would have yielded and that any such evidence would have affected his decision to enter this advantageous guilty plea. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (no prejudice where claim of failure to investigate is supported only by mere speculation as to the result). Further, Applicant did not present any testimony regarding an alleged Brady violation or indictment issue that would support this court providing the relief sought. Counsel reviewed the indictments and elements of each offense with Applicant prior to the entry of his plea, and while there was some testimony presented regarding an issue with Applicant's prior criminal charges used for enhancement, in the end Applicant pled to the

appropriate charges based on this allegation. Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective in his representation. Further, I find that Applicant's guilty plea was entered knowingly and voluntarily after being fully and adequately advised by competent counsel acting within the range of competence demanded of attorneys in criminal cases.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

### CONCLUSION

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

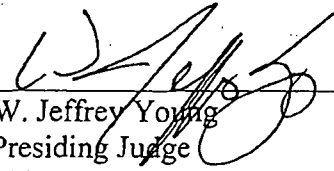
Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them, including the allegation in his application regarding counsel's failure to file a direct appeal. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

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

AND IT IS SO ORDERED this 26 day of Sept, 2011.

  
\_\_\_\_\_  
W. Jeffrey Young  
Presiding Judge  
Third Judicial Circuit

Dumter, South Carolina.

STATE OF SOUTH CAROLINA )  
 ) BURGLARY (2ND, Violent, 3 Counts); BREAKING  
 COUNTY OF SUMTER ) & ENTERING AUTO (7 Counts); FORGERY

At a Court of General Sessions, convened on December 31, 2008, the Grand

Jurors of SUMTER County present upon their oath:

COUNT ONE – BURGLARY (2<sup>nd</sup>, Violent)

That DARNELL J. GETTER did in Sumter County on or about May 5, 2007, enter the dwelling at \_\_\_\_\_ occupied by Tiffany Gettings in the nighttime without consent and with the intent to commit a crime therein, in violation of Section 16-11-312 (B)(2), South Carolina Code of Laws (1976), as amended, and the defendant having a prior record of two or more convictions for burglary or housebreaking or a combination of both.

COUNT TWO – BURGLARY (2<sup>nd</sup>, Violent)

That DARNELL J. GETTER did in Sumter County on or about August 1, 2007, enter the building, to-wit: \_\_\_\_\_ occupied by Du-Process Designs, without consent and with the intent to commit a crime therein and said defendant entered or remained in said building in the nighttime, in violation of Section 16-11-312(B)(2), South Carolina Code of Laws of South Carolina (1976), as amended, and the defendant having a prior record of two or more convictions for burglary or housebreaking or a combination of both.

COUNTS THREE THROUGH NINE – BREAKING & ENTERING AUTO

That DARNELL J. GETTER did in Sumter County on or about the dates listed below, violate Section 16-13-160(A)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did break into the motor vehicles as listed below with intent to steal same and/or something of value there from:

Count	Date	Vehicle Type	Owner	Location	Warrant #
3	10/3/07	Ford E150 Van	Sumter School Dist. 17		J303335
4	10/3/07	Dodge Ram	Sumter School Dist. 17		J303336
5	10/3/07	Dodge Ram (SC Tag CG45842)	Sumter School Dist. 17		J303336
6	10/9/07	1984 Box Truck	Sumter School Dist. 17		J303335
7	10/3/07	1996 Chev. Pickup	Sumter School Dist. 17		J303335
8	10/3/07	Ford E150	Sumter School Dist. 17		J303335
9	10/9/07	1994 Nissan Pickup	Dennis Elmore		J303337

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

*P. Kelly Jackson*  
 SOLICITOR

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR BURGLARY (2<sup>ND</sup>, Violent, 3 Counts), BREAKING & ENTERING AUTO (7 Counts), FORGERY WITH THE AFORESAID NAME OF DARNELL J. GETTER SHOWN THEREON:

DEPUTY CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA

COUNT TEN – FORGERY

That DARNELL J. GETTER did in Sumter County on or about October 9, 2007, with intent to defraud, falsely, make, forge, counterfeit, cause or procure to be falsely made, forged, or counterfeited, utter and publish as true, or wilfully act or assist in any of the foregoing, in regard to an instrument of writing, to-wit: forged check #1631 purporting to be drawn on the account of Dennis Elmore in the amount of \$325.00 and made payable to Timothy Dingle to Bank of America at 1141 Broad Street, as prohibited by Section 16-13-10 of the Code of Laws of South Carolina (1976), as amended.

COUNT ELEVEN – BURGLARY (2<sup>nd</sup>, Violent)

That DARNELL J. GETTER did in Sumter County on or about October 27, 2007, enter the building in the daytime, to-wit: 410 Broad Street occupied by Bells Appliance, without consent and with the intent to commit a crime therein and said defendant having a prior record of two or more convictions for burglary or housebreaking or a combination of both, of Section 16-11-312(B)(2), South Carolina Code of Laws of South Carolina (1976), as amended.

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

*C. Kelly Jackson*  
\_\_\_\_\_  
SOLICITOR

DOCKET NO. 2008-GS-43- 439

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JANUARY TERM 2009

THE STATE

vs.

DARNELL J. GETTER

ARREST WARRANT NUMBER

J302309; J303328; J303335; J303336;  
J303337; J303338; J295683

D/A: 05/07/09

ACTION OF GRAND JURY

*[Signature]*  
Travis Bice

Foreperson of Grand Jury

Date: 31 DECEMBER 2008

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

BURGLARY (2<sup>ND</sup>, Violent, 3 Counts),  
BREAKING & ENTERING AUTO (7  
Counts), FORGERY

C. KELLY JACKSON, SOLICITOR

CLERK OF COURT  
SUMTER COUNTY  
SOUTH CAROLINA  
JAN 13 2009

98 STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

CERTIFIED TRUE COPY OF ORIGINAL FILED INDICTMENT/CASE#: 2008-GS-43-0439

STATE VS.

James C. Campbell 203328

5573

DARNELL JAMES GETTER

AKA:

Race: Black

Sex: Male

Age:

DOB:

SS#:

Date of Offense: August 01, 2007  
CLERK OF COURT S.C. Code §: 16-11-0312  
SUMTER COUNTY S.C. Code §: 0080

Address:

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Burglary 3rd

in violation of § 16-11-312 of the S.C. Code of Laws, bearing CDR Code # 0101810

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC w/minor 1st or Lewd Act)  §17-25-45

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:

[Signature] Solicitor

[Signature] Defendant

[Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 5 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years

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

costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

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:  Deferred,  Defendant Waives Hearing,  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment

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
\$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
\$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)	\$390
TOTAL	\$133.90

- Obtain GED
- Attend Voc. Rehab. or Job Corp.
- May serve W/E beginning \_\_\_\_\_
- Substance Abuse Counseling \_\_\_\_\_
- Random Drug/Alcohol Testing \_\_\_\_\_
- Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_
- \$ \_\_\_\_\_ paid to Public Defender Fund
- Other: \_\_\_\_\_

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

James C. Campbell  
Clerk of Court/ Deputy Clerk  
Court Reporter: Margaret Sullivan

PRESIDING JUDGE [Signature]  
Judge Code: 2111413  
Sentence Date: 2/21/09

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

99

COUNTY OF SUMTER

INDICTMENT/CASE#: 2008-GS-43-0439

STATE VS.

CERTIFIED TRUE COPY OF ORIGINAL FILED

AW# J303335, J303336, J303337

DARNELL JAMES GETTER

*James C. Campbell*

Date of Offense: October 09, 2007

AKA:

Race: Black

Sex: Male

Age:

CLERK OF COURT SUMTER COUNTY SOUTH CAROLINA

SC Code §: 16-13-0160(1)(2), (B)

DOB:

SS#:

CDR Code #: 0258

*25 yrs*  
*\$4,000*

Address:

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: BEMV (4 counts) 3, 5, 6, 9

in violation of § 16-13-140(1)(a) of the S.C. Code of Laws, bearing CDR Code # 0121518

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC w/minor 1<sup>st</sup> or Lewd Act)  §17-25-45

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:

*[Signature]*  
Solicitor

*[Signature]*  
Defendant

*[Signature]*  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 5 ~~years~~ 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:  Deferred,  Defendant Waives Hearing,  Ordered

PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment \_\_\_\_\_

Payment Terms: \_\_\_\_\_

set by SCDPPPS \_\_\_\_\_

- 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: \_\_\_\_\_

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)		\$ 3.90
TOTAL		\$ 133.90

*plus 5.00*

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

*James C. Campbell*  
Clerk of Court/Deputy Clerk  
Court Reporter: *Margaret Sullivan*

PRESIDING JUDGE

Judge Code: *2011-4-13*

Sentence Date: *10-26-09*

STATE OF SOUTH CAROLINA  
100  
COUNTY OF SUMTER

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-43-0439

STATE VS.

DARNELL JAMES GETTER

A/W#: J302309

AKA:

Date of Offense: May 05, 2007 ORIGINAL FILE

Race: Black

Sex: Male

Age:

S.C. Code §: 16-11-0312

DOB:

SS#:

CDR Code #: 0080

Address:

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Burglary 2nd (Non-violent) Ct

in violation of § 16-11-312 of the S.C. Code of Laws, bearing CDR Code # 0101810

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC w/minor 1<sup>st</sup> or Lewd Act)  \$17-25-45

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:

[Signature]  
Solicitor

[Signature]  
Defendant

[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 8 ~~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:  Deferred,  Defendant Waives Hearing,  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) \$ 3.90

TOTAL \$ 133.90 plus 500 \$ \_\_\_\_\_

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

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

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

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

James C. Campbell  
Clerk of Court/ Deputy Clerk  
Court Reporter: Margaret Sullivan

PRESIDING JUDGE [Signature]  
Judge Code: 211 14 13  
Sentence Date: 7.26.09

SOUTH CAROLINA  
OF SUMTER

IN THE COURT OF GENERAL SESSIONS 101  
INDICTMENT/CASE#: 2008-GS-43-0439

5 of 5

VS.

ARNELL JAMES GETTER

AW#: J295683

≤ 5 yrs

AKA: \*  
Race: Black Sex: Male Age:  
DOB: SS#:

Date of Offense: October 27, 2007  
S.C. Code §: 16-11-0313  
CDR Code #: 0427

Address:  
DL# SID#

SENTENCE SHEET OF  
SUMTER COUNTY  
SOUTH CAROLINA

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Burglary 2nd (A.1)

in violation of § 16-11-313 of the S.C. Code of Laws, bearing CDR Code # 01421?

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC w/minor 1<sup>st</sup> or Lewd Act)  §17-25-45

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:

[Signature]  
Solicitor

[Signature]  
Defendant

[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 5 ~~days~~ ~~months~~ ~~years~~ or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus  
costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South  
Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on: \_\_\_\_\_

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.

RESTITUTION:  Deferred,  Defendant Waives Hearing,  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)		\$ 3.90
TOTAL	plus 5.00	\$ 133.90

SPECIAL CONDITIONS:  
PTUP \_\_\_\_\_ days/hours Public Service Employment  
Obtain GED  
Attend Voc. Rehab. or Job Corp.  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

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

James C. Campbell  
Clerk of Court/ Deputy Clerks  
Court Reporter: Margaret Sullivan

PRESIDING JUDGE [Signature]  
Judge Code: 211413  
Sentence Date: 12-24-09



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

CERTIFIED TRUE COPY OF ORIGINAL FILED

INDICTMENT/CASE#: 2008-GS-43-0439

1030

STATE VS.

*James C. Campbell*

DARNELL JAMES GETTER

1302309

= 15 yrs

AKA:

Race: Black

Sex: Male

Age:

Date of Offense: May 05, 2007

S.C. Code §: 16-11-0312

DOB:

SS#:

CLERK OF COURT SUMTER COUNTY SOUTH CAROLINA CDR Code #: 0080

Address:

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Burglary 2nd (Non-violent) Ct 1

in violation of § 16-11-312 of the S.C. Code of Laws, bearing CDR Code # 0101810

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC w/minor 1<sup>st</sup> or Lewd Act)  \$17-25-45

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:

*[Signature]*  
Solicitor

*Darnell Getter*  
Defendant

*[Signature]*  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 5 ~~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:  Deferred,  Defendant Waives Hearing,  Ordered

PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment \_\_\_\_\_

Payment Terms:

set by SCDPPPS

- 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: \_\_\_\_\_

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)	\$	\$ 3.90
TOTAL		\$ 133.90

plus 500

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

*James C. Campbell*  
Clerk of Court/ Deputy Clerk  
Court Reporter: *Margaret Sullivan*

PRESIDING JUDGE

Judge Code:

Sentence Date:

*[Signature]*  
14 13  
2.26.09

SOUTH CAROLINA  
 OF SUMTER  
 VS.  
 ARNELL JAMES GETTER  
 AKA:  
 Race: Black Sex: Male Age:  
 DOB: / / SS#:  
 Address:  
 DL# SID#

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: 2008-GS-43-0439

AW#: J303338  
 Date of Offense: October 09, 2007  
 S.C. Code §: 16-13-0010(B)(2)  
 CDR Code #: 2427  
 DEPUTY CLERK OF COURT  
 SUMNER COUNTY  
 SOUTH CAROLINA  
 SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
 TO: Forgery ct. 10  
 in violation of § 16-13-10(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2141212  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC  §17-25-45  
 w/minor 1<sup>st</sup> 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 5 1/2 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:  Deferred,  Defendant Waives Hearing,  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 \$ <u>100.00</u>
§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 \$ <u>25.00</u>
§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)	\$ <u>3.90</u>
TOTAL	\$ <u>133.90</u>

plus 500 \$ \_\_\_\_\_

PTUP \_\_\_\_\_ days/hours Public Service Employment  
 Obtain GED \_\_\_\_\_  
 Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
 May serve W/E beginning \_\_\_\_\_  
 Substance Abuse Counseling \_\_\_\_\_  
 Random Drug/Alcohol Testing \_\_\_\_\_  
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
 \$ \_\_\_\_\_ paid to Public Defender Fund  
 Other: \_\_\_\_\_  
 Appointed PD or appointed other counsel, §35.13 TP  
 Requires \$500 be paid to Clerk during probation.

James C. Campbell  
 Clerk of Court/ Deputy Clerk  
 Court Reporter: Margaret Sullivan

PRESIDING JUDGE \_\_\_\_\_  
 Judge Code: \_\_\_\_\_  
 Sentence Date: 11-4-13  
9-26-09

IN THE COURT OF GENERAL SESSIONS

105

INDICTMENT/CASE#: 2008-GS-43-0439

AW#: J303335, J303336, J303337

Date of Offense: October 09, 2007 25 yrs  
S.C. Code §: 16-13-0160(1)(2), (B) OF ORIGINAL FILE  
CDR Code #: 0258 341,000

SENTENCE SHEET  
DEPUTY CLERK OF COURT  
SOUTH CAROLINA

Sex: Male Age:  
SS#:

SID#

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: B.F.M.V. (4 counts) 3, 5, 6, 9

in violation of § 16-13-160(1)(a) of the S.C. Code of Laws, bearing CDR Code # 0121518

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC)  §17-25-45 w/minor 1<sup>st</sup> 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:

[Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,

for a determinate term of 5 ~~days~~ 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:  Deferred,  Defendant Waives Hearing,  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) 3X \$100 \$ 300.00

§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) 3X \$25 \$ 75.00

§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) 3X \$ \_\_\_\_\_

TOTAL plus 5.00 \$ 401.70

PTUP \_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

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

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

James C. Campbell  
Clerk of Court/ Deputy Clerk  
Court Reporter: Margaret Sullivan

PRESIDING JUDGE  
Judge Code: 2011-4-13  
Sentence Date: 10-26-09

106 STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

CERTIFIED TRUE COPY OF ORIGINAL FILED

INDICTMENT/CASE#: 2008-GS-43-0439

STATE VS.

*James C. Campbell* J303338

DARNELL JAMES GETTER

AKA: Sex: Male  
Race: Black SS#:   
DOB: SS#:

CLERK OF COURT Date of Offense: October 09, 2007  
SUMTER COUNTY S.C. Code §: 16-13-0010(B)(2)  
SOUTH CAROLINA CDR Code #: 2427

Address:

SENTENCE SHEET

DL# SID#

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS

TO: Forgery ct. 10

in violation of § 16-13-10 (B)(2) of the S.C. Code of Laws, bearing CDR Code # 2141217

NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS (CSC  §17-25-45 w/minor 1<sup>st</sup> 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:  
*[Signature]* Solicitor *[Signature]* Defendant *[Signature]* Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 5 1/2 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.

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SPECIAL CONDITIONS:

RESTITUTION:  Deferred,  Defendant Waives Hearing,  Ordered PTUP \_\_\_\_\_ days/hours Public Service Employment  
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)	\$ 3.90
TOTAL	plus 500 \$ 133.90

Obtain GED  
Attend Voc. Rehab. or Job Corp.  
May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling \_\_\_\_\_  
Random Drug/Alcohol Testing \_\_\_\_\_  
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_

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

*James C. Campbell* Clerk of Court/ Deputy Clerk  
Court Reporter: *Margaret Sullivan*  
PRESIDING JUDGE *[Signature]*  
Judge Code: 2141217  
Sentence Date: 10-26-09