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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

DeAndrea G. Benjamin, Circuit Court Judge

JONATHAN JAMES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213664

APPENDIX

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WITNESSES

DOCKET NO. 2001GS38-1916

The State of South Carolina

County of

ORANGEBURG

DET. K.KINSEY

Arresting Agency:

Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

G731964

Arrested: Aug 10, 2001

ACTION OF GRAND JURY

Johnathan James

Indictment for

ASSAULT AND BATTERY WITH INTENT
TO KILL

VERDICT

Foreperson of Grand Jury
Date: October 9, 2001

Debra A. Miller

Foreperson of Petit Jury
Date:

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

Defendant

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

Defendant

Witness:

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

ATTEST TRUE COPY

CLERK OF COURT

ORANGEBURG COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

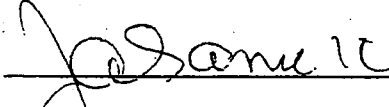
INDICTMENT

At a Court of General Sessions, convened on October 15, 2001 the Grand Jurors of Orangeburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Johnathan James, did in Orangeburg County, on or about June 19, 2001, with malice aforethought did commit an assault and battery, upon the victim, Charmaine James, by means of: striking the victim in her face, head, and body with his fists and a metal sign post, with the intent to kill the said victim. This offense being a violation of Section §16-3-620 of the South Carolina Code of laws, (1976 as amended).

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



J. Angela Garrick SOLICITOR

WITNESSES

DOCKET NO. 2001GS38-1917

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

Defendant

The State of South Carolina

County of

ORANGEBURG

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

DET. K. KINSEY

COURT OF GENERAL SESSIONS

October 15, 2001 TERM

Defendant

Arresting Agency:
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

G731963

Arrested: Aug 10, 2001

Witness:

C.C.C. FLS. AND G.S.

ACTION OF GRAND JURY

Johnathan James

Forfeiture of Grand Jury
Date: October 9, 2001

VERDICT

Indictment for

CRIMINAL SEXUAL CONDUCT-1ST
DEGREE

SC Code: 16-03-0652

CDR Code: 0160

Class: FEL-A(V)

Forfeiture of Full Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

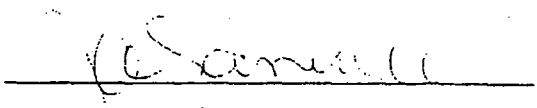
INDICTMENT

At a Court of General Sessions, convened on October 15, 2001 the Grand Jurors of Orangeburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT-1ST DEGREE

That Johnathan James, did in Orangeburg County, on or about June 19, 2001, willfully and unlawfully engage in criminal sexual conduct in the first degree in that the defendant committed sexual battery upon the victim, Charmaine James, by means of aggravated force or the victim submitted to sexual battery while she was under the circumstances of forcible confinement, kidnapping, robbery, extortion, burglary, or any other similar offense or act. This offense being a violation of Section §16-3-652 of the South Carolina Code of laws, (1976 as amended).

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


J. Angela Garrick SOLICITOR

12
WITNESSES

DOCKET NO. 2001GS38-1918

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

Defendant

The State of South Carolina

County of

ORANGEBURG

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

DET. K.KINSEY

COURT OF GENERAL SESSIONS

Arresting Agency:

October 15, 2001 TERM

Orangeburg Co. Sheriff Dept.

Defendant

ARREST WARRANT NUMBER

G731962

THE STATE

Arrested: Aug 10, 2001

vs.

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

Witness:

ACTION OF GRAND JURY

Johnathan James

Indictment for

BURGLARY - 1ST DEGREE

(DWELLING)

VERDICT

Matthew A. Huber
Foreperson of Grand Jury
Date: October 9, 2001

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL-EXM(V)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

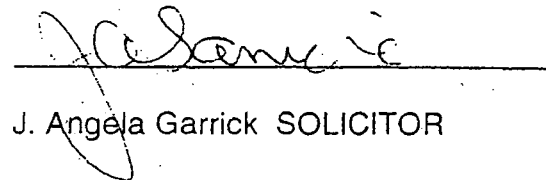
INDICTMENT

At a Court of General Sessions, convened on October 15, 2001 the Grand
Jurors of Orangeburg County present upon their oath:

BURGLARY - 1ST DEGREE (DWELLING)

That Johnathan James, did in Orangeburg County, on or about June 19, 2001, willfully and unlawfully enter the dwelling of Charmaine James and family without consent and with the intent to commit a crime therein and that the defendant did enter the dwelling at nighttime. This offense being a violation of Section §16-11-0311 of the South Carolina Code of laws, (1976 as amended).

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


J. Angela Garrick SOLICITOR

8 STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE VS.
Jonathan James
AKA:
Race: B Sex: M Age: 30
DOB: 11-11-80
Address:
DL# SID#

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

2001-GS-38-1917
A W#: 6731963
Date of Offense: 6-19-01
S.C. Code #: 16-3-652
CDR Code = 0160
☐ CASE RESTORED

SENTENCE
☒ PLEA ☐ TRIAL

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

TO: Criminal Sexual Conduct 1st degree
in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 01160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

[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 17 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: _____ \$

§14-1-206 (Assessments 100%) _____ \$

§14-1-211(A)(1) (Surcharge) _____ \$

§14-1-211(A)(2) (Surcharge) _____ \$

§56-5-2995 (DUI Assessment) _____ \$

2% to County (if paid in installments) _____ \$

TOTAL _____ \$

[Signature]
Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

PTUP _____
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

PRESIDING JUDGE

Judge Code: [Signature]

Sentence Date: [Signature]

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHON JAMES,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

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Attorney General

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Post Office Box 386
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(803) 793-3403

ATTORNEY FOR RESPONDENT

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FORM 5

STATE OF SOUTH CAROLINA)

County of ORANGEBURG)

IN THE COURT OF COMMON PLEAS

INITIAL

JONATHAN JAMES, 185547)

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

Pro Se

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

04-CP 38-1327

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION
4460 BROAD RIVER ROAD, COLUMBIA SOUTH CAROLINA 29210
2. Name and location of Court which imposed sentence STATE COURT OF GENERAL
SESSIONS, ORANGEBURG COUNTY
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2001 - GS38 - 1916

- (b) 2001 - GS38 - 1917
- (c) 2001 - GS38 - 1918
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 7-15-02
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ^X _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES _____
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 10-23-2003
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISHED OPINION NO. 2003-UP-600
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) 5th, 6th, and 14th CONSTITUTIONAL VIOLATIONS
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) APPLICANT WILL PROPERLY AMEND WITH
- (b) SUPPORTING FACTS PRIOR TO HEARING
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO _____

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) PCR PROPER MECHANISM FOR RAISING
 - (b) CONSTITUTIONAL VIOLATIONS
 - (c) APPLICANT RESERVES THE RIGHT TO AMEND
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? YES
 - (b) your trial, if any? _____
 - (c) your sentencing? YES
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
YES
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. MICHAEL CULTER
PUBLIC DEFENDER'S OFFICE
ORANGEBURG COUNTY COURT HOUSE
POST OFFICE BOX 9000
ORANGEBURG, SOUTH CAROLINA 29116-9000
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. PLEA, SENTENCING, AND APPEAL
 - ii. _____
 - iii. _____

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

VACATE SENTENCE AND CONVICTION

APPOINTMENT OF COUNSEL

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, JONATHAN JAMES, 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.

Jonathan James

SWORN to and subscribed before me this 14th
day of September, 2004
[Signature] (L.S.)
Notary Public

My Commission Expires: 8/28/2011



STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT

Case No. 2004-CP-38-_____

Jonathan James, 185547,)
)
 " Applicant,)

vs.)

State of South Carolina,)
)
 Respondent.)

AMENDMENTS TO APPLICATION
 FOR POST-CONVICTION RELIEF

The above Applicant, by and through the undersigned, post conviction relief retained counsel of record for the common pleas hearing, hereby amends and amplifies the Post Conviction Relief Application dated September 14, 2004, as follows, to wit:

1. Applicant's guilty plea was not voluntary, and intelligent and knowing. due to trial counsel's failure to ensure that the court conducted the required colloquy in obtaining the plea in that the trial court failed to make the required judicial determination that the Applicant not only understood the charges, his constitutional rights respecting each charge, but that Applicant acknowledged guilt to each charge, which the Applicant did not do in the record, nor did the Court find the pleas to be freely, voluntarily and intelligently given and then accept the pleas as part of the record, this all rendered the colloquy of the court procedurally and constitutionally defective.

2. Applicant's guilty plea was not freely and voluntarily given due to failure of trial counsel and the trial court to sufficiently explain the elements of the charges faced by Applicant with the trial

-2-

judge, without objection or correction of trial counsel, during the colloquy erroneously referring to one of the charge as one of kidnaping on occasions in the record.

3. Applicant's trial counsel failed to fully investigate the charges of the plea, which investigation could have benefitted Applicant in having the charges changed to no more than a Criminal Domestic Violence charge.

4. Trial counsel failed to fully investigate the Criminal Sexual Conduct charge in failing to obtain any available medical information, if any, on the subject charge, which failure was part of the trial counsel's failure to fully investigate the entire case and to work the same for every advantage of Applicant, and making the charges supportive of a Criminal Domestic Violence charge.

5. Applicant's trial counsel failed to adequately investigate the Burglary charge which would have shown that Applicant was a frequent visitor of the premises in question, located next door to his residence, which was not the home of his wife as stated in the indictment, for if the same had been the home of Applicant and wife, Applicant could not have burglarized his own home; and trial counsel should have moved the court for a quashing of this indictment.

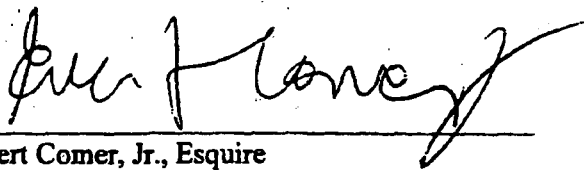
6. Trial counsel failed to meet with Applicant to discuss the charges and the circumstances of the marriage which would have revealed information beneficial to possibly trying the case, in that trial counsel only met once with Applicant in eleven (11) months to discuss the case, and then the discussion was only about pleading to the charges.

WHEREFORE, having fully set forth amendments to the Post Conviction Relief Application, Applicant respectfully prays that this Honorable Court set aside the conviction and remand the

-3-

matter for a new trial or other appropriate relief beneficial to Applicant.

LAW OFFICE OF EVERT COMER, JR.

By: 

Evert Comer, Jr., Esquire
PO Box 386
Denmark, SC 29042
(803) 793-3403
Attorney for Applicant

Denmark, South Carolina

Dated: October 19, 2004

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Case No. 2004-CP-38-_____

Jonathan James, 185547,)
)
Applicant,)

vs.)

State of South Carolina,)
)
Respondent.)

CERTIFICATE OF SERVICE BY MAIL

THIS IS TO CERTIFY that I, the undersigned legal assistant to Evert Comer, Jr., Attorney at Law, did on the 19th day of October, 2004, place in the United States Mail, Denmark, South Carolina, with postage prepaid and return address clearly indicated on an envelope, a copy of the foregoing an **APPLICATION FOR POST CONVICTION RELIEF** and an **AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF** which have been prepared in connection with this matter with letter in the above entitled action, addressed as follows:

The Hon. Henry McMaster
Attorney General of South Carolina
Office of the Attorney General
PO Box 11549
Columbia, SC 29211-1549


Andrea S. Reed
Legal Assistant to Evert Comer, Jr.

Denmark, South Carolina

Dated: October 19, 2004

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Jonathan James, #185547

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

04-CP-38-1327

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 19, 2004, 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 Orangeburg County Clerk of Court. The Applicant was indicted at the October 2001 term of the Orangeburg County Grand Jury for assault and battery with intent to kill (01-GS-38-1916); 1st degree criminal sexual conduct (01-GS-38-1917); and 1st degree burglary (01-GS-38-1918). He was represented by Michael Culter, Esquire. On July 15, 2002, the Applicant pled guilty as charged. He was sentenced by the Honorable J. Ernest Kinard, Jr. to confinement for a concurrent period of 17 years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. James, Op. No. 2003-UP-600 (S.C. Ct. App. filed October 20, 2003).

Attached herewith and incorporated herein by reference are the records of the Orangeburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript and the Applicant's appellate records.

II.

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

1. Ineffective assistance of counsel.
2. Lack of due process.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 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, 446 U.S. at 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, 446 U.S. at 668. 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).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C.

258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

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

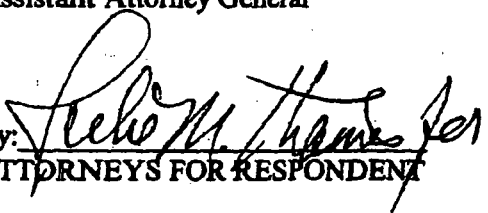
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

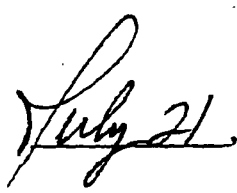
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By:  per PSM
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 July 21, 2005.

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF ORANGEBURG

FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

CASE NO. 01-GS-38-1916

) 01-GS-38-1917

) 01-GS-38-1918

)

) TRANSCRIPT OF RECORD

versus

)

) DATE:

JONATHAN JAMES,

)

) JULY 15, 2002

) DEFENDANT

BEFORE:

HONORABLE J. ERNEST KINARD, JR., PRESIDING JUDGE

APPEARANCES:

ANGELA GARRICK, ESQUIRE

ASSISTANT SOLICITOR

FOR THE STATE

MICHAEL CULLER, ESQUIRE

PUBLIC DEFENDER

FOR THE DEFENDANT

HARRY A. WALKER (MRS.)
 COURT REPORTER, FIRST JUDICIAL CIRCUIT
 POST OFFICE BOX 127
 ROWESVILLE, SOUTH CAROLINA 29133

2

I N D E X

PAGE

EXAMINATION OF DEFENDANT JAMES
BY THE COURT

4

SENTENCE OF THE COURT

18

E X H I B I T S

NONE

1 DATE:

2 JULY 15, 2002

3 THE COURT: ALRIGHT, WHAT DO WE HAVE
4 NOW, WHAT'S GOING ON NOW?

5 SOLICITOR GARRICK: YOUR HONOR,
6 INDICTMENTS 2001-1916, 1917 AND 1918. MR. JAMES WAS
7 CHARGED AND INDICTMENT WITH BURGLARY IN THE FIRST
8 DEGREE, CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE, AND
9 ASSAULT AND BATTERY WITH INTENT TO KILL. HE'S
10 REPRESENTED BY MR. CULLER. YOUR HONOR, THE STATE IS
11 RECOMMENDING A TWENTY YEAR SENTENCE.

12 THE COURT: ALRIGHT.

13 (NOTE: Blank lines on this page do not indicate any
14 part of record has been omitted. Headers on testimony
15 pages and hard page breaks between testimony are now
16 required by the Court. See next ensuing page for
17 sequential continuation of record.)

EXAM - JONATHAN JAMES BY THE COURT

4

EXAMINATION OF JONATHAN JAMES

BY THE COURT:

Q. MR. JAMES, YOU'RE CURRENTLY INCARCERATED?

A. YES, SIR.

Q. AND YOU'RE WHAT, [REDACTED] YEARS OLD?

A. YES, SIR.

Q. HOW LONG HAVE YOU BEEN LOCKED UP?

A. ELEVEN MONTHS.

Q. ALRIGHT. YOU HAD SOME CONNECTION WITH S [REDACTED]

[REDACTED], I GUESS?

A. THAT'S MY WIFE.

Q. CURRENTLY YOUR WIFE, OR WAS YOUR WIFE?

A. THAT'S MY WIFE.

Q. STILL YOUR WIFE. BURGLARY FIRST CARRIES FIFTEEN YEARS TO LIFE, A VIOLENT CRIME, MOST SERIOUS CRIME. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. IT ALSO CONSTITUTES A STRIKE ON THAT, YOU'VE HEARD, TWO STRIKES, YOU'RE OUT, THREE STRIKES, YOU'RE OUT, THAT'S A STRIKE. AND THEN YOU'VE GOT SOME OTHER SERIOUS CHARGES HERE, ASSAULT AND BATTERY WITH INTENT TO KILL, AND CRIMINAL SEXUAL CONDUCT, FIRST DEGREE. ASSAULT AND BATTERY WITH INTENT TO KILL CARRIES UP TO TWENTY. CRIMINAL SEXUAL CONDUCT, FIRST, CARRIES UP TO THIRTY. YOU'RE PICKING UP

EXAM - JONATHAN JAMES BY THE COURT

5

1 ENOUGH STRIKES TO PUT YOU IN JAIL FOR THE REST OF
2 YOUR LIFE IF, WHEN YOU GET OUT, YOU COMMIT ANY
3 OTHER VIOLENT CRIME OR MOST SERIOUS CRIME, DO YOU
4 UNDERSTAND THAT?

5 A. YES, SIR.

6 Q. NOW, YOU ARE REPRESENTED BY MR. CULLER?

7 A. YES, SIR.

8 Q. AND YOU WENT OVER THIS PLEA SHEET WITH HIM?

9 A. YES, SIR.

10 Q. ARE ALL YOUR ANSWERS TRUE AND CORRECT?

11 A. YES, SIR.

12 Q. YOU DO UNDERSTAND THAT YOU DON'T HAVE TO PROVE
13 YOU'RE NOT GUILTY DURING THE TRIAL?

14 A. YES, SIR.

15 Q. DO YOU UNDERSTAND THAT?

16 A. YES, SIR.

17 Q. THE STATE HAS THE BURDEN OF PROOF BEYOND A
18 REASONABLE DOUBT, THEY'VE GOT TO CONVINCE TWELVE
19 JURORS UNANIMOUSLY THAT YOU COMMITTED THE CRIME.
20 DO YOU UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. THE STATE HAS TO PROVE EACH ELEMENT THAT
23 CONSTITUTES A CRIME. AND LIKE BURGLARY, FIRST
24 DEGREE, IF THAT WAS YOUR HOUSE OR SOMETHING, YOU
25 KNOW, YOU MIGHT HAVE HAD THE RIGHT TO ENTER THERE,

EXAM - JONATHAN JAMES BY THE COURT

6

1 BUT IF YOU PLEAD GUILTY TO IT, YOU'RE SAYING YOU
2 DID IT. DO YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. AND CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE,
5 IF YOU PULL SOMEBODY IN OFF THE STREET THAT YOU
6 DON'T KNOW, THE STATE CAN PRETTY MUCH CONVICT YOU
7 IN A HURRY. IF IT'S YOUR SPOUSE INVOLVED, IT COULD
8 HAVE BEEN CONSENSUAL, AND THAT'S A POSITION OUT
9 THERE. THE JURY MIGHT CONVICT YOU. IF YOU PLEAD
10 GUILTY TO IT YOU WAIVE ANY DEFENSE THAT YOU HAVE,
11 AND YOU GET SENTENCED UP TO THIRTY YEARS. DO YOU
12 UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. KIDNAPPING, WE'RE TALKING ABOUT HAULING YOUR WIFE
15 AWAY. THE JURY MIGHT NOT FEEL LIKE YOU WERE TAKING
16 HER AWAY WITHOUT HER CONSENT. DO YOU UNDERSTAND
17 THAT?

18 A. YES, SIR.

19 Q. IF YOU PLEAD GUILTY TO IT, THOUGH, YOU SUBJECT
20 YOURSELF TO BEING SENTENCED TO THIRTY YEARS, AND
21 WAIVE ANY DEFENSE TO THAT CHARGE THAT YOU MIGHT
22 HAVE. DO YOU UNDERSTAND THAT?

23 A. YES, SIR.

24 Q. DURING THE TRIAL YOU GET TO BE PRESENT IN THE
25 COURTROOM, LOOK AT THE STATE'S WITNESSES, AND

EXAM - JONATHAN JAMES BY THE COURT

7

1 LISTEN TO WHAT THEY SAY, AND YOU CAN QUESTION THEM
2 THROUGH YOUR ATTORNEY. DO YOU UNDERSTAND THAT?

3 A. YES, SIR.

4 Q. I DON'T KNOW ANYTHING ABOUT YOUR SITUATION OR WITH
5 YOUR SPOUSE. SHE MIGHT NOT MAKE A GOOD WITNESS
6 DURING THE TRIAL. YOU HAVE VARIOUS DEFENSES
7 THROUGHOUT THAT YOU COULD PRESENT. SELF-DEFENSE,
8 OF COURSE, IS ONE. CONSENT IS ONE, SELF-DEFENSE
9 IS ONE. YOU DON'T HAVE TO PROVE THOSE THINGS, THE
10 STATE HAS TO CONVINCE THE JURY THAT THERE WAS NO
11 CONSENT, THAT THERE WAS NO SELF-DEFENSE. DO YOU
12 UNDERSTAND THAT?

13 A. YES, SIR.

14 Q. NOW, YOU CAN CALL WITNESSES TO TESTIFY FOR YOU.
15 THEY DON'T HAVE TO BE WITNESSES WHO OBSERVED WHAT
16 HAPPENED. THEY CAN JUST TESTIFY ABOUT PRIOR
17 RELATIONSHIPS AND THINGS LIKE THAT, TO MAKE THE
18 STATE'S POSITION WEAKER. IF YOU PLEAD GUILTY,
19 THOUGH, YOU DON'T GET TO PRESENT A DEFENSE. DO YOU
20 UNDERSTAND THAT?

21 A. YES, SIR.

22 Q. THEY CAN'T MAKE YOU TESTIFY, BUT YOU HAVE THE RIGHT
23 TO TESTIFY. AND YOU'VE DISCUSSED ALL THAT WITH MR.
24 CULLER, I TAKE IT?

25 A. YES, SIR.

EXAM - JONATHAN JAMES BY THE COURT

8

1 Q. AND ARE YOU SATISFIED WITH HIS REPRESENTATION?

2 A. YES, SIR.

3 Q. AND OF COURSE, HE WENT OVER THE PLEA SHEET IN SOME
4 DETAIL?

5 A. YES, SIR.

6 Q. ARE YOUR ANSWER TRUE AND CORRECT?

7 A. YES, SIR.

8 Q. NOW, YOU'VE BEEN INCARCERATED ELEVEN MONTHS. HAS
9 ANYBODY HARMED YOU, CAUSED YOU ANY PHYSICAL PAIN
10 TO CAUSE YOU TO PLEAD GUILTY?

11 A. NO, SIR.

12 Q. ARE YOU TAKING ANY MEDICATIONS TODAY?

13 A. NO, SIR.

14 Q. HAVE YOU HAD ANYTHING TO DRINK THAT CONTAINS
15 ALCOHOL?

16 A. NO, SIR.

17 Q. HAVE YOU TAKEN ANY OTHER CONTROLLED SUBSTANCES LIKE
18 HEROIN, COCAINE, SMOKED ANY MARIJUANA?

19 A. NO, SIR.

20 Q. HAVE YOU GOT ANY QUESTIONS BOUT ANYTHING?

21 A. NO, SIR.

22 Q. NOW, YOU UNDERSTAND, IF YOU PLEAD GUILTY TO THESE
23 CHARGES I COULD SENTENCE YOU ALL THE WAY UP TO
24 LIFE, AND YOU'RE LOOKING AT EIGHTY-FIVE PER CENT
25 NO MATTER WHAT SENTENCE I IMPOSE. THE STATE'S

EXAM - JONATHAN JAMES BY THE COURT

9

1 RECOMMENDING TWENTY YEARS. DO YOU UNDERSTAND THAT?

2 A. YES, SIR.

3 THE COURT: ALRIGHT.

4 SOLICITOR GARRICK: THANK YOU, YOUR
5 HONOR, MAY IT PLEASE THE COURT. YOUR HONOR, MR.
6 JONATHAN JAMES AND THE VICTIM, MS. S. [REDACTED] J. [REDACTED] HAD
7 BEEN MARRIED FOR FOUR YEARS BACK WHEN THIS HAPPENED ON
8 JUNE NINETEENTH OF LAST YEAR. AT THAT TIME THEY HAD
9 BEEN GOING THROUGH A DOMESTIC SITUATION. THERE WAS A
10 FAMILY COURT ORDER OF PROTECTION ON FILE. MS. S. [REDACTED]
11 J. [REDACTED] WAS LIVING WITH HER SISTER AND HER SISTER'S
12 HUSBAND AND CHILDREN THERE ON [REDACTED] WHICH IS IN
13 THE COUNTY OF ORANGEBURG.

14 THE COURT: ALRIGHT, IT WAS NOT
15 THEIR COMMUNAL HOUSE, IT WAS HER SISTER'S HOUSE?

16 SOLICITOR GARRICK: YES, SIR.

17 THE COURT: ALRIGHT.

18 SOLICITOR GARRICK: YOUR HONOR, IT
19 WAS ABOUT ELEVEN O'CLOCK AT NIGHT. MS. S. [REDACTED] J. [REDACTED]
20 HAD BEEN ON THE PHONE. SOMEBODY KEPT BEEPING IN WITH
21 THAT CALLER WAITING. SHE CLICKED OVER AT LEAST ONCE AND
22 IT WAS MR. JONATHAN JAMES. HE INDICATED HE WANTED TO
23 TALK WITH HER, MAYBE TALK ABOUT THEIR SITUATION. SHE
24 SAID, NO, SHE WAS TIRED, THAT THEY DIDN'T NEED TO TALK
25 ANYMORE, EVERYTHING WAS OVER, SAID AND DONE. SHE CLICKED

10

1 BACK OVER AND CONTINUED TALKING ON THE PHONE. THE LINE
2 KEPT BEEPING, SHE KNEW IT WAS HIM; SHE NEVER ANSWERED
3 IT AGAIN. THEN, I BELIEVE HER NIECE HAD BEEN ON THE
4 PHONE. HER NIECE, [REDACTED] WHO WAS [REDACTED] SAID THAT
5 JONATHAN JAMES KEPT CALLING AND CALLING. IT WAS AROUND
6 ELEVEN O' CLOCK AT NIGHT. S [REDACTED] J [REDACTED] INDICATED THAT
7 SHE SAW HER HUSBAND OUT THERE IN THE, OUTSIDE THE HOUSE.
8 SHE KNEW SOMETHING WAS GOING TO HAPPEN. SHE WAS AFRAID.
9 SHE TOLD [REDACTED] CALL LAW ENFORCEMENT, HE'S HERE. THE
10 NEXT THING SHE KNEW THE DOOR WAS KICKED IN, AND JONATHAN
11 CAME IN THE HOUSE. HE HAD SOME KIND OF KNIFE, EITHER
12 HE BROUGHT IT WITH HIM OR HE GOT IT FROM THE HOUSE, IT
13 WAS STEAK KNIFE. HE CHASED HER THROUGHOUT THE HOME
14 THERE, IT WAS A MOBILE HOME, AND WENT FROM ROOM TO ROOM.
15 HE WAS BEATING ON HER, PUNCHING HER, PUSHING ON HER.
16 YOUR HONOR, SHE HAD A NIGHT GOWN ON WITH UNDERWEAR AND
17 HE FORCIBLY, WHEN SHE WAS ON THE GROUND, BLEEDING FROM
18 BEING STRUCK ABOUT THE HEAD AND FACE, HE DIGITALLY
19 PENETRATED HER. YOUR HONOR, HE THREATENED HER THROUGHOUT
20 THIS WHOLE TIME, SAID THAT HE WAS GOING TO KILL HER,
21 THAT HE KNEW THIS TIME IT WAS OVER AND THEY WERE NOT
22 GOING TO RECONCILE, AND HE JUST COULDN'T DEAL WITH THAT.
23 YOUR HONOR, THERE WAS A [REDACTED] YEAR OLD THAT I'VE TOLD
24 YOU ABOUT THERE IN THE HOUSE, AND THERE WAS A [REDACTED] YEAR
25 OLD NEPHEW THAT WAS THERE IN THE HOUSE, TOO, THEY WERE

11
1 WITNESSING THIS. THE [REDACTED] YEAR OLD IS THE
2 COMPLAINANT WHO ACTUALLY CALLED THE ORANGEBURG COUNTY
3 SHERIFF'S DEPARTMENT, SAID, COME QUICKLY, THIS WAS ALL
4 GOING ON IN FRONT OF THEM. THEY WENT FROM ROOM TO ROOM
5 TO ROOM, AS I SAID, THERE WAS BLOOD EVERYWHERE. HE LEFT
6 ONE TIME AND S [REDACTED] THOUGHT IT WAS OVER. SHE WAS,
7 AT THAT POINT HAD GONE TO A CLOSET AND HID. HE CAME
8 BACK IN AGAIN. HE KEPT HITTING HER AND TOUCHING HER
9 AND, AND THE CHILDREN WERE THERE, SO WHEN HE WAS SAYING,
10 COME ON AND GO WITH ME, LET'S GO, LET'S GO, SHE FINALLY
11 SAID, IF I GO OUTSIDE, YOU KNOW, JUST STOP BEATING ME.
12 SHE WAS TRYING TO GET THE CHILDREN TO WHERE THEY WOULD
13 BE SAFE. SHE DID GO OUTSIDE WITH HIM. HE WAS WORKING
14 AT THE TIME AND DRIVING AN EIGHTEEN WHEELER. THEY WENT
15 UP NEAR THE EIGHTEEN WHEELER AND HE WAS, STARTED TO HIT
16 HER SOME MORE. HE TRIED TO GET HER TO GET IN THE TRUCK
17 WITH HIM AND TO LEAVE AND TO GO HOME. SHE ABSOLUTELY
18 WOULD NOT DO THAT, SHE WAS JUST STALLING FOR TIME, FOR
19 LAW ENFORCEMENT TO GET THERE. YOUR HONOR, HE HIT HER
20 AGAIN THERE, THERE WAS SOME KIND OF METAL SIGN POST
21 THERE ON THE GROUND THAT HE PICKED UP AND USED IT TO
22 STRIKE HER. BLOOD WAS GOING EVERYWHERE. AT SOME POINT
23 HE GOT IN THE VEHICLE AND SHE DID NOT REALIZE THIS UNTIL
24 LATER, BUT WHEN HE HAD CRANKED THE EIGHTEEN WHEELER HE
25 PUT SOME KIND OF WOOD BLOCK ON THE ACCELERATOR, AND WAS

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1 WEEK FOR TRIAL, THIS WAS THE TRIAL SCHEDULED FOR MONDAY
2 OF NEXT WEEK, BUT ON A PLEA SHE SAID SHE DID NOT WANT
3 TO BE HERE, THAT SHE HAS FOLLOWED THROUGH WITH THE
4 DIVORCE, I BELIEVE IT WILL BE FINAL THE END OF AUGUST.
5 THEY DID NOT HAVE ANY CHILDREN TOGETHER, THEY WILL NOT
6 RECONCILE. SHE HAS NOT GONE TO THE JAIL TO SEE HIM.
7 HE STILL CALLS HER, AND SHE JUST DOES NOT ACCEPT THE
8 COLLECT CALLS FROM THE JAIL. YOUR HONOR, SHE KNOWS
9 ABOUT THIS PLEA RECOMMENDATION, SHE IS COMFORTABLE WITH
10 THAT, AND SHE IS SATISFIED WITH THAT. YOUR HONOR, IT
11 TOOK SEVERAL WEEKS, BUT MR. JAMES WAS PICKED UP AND
12 ARRESTED ON THESE CHARGES. YOUR HONOR, THESE CHARGES
13 ARE CERTAINLY VERY SERIOUS. SHE, AT THE TIME, WAS
14 GREATLY TRAUMATIZED BY IT AND THE CHILDREN WERE ---

15 THE COURT: WELL, I CAN IMAGINE.

16 SOLICITOR GARRICK: --- THE CHILDREN
17 THERE AT THE HOUSE WERE ALSO TRAUMATIZED. YOUR HONOR,
18 MR. JAMES DOES HAVE A PRIOR RECORD FROM MARCH OF NINETY-
19 TWO, HE HAD A DISTRIBUTION OF CRACK, AND A BURGLARY,
20 SECOND, WHERE HE GOT FIFTEEN YEARS AND TWENTY-FIVE
21 THOUSAND DOLLARS. HE HAS A CDV CONVICTION FROM OCTOBER
22 OF NINETY-SEVEN. HE HAS A FEBRUARY OF TWO THOUSAND
23 POSSESSION OF CRACK AND HE GOT TEN YEARS SUSPENDED TO
24 THIRTY MONTHS PROBATION. HE HAS ANOTHER CDV FROM JULY
25 OF TWO THOUSAND. YOUR HONOR, HE HAD A PROBATION

14

1 REVOCATION SEPTEMBER TWENTY-FIRST OF TWO THOUSAND AND
2 ONE, AND THAT'S THE TIME HE'S DOING NOW, YOUR HONOR, HE
3 GOT REVOKED TWENTY MONTHS. SOS, HE HAS BEEN, NOT
4 NECESSARILY INCARCERATED ON THESE CHARGES, HE WAS
5 REVOKED SEPTEMBER OF LAST YEAR. YOUR HONOR, CERTAINLY
6 DUE TO THE NATURE OF THE CRIME, THE FACT IT WAS AT NIGHT
7 IT WAS CERTAINLY FRIGHTENING AND TERRIFYING, AND THE
8 FACT THAT HE FELT LIKE HE OWNED HER AND IF HE COULDN'T
9 HAVE HER NO ONE ELSE WOULD HAVE HER, HE NEEDS
10 SUBSTANTIAL SENTENCE ON THESE VERY SERIOUS CHARGES. AND
11 IF YOU COULD BRIEFLY HEAR FROM DETECTIVE KINSEY, KENNY
12 KINSEY.

13 THE COURT: ALRIGHT.

14 DETECTIVE KINSEY: YOUR HONOR, SIR,
15 I'VE BEEN WORKING VIOLENT CRIME SCENES AND CRIMINAL
16 INVESTIGATIONS FOR THREE YEARS, THE LAST YEAR BEING A
17 SUPERVISOR OF SEVERAL OTHER INVESTIGATORS. THIS IS BY
18 FAR THE BLOODIEST CRIME SCENE I HAVE EVER WORKED AS A
19 CRIME SCENE TECHNICIAN WHERE THE VICTIM ENDED UP WITHOUT
20 AN EXTENDED STAY IN A HOSPITAL OR WORSE. I FEEL LIKE
21 WE'RE ABLE TO BE BEFORE YOU TODAY DUE TO THE FACT THAT
22 MR. JAMES NEVER GOT HIS WIFE IN THAT EIGHTEEN WHEELER.
23 HAD HE GOTTEN HER IN THAT EIGHTEEN WHEELER OR WORSE, I
24 REALLY DON'T BELIEVE WE WOULD HAVE EVER SEEN HER, AT
25 LEAST BREATHING AGAIN. THE SHERIFF'S OFFICE WOULD

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1 RESPECTFULLY REQUEST THAT YOU CONSIDER THE TWENTY YEARS
2 AND PLEASE GRANT THAT, SIR.

3 THE COURT: ALRIGHT. OF COURSE, HE'S
4 GOT TO SERVE EIGHTY-FIVE PER CENT OF ANYTHING. YOU
5 UNDERSTAND THAT.

6 ALRIGHT, MR. CULLER.

7 MR. CULLER: THANK YOU, YOUR HONOR.
8 MR. JAMES, AS HE'S TOLD YOU, IS [REDACTED] YOUR HONOR, HE
9 RELATES THAT HE'S HAD A RELATIONSHIP WITH HIS WIFE,
10 S [REDACTED] SINCE THEY WERE IN ABOUT THE SEVENTH GRADE.
11 THEY WERE HIGH SCHOOL SWEETHEARTS, THEY WERE THEN
12 MARRIED. HE TELLS ME HE DOES HAVE TWO CHILDREN WITH
13 HER. YOUR HONOR, HE GREW UP IN NORWAY HERE IN ORANGEBURG
14 COUNTY. HIS FATHER WAS EMPLOYED AT DUCANE, HIS MOTHER
15 IS A REGISTERED NURSE. HE DOES HAVE A SISTER THAT
16 TEACHES SCHOOL, SECOND GRADE, OVER IN FLORENCE, I
17 BELIEVE. HE'S GRADUATED FROM HIGH SCHOOL, GONE TO
18 TECHNICAL SCHOOL AND LEARNED HOW TO DRIVE A TRUCK, AND
19 HAS BEEN EMPLOYED, HAD A PRETTY GOOD WORK HISTORY, AND
20 EMPLOYMENT AS A TRUCK DRIVER. UNFORTUNATELY, YOUR
21 HONOR, HE HAS BEEN INVOLVED IN A VOLCANIC RELATIONSHIP,
22 NO QUESTION ABOUT THAT, WITH HIS WIFE, ONE THAT I WOULD
23 SUBMIT PROBABLY SHOULD HAVE ENDED SOME TIME AGO. AND
24 HE HAS RELATED TO ME THAT THERE WERE ACTS OF VIOLENCE
25 BY HIM AND BY HER, IT WAS A SITUATION THAT WAS JUST A

16

1 BAD RELATIONSHIP, AND HE COULD NOT GET OUT OF THAT, AND
2 EVIDENTLY, SHE WAS NOT ABLE TO GET OUT OF THAT UNTIL
3 THIS CULMINATING EVENT HAS NOW ENDED THEIR MARRIAGE.
4 HE HAS BEEN IN JAIL, HE WAS ARRESTED AUGUST THE NINTH
5 OF LAST YEAR, AND THEN, AS THE SOLICITOR STATED, WAS
6 REVOKED SOMETIME IN SEPTEMBER. WE WERE NOT ABLE TO GET
7 THE INFORMATION ON THIS CASE IN BEFORE THEY REVOKED HIM,
8 SO IT'S NOT BEEN A CASE THAT WE WERE ABLE TO EASILY DEAL
9 WITH.

10 I WOULD ASK THE COURT TO CONSIDER
11 THE FACT THAT HE DOES HAVE A PRETTY GOOD WORK HISTORY.
12 H E COMES FROM A GOOD FAMILY. OBVIOUSLY, THIS IS,
13 WITHOUT THE SOLICITOR GIVING ALL THE FACTS, JUST LOOKING
14 AT THE PHOTOGRAPHS, YOU KNOW, A VIOLENT CRIME, A BAD
15 CRIME, ONE THAT I SINCERELY BELIEVE THAT HE REGRETS. AND
16 I DON'T THINK HE REALLY KNEW HOW TO DEAL WITH IT. HE
17 CERTAINLY IS FACING A LONG TIME IN JAIL, HE AND I HAVE
18 DISCUSSED THAT. HE DOESN'T LOOK FORWARD TO IT, BUT I
19 BELIEVE THAT HE RECOGNIZES THAT IT IS SOMETHING THAT HE
20 NEEDS TO DO TO PAY SOCIETY AND TO PAY HIS WIFE BACK,
21 REALLY, FOR WHAT HAS OCCURRED. AND I WOULD ASK THE
22 COURT TO CONSIDER SOME SENTENCE LESS THAN TWENTY YEARS,
23 TO GIVE HIM AN OPPORTUNITY JUST TO LOOK AT THIS AND GET
24 OUT AND CONTINUE TO HAVE A PRODUCTIVE LIFE. AS THE COURT
25 HAS SAID, HE'S GOING TO SERVE EIGHTY-FIVE PER CENT OF

17

1 WHATEVER HE SERVES, SO IT WILL BE SUBSTANTIAL.

2 AND I WOULD ASK THE COURT TO HEAR
3 BRIEFLY FROM MR. JAMES, IF HE WANTS TO SPEAK.

4 THE COURT: ALRIGHT, MR. JAMES, WHAT
5 WOULD YOU LIKE TO SAY?

6 DEFENDANT JAMES: YES, ME AND HER
7 DO HAVE TWO CHILDREN TOGETHER, I HAVE A [REDACTED] YEAR
8 OLD SON BY HER AND A [REDACTED] YEAR OLD DAUGHTER BY HER. IT
9 WAS A BAD RELATIONSHIP, WE HAD UPS AND DOWNS. I COULD
10 LEAVE, SHE COULDN'T LEAVE. WE BROKE UP NUMEROUS TIMES,
11 AS THE SOLICITOR SAID, BUT WE ALWAYS ENDED UP GETTING
12 BACK TOGETHER. THIS TIME IT JUST GOT OUT OF CONTROL
13 THAT NIGHT, AND I WASN'T GOING TO KILL HER, I KNOW I
14 WASN'T GOING TO -- IT JUST GOT OUT OF CONTROL, IT GOT
15 OUT OF HAND. AND I'M SORRY, I TOLD HER I WAS SORRY. SHE
16 DO ACCEPT MY CALLS. I TALK TO MY DAUGHTER ALL THE TIME
17 ON THE PHONE, AND I ALWAYS TELL HER I'M SORRY, WILL SHE
18 ACCEPT MY APOLOGY.

19 THE COURT: YEAH, Y'ALL SHOULD HAVE
20 GOT A DIVORCE A LONG TIME AGO.

21 DEFENDANT JAMES: YEAH, I REALLY SEE
22 THAT NOW.

23 THE COURT: YOU CAN'T MAKE SOMEBODY
24 COME WITH YOU, EVEN IF YOU WANTED THEM TO, WHICH, I TAKE
25 IT YOU WANTED HER TO. EIGHTY-FIVE PER CENT IS A LONG

18

1 TIME TO SERVE, AND YOU UNDERSTAND, YOU MIGHT HAVE TO
2 SERVE A HUNDRED PER CENT OF WHATEVER I GIVE YOU.
3 EVERYBODY SAYS EIGHTY-FIVE PER CENT LIKE THAT'S ALL YOU
4 SERVE, BUT A PERSON IS LUCKY TO JUST DO EIGHTY-FIVE PER
5 CENT. AND I GET LETTERS DAILY FROM INMATES, STACKS OF
6 THEM, BECAUSE I SENTENCE A LOT OF PEOPLE, SAYING THEY
7 DIDN'T UNDERSTAND THAT, THEY THOUGHT WHEN THEY DID
8 EIGHTY-FIVE PER CENT THAT THAT WOULD BE THE END OF IT.
9 NO, EVEN IF YOU GET OUT, THEN YOU'RE ON SUPERVISED
10 RELEASE FOR A PERIOD OF TIME AND THEY CAN TAKE YOU BACK
11 IN. SO, CHANCES ARE YOU'LL SERVE A HUNDRED PER CENT,
12 I THINK THAT'S THE LEGISLATURE'S INTENT. IT WAS YOUR
13 WIFE, YOU COULD HAVE KILLED HER BUT YOU DIDN'T KILL HER.

14 SENTENCE OF THE COURT

15 I SENTENCE YOU TO SEVENTEEN YEARS
16 ON EACH COUNT, THEY ARE CONCURRENT, BUT YOU DON'T GET
17 ANY CREDIT FOR TIME SERVED BECAUSE YOU'RE SERVING TIME
18 FOR A PROBATION VIOLATION.

19 THAT'S IT.

20 MR. CULLER: THANK YOU, YOUR HONOR.

21 SOLICITOR GARRICK: THANK YOU. YOUR
22 HONOR, MAY I APPROACH AND GET THE PHOTOGRAPH BACK?

23 THE COURT: SURE.

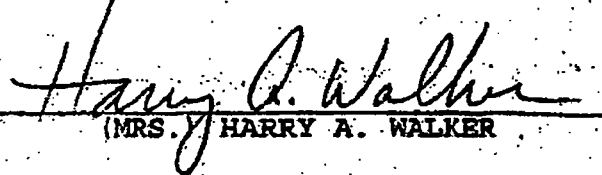
19

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE FIFTEENTH DAY OF JULY, 2002.

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

DATE: AUGUST 14, 2002


(MRS.) HARRY A. WALKER

GENERAL SESSIONS DOCKET REPORT FOR ORANGEBURG COUNTY

REPORT RUN DATE ~ 01/05/2005

INDICTMENT NUMBER: 2001GS3801917

DEFENDANT NAME: JAMES, JOHNATHAN

AKA:

ADDRESS: [REDACTED] CITY: [REDACTED] STATE: SC ZIP: [REDACTED]

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / [REDACTED]

MARITAL STATUS:

WARRANT OR TICKET NUMBER: G731963 COUNTS: 01 OFFENSE CODE: 0160

NO WARRANT? 0 NAME OF OFFENSE: SEX/CRIM SEXUAL

DATE OF ARREST: 06/19/2001 DATE RECD BY CLERK: 08/22/2001

SUMMARY JUDGE: 721

DISP DATE: 07/15/2002 DISP TYPE: 1 GUILTY PLEA

DISP TYPE EXPLANATION:

JUDGE CODE/NAME: 017 KINARD, J ERNEST JR COURT REPORTER: WALKER, HARRY

CONVICTION: CTS: 01 OFFENSE: 0160 SEX/CRIM SEXUAL

SENTENCE:

17 YRS

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

GENERAL SESSIONS DOCKET REPORT FOR ORANGEBURG COUNTY

REPORT RUN DATE - 01/05/2005

INDICTMENT NUMBER: 2001GS3801918

DEFENDANT NAME: JAMES, JOHNATHAN

AKA:

ADDRESS: [REDACTED] CITY: [REDACTED] STATE: [REDACTED] ZIP [REDACTED]

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: [REDACTED] / [REDACTED]

MARITAL STATUS:

WARRANT OR TICKET NUMBER: G731962 COUNTS: 01 OFFENSE CODE: 0079

NO WARRANT? 0 NAME OF OFFENSE: BURGLARY/(AFTER

DATE OF ARREST: 06/19/2001 DATE RECD BY CLERK: 08/22/2001

SUMMARY JUDGE: 721

DISP DATE: 07/15/2002 DISP TYPE: 1 GUILTY PLEA

DISP TYPE EXPLANATION:

JUDGE CODE/NAME: 017 KINARD, J ERNEST JR COURT REPORTER: WALKER, HARRY

CONVICTION: CTS: 01 OFFENSE: 0079 BURGLARY/(AFTER

SENTENCE:
17 YRS

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

GENERAL SESSIONS DOCKET REPORT FOR ORANGEBURG COUNTY

REPORT RUN DATE - 01/05/2005

INDICTMENT NUMBER: 2002GS3802172

DEFENDANT NAME: WOODS, WAYNE

AKA:

ADDRESS: [REDACTED] CITY: [REDACTED] STATE: [REDACTED] ZIP: [REDACTED]

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / 9999999999999999

MARITAL STATUS:

WARRANT OR TICKET NUMBER: H163400 COUNTS: 01 OFFENSE CODE: 0186

NO WARRANT? 0 NAME OF OFFENSE: DRUGS/MP OF OTH

DATE OF ARREST: 08/22/2002 DATE RECD BY CLERK: 09/04/2002

SUMMARY JUDGE: 721

DISP DATE: 07/10/2003 DISP TYPE: 1 GUILTY PLEA

DISP TYPE EXPLANATION:

JUDGE CODE/NAME: 041 COTTINGHAM, EDWARD B COURT REPORTER: GANTT, REMA

CONVICTION: CTS: 01 OFFENSE: 0186 DRUGS/MP OF OTH

SENTENCE:

5 YRS

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

GENERAL SESSIONS DOCKET REPORT FOR ORANGEBURG COUNTY

REPORT RUN DATE - 01/05/2005

INDICTMENT NUMBER: 2001GS3801916

DEFENDANT NAME: JAMES, JOHNATHAN

AKA:

ADDRESS: [REDACTED] CITY: [REDACTED] STATE: SC ZIP: [REDACTED]

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / [REDACTED]

MARITAL STATUS:

WARRANT OR TICKET NUMBER: G731964 COUNTS: 01 OFFENSE CODE: 0014

NO WARRANT? 0 NAME OF OFFENSE: ASSAULT/ASSLT &

DATE OF ARREST: 06/19/2001 DATE RECD BY CLERK: 08/22/2001

SUMMARY JUDGE: 721

DISP DATE: 07/15/2002 DISP TYPE: 1 GUILTY PLEA

DISP TYPE EXPLANATION:

JUDGE CODE/NAME: 017 KINARD, J ERNEST JR COURT REPORTER: WALKER, HARRY

CONVICTION: CTS: 01 OFFENSE: 0014 ASSAULT/ASSLT &

SENTENCE:

17 YRS

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE VS.
Nathan James
AKA:
Race: B Sex: M Age: 30
DOB: [REDACTED] SS#: [REDACTED]
Address:
DL# SID#

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

2001 GS- 38-1718
A/W#: 6731962
Date of Offense: 6-19-01
S.C. Code §: 16-11-311
CDR Code #: 0101719
☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIAL

☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Burglar 1st Degree
in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

[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 17 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine:\$
\$14-1-206 (Assessments 100%)\$
\$14-1-211(A)(1) (Surcharge)\$ 100.00
\$14-1-211(A)(2) (Surcharge)\$
\$56-5-2995 (DUI Assessment)\$
% to County (if paid in installments)\$ 500
TOTAL\$ 1050

PTUP: _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: TO: JDP: _____

[Signature]
CLERK OF COURT
PRESIDING JUDGE
Judge Code: 5115102
Sentence Date: 5/15/02

[Signature]
Clerk of Court/Deputy Clerk
Court Reporter: [Signature]

G-731962

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

ORANGEBURG COUNTY

THE STATE 2001015680
against

JONATHAN JAMES

Address: SC 29039

Phone: SSN: 180

Sex: M Race: E Height: 6' 2" Weight: 180

DL State: DL # 00 Agency OR #:

DOB: Prosecuting Agency SHERIFF'S DEPARTMENT

Prosecuting Officer: DET. K. KINSEY

Offense: BURGLARY 1ST DEGREE

Offense Code: 079

Code/Ordinance Sec. 16-11-311

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(LS.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant JONATHAN JAMES
on 6/19/01

Signature of Constable/Law Enforcement Officer:

RETURN WARRANT TO:

ORANGEBURG MAGISTRATES 1 DAVIS

P.O. BOX 9000

ORANGEBURG SC 29116

STATE OF SOUTH CAROLINA

AFFIDAVIT

Form Approved by
SC Attorney General
Jan 28 1990
SCAG 616☒ County/ ☐ Municipality of

ORANGEBURG COUNTY

Personally appeared before me the affiant DET. KENNY KINSEY
being duly sworn deposes and says that defendant JONATHAN JAMES
did within this county and state on 6/19/01 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of
in the following particulars:
DESCRIPTION OF OFFENSE: BURGLARY 1ST DEGREEI further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:BASED ON AN INVESTIGATION BY THE ORANGEBURG COUNTY SHERIFF'S
OFFICE, THAT ON JUNE 19, 2001, LOCATED AT [REDACTED]
[REDACTED] S.C. THE DEFENDANT, JONATHAN JAMES, DID VIOLATE SECTION
16-11-311 OF THE S.C. CODE OF LAWS, "BURGLARY 1ST DEGREE", IN THAT
THAT HE DID GAIN FORCED ENTRY TO THE RESIDENCE AT APPROXIMATELY
11:45 P.M., ARMED WITH A KNIFE, AND THAT THE DEFENDANT DID
ASSAULT [REDACTED] WHILE THREATENING TO KILL SAID VICTIM.

Sworn to and subscribed before me

on 6/20/01

Signature of Affiant: Henry Kinsey

Signature of Issuing Judge: [REDACTED]

Affiant's Address: P.O. BOX 9000
ORANGEBURG SC 29116
Affiant's Telephone: 803 531-4642

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

ARREST WARRANT

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

If appearing from the above affidavit that there are reasonable grounds to believe that
on 6/19/01 defendant JONATHAN JAMES
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY 1ST DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.Judge's Address: P.O. BOX 9000
ORANGEBURG SC 29116

Signature of Issuing Judge: [REDACTED] (LS.)

Judge's Telephone:

Judge Code: 721

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

WITNESSES -

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

trial set by

to be

to be

to be

to be

arrangement only

Reginald Klein
8-10-2001

to be

DISPOSITION HERE

to be (or list each had, place, and pres. etc.)

JURORS

WITNESSES

DOCKET NO. 2001GS38-1918

The State of South Carolina

County of

ORANGEBURG

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

Defendant

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

DET. K.KINSEY

COURT OF GENERAL SESSIONS

October 15, 2001 TERM

Arresting Agency:
Orangeburg Co. Sheriff Dept.

Defendant

ARREST WARRANT NUMBER

G731962

Arrested: Aug 10, 2001

THE STATE

VS.

ACTION OF GRAND JURY

Johnathan James

ATTEST: TRUE COPY

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

Witness:

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

TRUE BILL

Indictment for

BURGLARY - 1ST DEGREE
(DWELLING)

VERDICT

Foreperson of Grand Jury
Date: October 9, 2001

SC Code: 16-11-0311
CDR Code: 0079
Class: FEL-EXM(V)

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

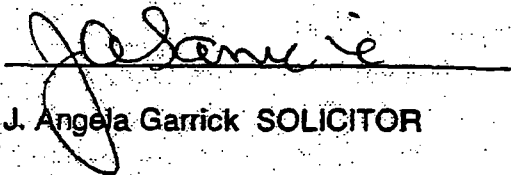
INDICTMENT

At a Court of General Sessions, convened on October 15, 2001, the Grand Jurors of Orangeburg County present upon their oath:

BURGLARY - 1ST DEGREE (DWELLING)

That Johnathan James, did in Orangeburg County, on or about June 19, 2001, willfully and unlawfully enter the dwelling of [REDACTED] J. [REDACTED] and family without consent and with the intent to commit a crime therein and that the defendant did enter the dwelling at nighttime. This offense being a violation of Section §16-11-0311 of the South Carolina Code of laws, (1976 as amended).

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


J. Angela Garrick SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Orangeburg
STATE VS.

INDICTMENT/CASE#:

Jonathan James2001-GS-38-1917

AKA:

A/W#: 6731963Race: BSex: MAge: [REDACTED]Date of Offense: 6-15-01DOB: [REDACTED]SS#: [REDACTED]S.C. Code §: 16-3-652

Address: _____

CDR Code #: 011610☐ CASE RESTORED

DL# _____

SID# _____

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Criminal Sexual Conduct 1st Degree
in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 011610☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

[Signature]
Solicitor[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 17 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.

☐ The Defendant is to be given credit for _____ days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

\$14-1-206 (Assessments 100%) _____ \$

\$14-1-211(A)(1) (Surcharge) _____ \$ 100.00

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

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

% to County (if paid in installments) _____ \$ 3.00TOTAL _____ \$ 103.00

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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.

ATTORNEY: TRUE COPY

CLERK OF COURT

RESIDING JUDGE

Judge Code: _____

Sentence Date: 7/15/08Court Reporter: [Signature]

Clerk of Court/Deputy Clerk

G-731963

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

ORANGEBURG COUNTY

THE STATE 2001015680

against

JONATHAN JAMES

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: R Height: 6' 2" Weight: 180

DL State: [REDACTED] DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: [REDACTED]

Prosecuting Agency: SHERIFF'S DEPARTMENT

Prosecuting Officer: DET. K. KINSEY

Offense: CRIMINAL SEXUAL CONDUCT

1ST DEGREE

Code/Ordinance Sec. 16-3-652

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant JONATHAN JAMES on 6/19/01

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ORANGEBURG MAGISTRATES 1 DAVIS

P.O. BOX 9000

ORANGEBURG

SC 29116

STATE OF SOUTH CAROLINA

AFFIDAVIT

☒ County/ ☐ Municipality of

ORANGEBURG COUNTY

Personally appeared before me the affiant DET. KENNY KINSEY

being duly sworn deposes and says that defendant JONATHAN JAMES

did within this county and state on 6/19/01

State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT 1ST DEGREE

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

BASED ON AN INVESTIGATION BY THE ORANGEBURG COUNTY SHERIFF'S OFFICE, THAT ON JUNE 19, 2001, LOCATED AT [REDACTED] OFFICE, THAT ON JUNE 19, 2001, LOCATED AT [REDACTED] S.C., THE DEFENDANT, JONATHAN JAMES, DID VIOLATE SECTION 16-3-652, OF THE S.C. CODE OF LAWS, "CRIMINAL SEXUAL CONDUCT 1ST DEGREE", IN THAT THE DEFENDANT DID, WITHOUT CONSENT, AND DURING THE COMMISSION OF A BURGLARY 1ST DEGREE, WHILE ARMED WITH A KNIFE, AND DURING THE PHYSICAL ASSAULT OF VICTIM, AND WHILE THREATENING TO KILL HER, VAGINALLY PENETRATE, [REDACTED], WITH HIS FINGERS.

Sworn to and subscribed before me on 6/20/01

Signature of Affiant

Affiant's Address: P.O. BOX 9000

ORANGEBURG

Affiant's Telephone: 803.531-4647

SC 29116

STATE OF SOUTH CAROLINA

ARREST WARRANT

☒ County/ ☐ Municipality of

ORANGEBURG COUNTY

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 6/19/01

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

☐ County/ ☐ Municipality of

DESCRIPTION OF OFFENSE: CRIMINAL SEXUAL CONDUCT 1ST DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge's Address: P.O. BOX 9000

ORANGEBURG

SC 29116

Judge Code: 721

Judge's Telephone

Issuing Court

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

WITNESSES

Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

Name: _____
Address: _____
Telephone: _____

BAIL set by

arrangement only
Guy D. Davis
8-40-2001
Continued under G-73962

DISPOSITION

46

JUDICIAL

WITNESSES

DOCKET NO. 2001GS38-1917

The State of South Carolina

County of

ORANGEBURG

DET. K.KINSEY

COURT OF GENERAL SESSIONS

Arresting Agency:

October 15, 2001 TERM

Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

G731963

Arrested: Aug 10, 2001

THE STATE

vs.

ACTION OF GRAND JURY

Johnathan James

TRUE BILL

Indictment for

CRIMINAL SEXUAL CONDUCT-1ST DEGREE

VERDICT

Foreperson of Grand Jury
Date: October 9, 2001

SC Code: 16-03-0652
CDR Code: 0160
Class: FEL-A(V)

Foreperson of Petit Jury
Date:

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

Defendant

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

Defendant

Witness:

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

ATTEST: TRUE COPY

47

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

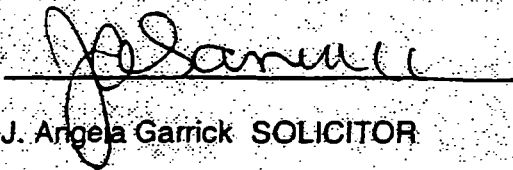
INDICTMENT

At a Court of General Sessions, convened on October 15, 2001 the Grand Jurors of Orangeburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT-1ST DEGREE

That Johnathan James, did in Orangeburg County, on or about June 19, 2001, willfully and unlawfully engage in criminal sexual conduct in the first degree in that the defendant committed sexual battery upon the victim, [REDACTED], by means of aggravated force or the victim submitted to sexual battery while she was under the circumstances of forcible confinement, kidnapping, robbery, extortion, burglary, or any other similar offense or act. This offense being a violation of Section §16-3-652 of the South Carolina Code of laws, (1976 as amended).

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


J. Angela Garrick SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:COUNTY OF Orangeburg
STATE VS.Johnathan James

AKA:

Race: B Sex: M Age: 20DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]2001-GS-38-1916A/W#: G-731964Date of Offense: 6-19-01S.C. Code §: 16-3-620CDR Code #: 0101114☐ CASE RESTOREDSENTENCE
☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Assault and Battery with Intent to Killin violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0101114☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 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.☐ The Defendant is to be given credit for days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$14-1-206 (Assessments 100%) \$14-1-211(A)(1) (Surcharge) 100.00\$14-1-211(A)(2) (Surcharge) \$56-5-2995 (DUI Assessment) 3% to County (if paid in installments) 300TOTAL 103.00[Signature]
Clerk of Court/ Deputy ClerkCourt Reporter [Signature]PTUP
days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps 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: PRESIDING JUDGE [Signature]Judge Code: Sentence Date: 7/15/08

61

ARREST WARRANT

G-731964

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

ORANGEBURG COUNTY

THE STATE 2001015680

against

JONATHON JAMES

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: K Height: 6 2 Weight: 180

DL State: [REDACTED] DL#: [REDACTED]

DOB: [REDACTED] Agency ORI#: [REDACTED]

Prosecuting Agency: SHERIFF'S DEPARTMENT

Prosecuting Officer: DET. K. KINSEY

Offense: ASSAULT & BATTERY

W/INTENT TO KILL. Offense Code: 014

Code/Ordinance Sec. 16-3-620.

This warrant is CERTIFIED FOR SERVICE in the ☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant JONATHON JAMES on 6/19/01

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ORANGEBURG MAGISTRATES 1 DAVIS

P.O. BOX 9000

ORANGEBURG SC 29116

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

ORANGEBURG COUNTY

AFFIDAVIT

Personally appeared before me the affiant DET. KENNY KINSEY

being duly sworn deposes and says that defendant JONATHON JAMES

did within this county and state on 6/19/01 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of

In the following particulars:

DESCRIPTION OF OFFENSE: ASSAULT & BATTERY W/INTENT TO KILL.

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

BASED ON AN INVESTIGATION BY THE ORANGEBURG COUNTY SHERIFF'S OFFICE, THAT ON JUNE 19, 2001, LOCATED AT [REDACTED], S.C., AT APPROXIMATELY 11:45 P.M., THE DEFENDANT, JONATHON JAMES, DID VIOLATE SECTION 16-3-620, OF THE S.C. CODE OF LAWS, "ASSAULT AND BATTERY WITH INTENT TO KILL", IN THAT THE DEFENDANT DID ASSAULT [REDACTED], BY STRIKING VICTIM IN HER FACE, HEAD, AND BODY WITH HIS FISTS AND A METAL SIGN POST, WHILE ARMED WITH A KNIFE AND WITH THE CONSTANT VERBAL THREAT OF KILLING SAID VICTIM.

Sworn to and subscribed before me on 6/20/01

Signature of Affiant

Affiant's Address: P.O. BOX 9000

ORANGEBURG SC 29116

Affiant's Telephone: 803 531-4647

Signature of Issuing Judge

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

ORANGEBURG COUNTY

ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that on 6/19/01 defendant JONATHON JAMES

did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of

DESCRIPTION OF OFFENSE: ASSAULT & BATTERY W/INTENT TO KILL.

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge Code: 221

ORIGINAL

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: Mr. J. C. Smith
Address: 123 Main St.,
New York, N. Y.
Telephone: 1-234-5678

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____

Name: _____
Address: _____

Name: _____
Address: _____

CODEFENDANTS

CODEFENDANTS

Arrangement only
FBI LABORATORY HEADQUARTERS

Reynolds Klein

B-10-2021

Continued under G-73962
Name: _____

Category 1 (40.00%)

51

WURCS

WITNESSES

DOCKET NO. 2001GS38-1916

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

Defendant

The State of South Carolina

County of

ORANGEBURG

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

DET. K. KINSEY

COURT OF GENERAL SESSIONS

Arresting Agency:

October 15, 2001 TERM

Orangeburg Co. Sheriff Dept.

Defendant

ARREST WARRANT NUMBER

G731964

THE STATE

Arrested: Aug 10, 2001

vs.

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

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

ACTION OF GRAND JURY

Johnathan James

TRUE BILL

Indictment for

ASSAULT AND BATTERY WITH INTENT TO KILL

TO KILL

VERDICT

Foreperson of Grand Jury
Date: October 9, 2001

SC Code: 16-3-620

CDR Code: 0014

Class: FLE-C(V)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

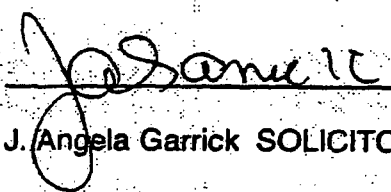
INDICTMENT

At a Court of General Sessions, convened on October 15, 2001 the Grand Jurors of Orangeburg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That Johnathan James, did in Orangeburg County, on or about June 19, 2001, with malice aforethought did commit an assault and battery, upon the victim, [REDACTED] J. [REDACTED] by means of: striking the victim in her face, head, and body with his fists and a metal sign post, with the intent to kill the said victim. This offense being a violation of Section §16-3-620 of the South Carolina Code of laws, (1976 as amended).

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


J. Angela Garrick SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Orangeburg
STATE VS

INDICTMENT/CASE#:

Jonathan James2000 GS 38 - 1259AKA: Jonathon JamesA/W#: G514149Race: B Sex: M Age: [REDACTED]Date of Offense: 6-6-00DOB: [REDACTED] SS# [REDACTED]S.C. Code §: 16-9-320(b)

Address: _____

CDR Code #: 0121516☐ CASE RESTORED

DL# _____

SID# _____

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Resisting Arrestin violation of § 16-9-320(b) of the S.C. Code of Laws, bearing CDR Code # 0121516☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State

ATTEST:

Jennifer C. Porter
SolicitorJonathan James
Defendant[Signature]
Attorney for Defendant

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

☐ The Defendant is to be given credit for _____ days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: with time being served

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§14-1-206 (Assessments 100%)\$ _____

§14-1-211(A)(1) (Surcharge)\$ 100.00

§14-1-211(A)(2) (Surcharge)\$ _____

§56-5-2995 (DUI Assessment)\$ _____

3% to County (if paid in installments)\$ 300TOTAL\$ 103.00

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

ATTEST: TRUE COPY paid for Public Defender Fund.

/Other: _____

[Signature]

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

54 PRESIDING JUDGE [Signature]Judge Code: 0910Sentence Date: 12-10-00Court Reporter: Carol LeBeure

G-514149

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 ORANGETHURB COUNTY

 THE STATE 2006012325
 against

JOHNATHAN JAMES

Address: SC

Phone: SSN: 180

Sex: F Race: H Height: 6 Weight: 180

DL State: DL#:

DOB: AGENCY OR#:

Prosecuting Agency: SHERIFF DEPT

Prosecuting Officer: EARVIN R SMITH

Offense: RESISTING ARREST, ASSAULT

BEAT OF WOUND Offense Code: 0256

Code/Ordinance Sec. 16-09-0320(b)

 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of The accused

 Is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge (L.S.)

Date: RETURN

 A copy of this arrest warrant was delivered to
 defendant JOHNATHAN JAMES

on 6-7-08

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
 ORANGETHURB MAGISTRATE 2 ROBINSON

P.O. BOX 9000

ORANGETHURB SC 29116

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 ORANGETHURB COUNTY

AFFIDAVIT

Personally appeared before me the affiant EARVIN R SMITH

 being duly sworn deposes and says that defendant JOHNATHAN JAMES who
 did within this county and state on 6/06/00 violate the criminal laws of the

 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
 in the following particulars:

DESCRIPTION OF OFFENSE: RESISTING ARREST, ASSAULT, BEAT OF WOUND

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: THAT ON JUNE 6, 2000 AT APPROXIMATELY 9:45PM, ONE JOHNATHAN JAMES DID RESIST THE LAWFUL ARREST FOR CDV BY DELIBERATELY HEAD BUTTING AND SPITTING INTO THE FACE OF DEPUTY E. SMITH WHILE HE WAS ASSISTING ANOTHER DEPUTY IN THE REMOVAL FROM THE SCENE AND PLACEMENT OF THE DEFENDANT INTO THE PATROL VEHICLE FOR TRANSPORT TO OCRDC. THIS INCIDENT OCCURRED IN ORANGETHURB COUNTY, STATE OF SOUTH CAROLINA.

 Sworn to and subscribed before me
 on 6/07/00

Signature of Issuing Judge (L.S.)

 Signature of Affiant
 Affiant's Address: P.O. BOX 9000
 ORANGETHURB SC 29116
 Affiant's Telephone: 803 531-4647

 STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
 ORANGETHURB COUNTY

ARREST WARRANT

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

 If appearing from the above affidavit that there are reasonable grounds to believe that
 on 6/06/00 defendant JOHNATHAN JAMES

 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of
 DESCRIPTION OF OFFENSE: RESISTING ARREST, ASSAULT, BEAT OF WOUND

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of his apprehension, or as soon thereafter as is practicable.

 Judge's Address: 1520 ELLIS AVENUE
 ORANGETHURB SC 29116

Signature of Issuing Judge (L.S.)

 Judge's Telephone: Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

67
Dennis - 5000 family
6-7-2000

THE IMPORTANCE OF

1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 26

with the following conditions and prices (cf.):

2015

References

A. b. l. f. g. h. i. j.

11:58 AM

Phonics:

As follows:

1. Introduction

Naming:

Activities

Telefonnummer:

CONFIDENTIAL

WITNESSES

DEP. EARVIN R. SMITH - OCSD

Arresting Agency:
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

G514149

Arrested: Jun 07, 2000

ACTION OF GRAND JURY
TRUE BILL

VERDICT

Report of Grand Jury
Jury: July 17, 2000

Person of Petit Jury
re:

DOCKET NO. 2000GS38-1259

The State of South Carolina

County of

ORANGEBURG

COURT OF GENERAL SESSIONS

July 24, 2000 TERM

THE STATE

vs.

Johnathan James

Indictment for

RESISTING ARREST / ASSAULT ON A
POLICE OFFICER

SC Code: 16-9-320(b)
CDR Code: 0256
Class: FEL-E

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

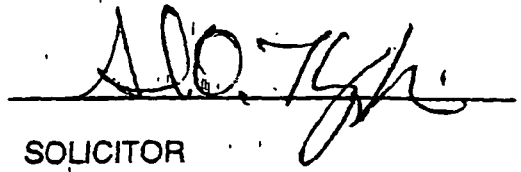
INDICTMENT

At a Court of General Sessions, convened on July 24, 2000 the Grand Jurors of Orangeburg County present upon their oath:

RESISTING ARREST / ASSAULT ON A POLICE OFFICER

That Johnathan James, did in Orangeburg County, on or about June 6, 2000, knowingly and willfully assault, beat or wound one Deputy Earvin R. Smith, a law enforcement officer of this State, while resisting the efforts of the said officer to execute a lawful arrest on the said defendant.

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


SOLICITOR

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 01/18/05
OMCOMITA RELEASE DATE SCREEN CQ23981
SCDC# > 185547 LOC: BROAD RIVER
JAMES, JONATHAN - SCDC CLASSIFICATION... VIOLENT

SEXUAL REGISTRY... Y
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL PREDATOR...: PENDING
DNA STATUS...: COMPLETED

TOTAL SENTENCE...: 017-00-000 CONSECUTIVE SENTENCE ...: N
CURRENT SENTENCE: 017-00-000 CURRENT SENT START DATE: 07/15/2002
PROJECTED COMPLETION DATES
MAXOUT DATE: 12/21/2016 CURRENT EWC ..: 3 F 7
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000301 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
TOTAL EXTRA EARNED CREDITS ..: 000
TOTAL SERVICE TIME EARNED ...: 000903

PFKEYS: 5:HISTORY OF DATE CHANGES

4-6 1 Sess-1 167.7.50.33 TNET2079 3/11

CLASSIFICATION SUMMARY REPORT DATED 01/18/05

SCDC# 185547 JAMES, JONATHAN -
 OFFENDER TYPE: ADULT-STRAIGHT SENTENCE
 INSTITUTION: BRAD RIVER CORR. INST
 SECURITY/CUST: 3 MINIMUM IN
 TOT INCARC SENT: 17 YRS 0 MOS 0 DYS
 CENTRAL MONITORING: NO
 MFD CLASS: 1 NO MFD PROB/NO WORK RESTRICT
 MENTAL CLASS: NMH (NO MENTAL HEALTH TRF)
 CURRENT PROGRAM: NO CURRENT PROGRAM
 AGE: 32

F02398
 FBI# 452231PA5

DOBS: MI0247
 PROJ MAXOUT DATE: 12/31/2016
 PROJ PAROLE DATE: 00/00/0000
 EMP JOB: FOOD SERVICE AIDE
 EDUC PRG: NO CURR EDUC PROGRAM
 EMP LEVEL: 3F7 EFF LEVEL:
 ASSIGNMENT: CAFETERIA

PREVIOUS NUMBERS:

* NO PREVIOUS NUMBERS **

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	SENTENCE	START	U/V	CAT	INDICT
URGLARY-1ST DEGREE	17	0	0	ORANGEBURG	07/15/2002	U		4	018S38-1918
RIMINAL SEX ONDT 1ST DE	17	0	0	ORANGEBURG	07/15/2002	U		5	018S38-1917
RSULT & BATT W/INTNT KILL	17	0	0	ORANGEBURG	07/15/2002	U		4	018S38-1916
RESISTING OFFICER	1	0	0	ORANGEBURG	12/10/2001	N		3	006S38-1259
INU/DIST CRACK-2ND OFF	0	20	0	ORANGEBURG	08/10/2001	N		3	996S38-1874
ACK DISTRIBUTION	15	0	0	ORANGEBURG	02/06/1992	N		2	926S38-447

NO PRIOR COMMITMENTS OVER 90 DAYS

NO PRIOR COMMITMENTS OVER 90 DAYS

NO PRIOR COMMITMENTS OVER 90 DAYS

NO PRIOR COMMITMENTS OVER 90 DAYS

NO PRIOR COMMITMENTS OVER 90 DAYS

NO PRIOR COMMITMENTS OVER 90 DAYS

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NO PRIOR COMMITMENTS OVER 90 DAYS

NO PRIOR COMMITMENTS OVER 90 DAYS

NO PRIOR COMMITMENTS OVER 90 DAYS

SCDC# 185547 JAMES, JONATHAN - (CONTINUED)

04/14/94 FALSE STATEMENT TO HARM CONVICTED MAJOR
 06/14/94 FAILING/REFUSING RESPOND CONVICTED MAJOR
 07/14/94 REFUSING OR FAILING OBEY CONVICTED MINOR
 10/15/92 POSSESSION OF CONTRABAND CONVICTED MAJOR
 02/10/92 OUT OF PLACE CONVICTED MINOR

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
09/11/00	BROAD RIVER	INCARCERATED	LOCKUP-ADJUSTMENT COMM.
07/23/02	EVANS	INCARCERATED	RETURN FROM COURT
06/07/02	ORANGEBURG CO	ABSENT WITH LEAVE (A	TO COURT
12/12/01	EVANS	INCARCERATED	RETURN FROM COURT
10/15/01	ORANGEBURG CO	ABSENT WITH LEAVE (A	TO COURT
10/01/01	EVANS	INCARCERATED	ADMINISTRATIVE
09/27/01	TRENTON	INCARCERATED	ADMINISTRATIVE
09/21/01	KIRKLAND	INCARCERATED	RETURN FROM COURT
09/21/01	ORANGEBURG CO	ABSENT WITH LEAVE (A	TO COURT
09/12/01	KIRKLAND	INCARCERATED	PAROLE VIOLATOR
08/10/01	ORANGEBURG CO	ABSENT WITH LEAVE (A	LOCKUP-FRM EPA, SF, PAR, PRE
06/29/01	UNK	DEAD TIME	WARRENT ISSUED
03/07/97	ORANGEBURG CO	PAROLE	PAROLE BOARD ACTION
05/22/96	RIDGELAND	INCARCERATED	ADMINISTRATIVE
10/18/95	MANNING	INCARCERATED	ADMINISTRATIVE
10/13/95	TYGER RIVER LOW	INCARCERATED	ADMINISTRATIVE
10/05/95	GREENWOOD	INCARCERATED	DISCIPLINARY
08/09/95	LIVESAY	INCARCERATED	DRUG ADDICTION UNIT
05/18/94	MANNING	INCARCERATED	ADMINISTRATIVE
05/04/92	ALLENDALE	INCARCERATED	ADMINISTRATIVE
02/14/92	BROAD RIVER H&E	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB NO.
FOOD SERVICE AIDE	01/11/05	00/00/00		101
WARDKEEPER ASSISTANT	08/17/04	01/10/05	INMATE REQUEST	3F7
FOOD SERVICE AIDE	05/21/04	07/26/04	PLACED IN ST/SF CUSTODY	3F5
WARDKEEPER ASSISTANT	04/27/04	05/20/04	INMATE REQUEST	3F5
CUSTODIAL WORKER	05/15/03	09/11/03	DISCIPLINARY/LOCK-UP	5F5
CUSTODIAL WORKER	11/19/02	05/14/03	CUSTODY REVIEW	3F5
CUSTODIAL WORKER	10/18/02	11/18/02	CUSTODY REVIEW	5F5
CUSTODIAL WORKER	04/25/02	10/17/02	CUSTODY REVIEW	7F5
CUSTODIAL WORKER	03/18/02	04/24/02	CUSTODY REVIEW	5F5
FOOD SERVICE AIDE	02/07/02	02/17/02	LATERAL TRANSFER	5F5
FOOD SERVICE AIDE	12/12/01	02/06/02	CUSTODY REVIEW	2F5
FOOD SERVICE AIDE	10/05/01	10/18/01	COURT	2F5
FOOD SERVICE AIDE	10/03/01	10/04/01	NOT ELIGIBLE FOR LEVEL 2	3F5
WARDKEEPER	03/05/97	03/07/97	LATERAL TRANSFER	7F7
WARDKEEPER	06/03/96	11/21/96	DISCIPLINARY/LOCK-UP	3F5
GENERAL WORKER	10/25/95	11/31/95	DISCIPLINARY/LOCK-UP	7F7
GENERAL WORKER	10/09/95	10/13/95	INSTIT TRANSFER	7F5
CUSTODIAL WORKER	08/09/95	10/05/95	INSTIT TRANSFER	7F5
WARDKEEPER ASSISTANT	06/07/95	06/26/95	DISCIPLINARY/LOCK-UP	5F7
WARDKEEPER	04/05/95	05/19/95	DISCIPLINARY/LOCK-UP	3F7
WARDKEEPER ASSISTANT	02/07/95	04/04/95	PROMOTION	5F7
IN DINING ROOM OPERA	11/33/94	02/06/95	INMATE REQUEST	3F7
FOOD SERVICE AIDE	09/20/94	11/22/94	PROMOTION	5F7
MACHINE OPERATOR	07/14/94	09/06/94	UNSAT JOB PERFORM	3F5
LAUNDRY ROOM ATTEND	06/19/94	07/13/94	PROMOTION	5F5
LAUNDRY ROOM ATTEND	05/24/94	06/14/94	DISCIPLINARY/LOCK-UP	5F5
IN DINING ROOM OPERA	04/24/94	05/18/94	INSTIT TRANSFER	3F7
IN DINING ROOM OPERA	04/03/93	04/15/94	DISCIPLINARY/LOCK-UP	3F7
FOOD SERVICE AIDE	04/03/93	04/15/93	PROMOTION	

POLICE 185547 JAMES S. JONATHAN - (CONTINUED)
 FOOD SERVICE AIDE 05/29/92 06/30/92 PROMOTION
 HISTORY OF EARNED EDUCATION CREDITS:
 REC. START END TERMINATION
 DESCRIPTION DATE DATE REASON
 BONUS 15 OR MORE 01/14/92 02/08/97 DISCIPLINARY/LOCK-UP
 BONUS 15 OR MORE 02/05/97 03/07/97 LATERAL TRANSFER
 BONUS 15 OR MORE 06/17/94 11/31/94 DISCIPLINARY/LOCK-UP
 BONUS 15 OR MORE 10/30/95 11/31/95 DISCIPLINARY/LOCK-UP
 LVL. 5 - FULL TIME (NO FWD) 07/17/95 08/08/95 INMATE REQUEST
 BONUS 4-7 HRS/WK 09/07/94 07/16/95 INMATE REQUEST
 BONUS 4-7 HRS/WK 06/02/92 08/03/92 UNSAT JOB PERFORM
 ***** END OF REPORT *****

P. NEU

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:COUNTY OF Orangeburg 195547
STATE VS. INMATE REWARDS OFFICEJonathan James 2001 DEC 17 AM 9:35AKA: Jonathon JamesRace: B Sex: M Age: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]DL# [REDACTED] SID# [REDACTED]2000 -GS- 38 -1259A/W#: G514149Date of Offense: 6-6-00S.C. Code §: 16-9-320(b)CDR Code #: 0121516☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Resisting Arrestin violation of § 16-9-320(b) of the S.C. Code of Laws, bearing CDR Code # 0121516☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-2543The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury
The charge is without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.[Signature] Solicitor [Signature] Defendant [Signature] Attorney for DefendantWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years
and/or to pay a fine of \$ [REDACTED], provided that upon the service of [REDACTED] days/months/years and/or payment
of \$ [REDACTED] plus costs and assessments as applicable*, the balance is suspended with probation for [REDACTED]
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation which are incorporated by reference.☐ The Defendant is to be given credit for [REDACTED] days/months/jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: with time being served

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard ☐ Waived ☐ OrderedTotal [REDACTED] plus 20% fee: \$ [REDACTED]

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: [REDACTED] \$ [REDACTED]\$14-1-206 (Assessments 100%) \$ [REDACTED]\$14-1-211(A)(1) (Surcharge) \$ 100.00\$14-1-211(A)(2) (Surcharge) \$ [REDACTED]\$56-5-2995 (DUI Assessment) \$ [REDACTED]3% to County (if paid in installments) \$ 300TOTAL \$ 103.00[Signature]
Clerk of Court/Deputy ClerkCourt Reporter: Carol LebeurePRESIDING JUDGE: [Signature]Judge Code: 0101Sentence Date: 12-10-2001

Created by the South Carolina Department of Probation, Parole and Prison Services

STATE OF SOUTH CAROLINA

County of Orangeburg
STATE VS

Jonathan James DEC 17 2001

AKA: _____

Race: B Sex: M

DOB: _____

SSN: _____

SID#: 00759125 (102)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#

99 -GS- 38 - 1874
CM#: W-38-01-0133 / 8-10-01
Name of Original Offense: Poss. of Cocaine - 2
Conviction S.C. Code #: 44-53-0370(B)(1)
Conviction CDR Code #: 1841
Date of Original Offense: 8-22-99
Original Sentence: 10 yrs & 30 months Prob

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 2/12/01 in the Court of General Sessions of Orangeburg County as set forth in the attached warrant or citation. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit)

1, 2, 6, 7, 9 and 10

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 20 months/years, the remainder of the original sentence, and/or pay \$ _____
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____ thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

☒ Additional Conditions ordered by the Court:

Concurrent with Sentence
now serving

☒ Credit for pre-trial detention time on current probation violation: 42 days

☒ The defendant has previously served 0 months/years on this sentence (split sentence time and/or prior partial revocation time)

This 21st day of Sept 2001

Orangeburg SC

Presiding Judge

FIRST

Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

I am to certify that I have read, or have had read to me, the order and the conditions set out therein, I agree to comply with such conditions and the conditions of the attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Defender's Signature
Jonathan James

Witnessed by
[Signature]

Signed this 21st day of Sept 2001 at Orangeburg SC

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg
STATE VS.Jonathan James 185547

AKA:

Race: BSex: MAge: [redacted]DOB: [redacted]SS#: [redacted]

Address: _____

DL# _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#2001-GS-38-1917 185A/W#: 6731963Date of Offense: 6-15-01S.C. Code §: 16-3-652CDR Code #: 011610☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Criminal Sexual Conduct 1st degree
in violation of § 16-3-652 of the S.C. Code of Laws, bearing CDR Code # 011610☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 17 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.☐ The Defendant is to be given credit for _____ days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☒ set by SCDPPPS

Recipient: _____

*Fine: _____ \$

\$14-1-206 (Assessments 100%) \$

\$14-1-211(A)(1) (Surcharge) \$ 1000

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

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

5% to County (if paid in installments) \$ 50TOTAL \$ 1050

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

PRESIDING JUDGE [Signature]

Judge Code: _____

Sentence Date: 7/15/08Court Reporter: [Signature]

Clerk of Court/Deputy Clerk

INMATE RECORDS OFFICE
2002 JUL 25 4 05 PM

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

Orangeburg

INDICTMENT/CASE#:

STATE

VS.

2001-GS-38-1916

Johnathan James

185547

A/W#

G-731964

AKA:

Date of Offense:

6-15-04

Race:

B

Sex:

M

Age:

[REDACTED]

S.C. Code §:

16-3-620

DOB:

SS#

[REDACTED]

CDR Code #:

0101114

Address:

☐ CASE RESTORED

DL#

SID#

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO: Assault and Battery with Intent to Killin violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 0101114☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe 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 17 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.

☐ The Defendant is to be given credit for days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard ☐ Waived ☐ OrderedTotal \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$14-1-206 (Assessments 100%) \$14-1-211(A)(1) (Surcharge) \$14-1-211(A)(2) (Surcharge) \$56-5-2995 (DUI Assessment) 5% to County (if paid in installments) TOTAL

PTUP

 days/hours Public Service EmploymentObtain GED Attend Voc Rehab or Job Corps 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 FundOther:

PRESIDING JUDGE

Judge Code: Sentence Date:

Court Reporter

Clerk of Court/ Deputy Clerk

2002 JUL 22 AM 9:05
 WHITE RECORDS OFFICE

66

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg

STATE VS.

Nathan James 185547

AKA:

Race: B Sex: M Age: [REDACTED]DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]DL# [REDACTED] SID# [REDACTED]IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:2001 GS- 38 - 1918A/W#: 6731962Date of Offense: 6-19-01S.C. Code §: 16-11-311CDR Code #: 0101719☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIAL☐ CONVICTED OF or ☒ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Burglary 1st Degreein violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0101719☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[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 17 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.

☐ The Defendant is to be given credit for days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS Recipient: *Fine: \$14-1-206 (Assessments 100%) \$14-1-211(A)(1) (Surcharge) 1100\$14-1-211(A)(2) (Surcharge) \$56-5-2995 (DUI Assessment) 5% to County (if paid in installments) 50TOTAL 1050PTUP days/hours Public Service EmploymentObtain GED Attend Voc Rehab. or Job Corps 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: 67 PRESIDING JUDGE [Signature]Judge Code: Sentence Date: 7/15/08Court Reporter: [Signature]

Clerk of Court/Deputy Clerk

Pink - Defendant

INMATE RECORDS OFFICE
2002 JUL 25 AM 9:05

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN JAMES,

APPELLANT

FINAL *ANDERS* BRIEF OF APPELLANT

DANIEL T. STACEY
Chief Attorney

South Carolina Office
of Appellate Defense
1122 Lady Street, Suite 940
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

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TABLE OF AUTHORITIES

Cases:

<i>Simpson v. State</i> , 317 S.C. 506, 455 S.E.2d 175 (1995)	5
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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by sentencing appellant where he never admitted he was guilty?

STATEMENT OF THE CASE

Appellant appeared before the Honorable J. Ernest Kinard, Jr., presiding judge on July 15, 2002 in Orangeburg and entered guilty pleas to indictments for burglary in the first degree, criminal sexual conduct in the first degree and assault and battery with intent to kill. Appellant was sentenced to seventeen years on each count concurrent. This appeal follows.

ARGUMENT

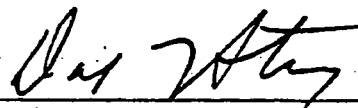
The court erred by sentencing appellant where he never admitted he was guilty.

A review of the entire transcript indicates considerable colloquy between the appellant and the court but in fact he never pleaded guilty. While it has been ruled there is no requirement that a defendant acknowledge a guilty plea in writing, *see Simpson v. State*, 317 S.C. 506, 455 S.E.2d 175 (1995), a review of the entirety of the transcript here demonstrates that appellant never acknowledged his guilt at all. Under these circumstances, the guilty plea cannot stand.

CONCLUSION

Appellant should receive a new trial:

Respectfully submitted,



Daniel T. Stacey
Chief Attorney

ATTORNEY FOR APPELLANT

This 18th day of February, 2003.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JONATHAN JAMES,

APPELLANT

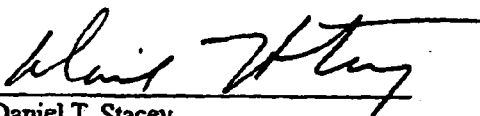
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jonathan James states:

1. He is Chief Attorney for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge J. Ernest Kinard, Jr., which was held on July 15, 2002, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Jonathan James.

Respectfully submitted,


Daniel T. Stacey
Chief Attorney

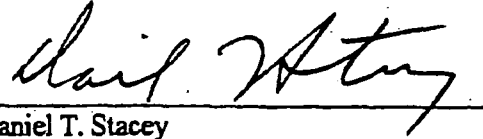
75 ATTORNEY FOR APPELLANT

This 18th day of February, 2003.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

February 18th, 2003



Daniel T. Stacey
Chief Attorney

S. C. Office of Appellate Defense
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

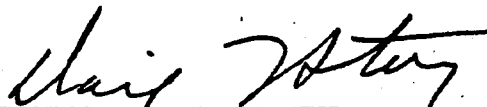
V.

JONATHAN JAMES,

APPELLANT

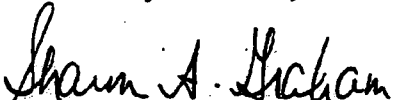
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final *Anders* Brief of Appellant in the above referenced case has been served upon Charles H. Richardson, Esquire this 18th day of February, 2003.


Daniel T. Stacey
Chief Attorney

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of February, 2003.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: April 8, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Jonathan James,

Appellant.

Appeal From Orangeburg County
J. Ernest Kinard, Jr., Circuit Court Judge

Unpublished Opinion No. 2003-UP-600
Submitted August 20, 2003 – Filed October 20, 2003

APPEAL DISMISSED

Chief Attorney Daniel T. Stacey, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster; Chief Deputy Attorney General John W. McIntosh; Assistant Deputy Attorney General Charles H. Richardson, of Columbia; and Solicitor Walter M. Bailey, Jr., of Summerville, for Respondent.

PER CURIAM: Jonathan James appeals his plea of guilty to first-degree burglary, first-degree criminal sexual conduct, and assault and battery with intent to kill. The trial judge sentenced James to seventeen years imprisonment on each charge. The sentences were to be served concurrently.

Pursuant to Anders v. California, 386 U.S. 738 (1967), counsel for James attached to the final brief a petition to be relieved as counsel, stating he had reviewed the record and concluded James's appeal is without legal merit sufficient to warrant a new trial. James filed a separate pro se response.

After a thorough review of the record pursuant to Anders and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED.

HEARN, C.J., CONNOR and ANDERSON, JJ., concur.



close
RE

The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

ATTORNEYS GENERAL

POST OFFICE BOX 11625
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 21, 2003

REMITTITUR

The Honorable Lisa Mizell
190 Gibson Street
PO Box 9000
Orangeburg, SC 29116-9000

Re: The State v. James, Jonathan
2001-GS-38-01916
2001-GS-38-01917
2001-GS-38-01918

Dear Ms. Mizell:

The above referenced matter is hereby remitted to the trial court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in cursive script, appearing to read "Renee S. Johnson".

Renee S. Johnson
Administrative Specialist

VW
KAR/tj

cc: Chief Attorney Daniel T. Stacey
Jonathan James #185547
Assistant Deputy Attorney General Charles H. Richardson
Walter M. Bailey, Jr., Esquire

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 COURT OF COMMON PLEAS)

JUDGMENT ON TRIAL OR ORDER BY THE COURT

CASE NO. 2004 -CP-38- 1327

VS

Jonathan James
185547

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

- () JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND THE JURY HAS RENDERED ITS VERDICT.
- () DECISION BY COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION HAS BEEN RENDERED.
- () ACTION DISMISSED. () RULE 40 (J) OF SCRPC, () RULE 12 (B) OF SCRPC,
 () SETTLED. () VOL. NONSUIT. () OTHER _____

IT IS ORDERED AND ADJUDGED: () SEE ATTACHED ORDER, () STATEMENT OF JUDGMENT BY COURT

For 3 weeks until the trial can
be held

DATED AT ORANGEBURG, SOUTH CAROLINA, THIS 25 DAY OF Jan, 2008.

JUDGE/CLERK OF COURT

THIS JUDGMENT WAS ENTERED ON THE 25 DAY OF Jan, 2008
 AND A COPY MAILED FIRST CLASS THIS 25 DAY OF Jan, 2008.
 TO ATTORNEYS OF RECORD OR TO PARTIES (WHEN APPEARING PRO SE) AS FOLLOWS:

Everet Cromer, Esq.

Teri Salane, Esq.

SC Attorney General's Office

PO BOX 14549

Columbia, SC

ATTEST: TRUE COPY

ATTORNEY(S) OR PLAINTIFF(S)

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

ATTORNEY(S) FOR DEFENDANT(S)



HENRY McMASTER
ATTORNEY GENERAL

May 2, 2006

Evert Comer, Jr., Esquire
Post Office Box 386
18521 Heritage Highway
Denmark, South Carolina 29042

Re: Jonathan James v. State of South Carolina
PCR Case No. 2004-CP-38-1327

Dear Mr. Comer:

I have enclosed the two-page plea sheet, which was provided by the Clerk of Court. The Honorable James C. Williams, Jr. has requested that you provide any response within ten days. Please also note that Teri Salane, Esquire, remains the assigned attorney from my office in this matter.

By copy of this letter, I am also requesting that the Clerk of Court file the attached document in the above PCR file.

With highest regards,

Molly R. Crum
Assistant Attorney General

Enclosure

cc: The Honorable James C. Williams, Jr., Presiding Judge (w/ enclosure)
Lisa W. Mizell, Orangeburg County Clerk of Court (w/ enclosure)
Michael Culler, Esquire (w/ enclosure)

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ATTEST: TRUE COPY

THE STATE V. JONATHAN JAMES COUNTY GENERAL SESSIONS
 INDICTMENT # 2001-38-1916 DEFENSE ATTORNEY GAARDEN
 SOLICITOR GAARDEN

The Defendant avers that the Defendant desires to plead guilty to ADWIK + BURGLARY I + CSCT
 and certifies to the Court that the answers to the following are true: ADWIK

1. The Penalty(ies) for my charge(s) is/are: ADWIK 20 Yrs ; CSC - 30
Burg I - 15 up to life
2. The maximum sentence I could get is: life
3. Has the State agreed to recommend a sentence to the Judge? Yes
 - (a) If so, what is that recommendation? 20 concurrent
 - (b) If so, has anyone promised you anything else to get you to plead guilty or assured you as to a particular sentence? N/A
4. Has anyone promised you anything else, threatened you or put any pressure on you to get you to plead guilty?
N/A
 If so, who and what? _____
5. Have you taken medications, drugs or alcohol within the last 24 hours? N/A
 If yes, explain. _____
6. Are you aware of any physical, emotional or nervous problem that might impact on your understanding of this plea? N/A
 If yes, explain. _____
7. Do you understand that if you plead NOT GUILTY you have the right to have the help of a lawyer at all stages of the proceedings, even if you cannot afford to employ one? YES ✓ NO _____
8. Do you understand that when you plead guilty you give up your right to a jury trial? YES
9. Do you understand that in a trial you would be presumed to be innocent until the State proved you to be guilty beyond a reasonable doubt and all jurors unanimously agree on your guilty? YES ✓ NO _____
10. Do you understand that in a trial you have the right to see and hear all witnesses called to testify against you and to confront, cross examine and question them? YES ✓ NO _____
11. Do you understand that in a trial you have the right to take the witness stand and testify or not to take the witness stand as you choose, and that you cannot be required to take the witness stand?
 YES ✓ NO _____

12. Do you understand that if you plead NOT GUILTY and that if you do not take the witness stand, they jury cannot take that as evidence against you? YES ☒ NO ☐
13. Do you understand that if you plead NOT GUILTY you have a right to use the subpoena power of the Court to get the attendance of any witnesses on your behalf at a trial whether they want to come or not? YES ☒ NO ☐
14. Do you know that if you plead GUILTY you will be found guilty without a trial and you will have given up all the rights mentioned in questions (9) to (14) along with your right to present any defense(s)? YES ☒ NO ☐
15. Have you made any statement(s) in which you admitted all or any part of the crime(s) to which you want to plead guilty? YES ☐ NO ☒
• If YES, would you plead guilty if you knew the statement(s) could not be used against you?
YES ☐ NO ☐
16. If you are on Parole or Probation, do you know this plea could result in a revocation? YES ☒ NO ☐
17. Has your lawyer gone over your rights and all circumstances of the charge(s) with you? YES ☒ NO ☐
18. Are you satisfied with your lawyer? YES ☒ NO ☐
19. Do you understand what you are doing and all the rights that you are giving up? YES ☒ NO ☐
20. Are you pleading guilty freely and voluntarily? YES ☒ NO ☐
21. Do you understand that you have a right to appeal from your sentence based on your plea but that you must appeal within 10 days of the sentence? YES ☒ NO ☐

DATE: 7/15/02

[Signature]
Defendant's Signature

I certify that the above questions were answered by the Defendant after a full explanation of each question by the undersigned and in my opinion the Defendant understands the possible punishment for the charge(s) and his/her Constitutional rights that will be waived if the plea is accepted.

DATE: 7/15/02

[Signature]
Attorney for the Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Case No. 2004-CP-38-1327

Jonathan James, #185547,

Applicant,

vs.

State of South Carolina,

Respondent.

POSITION OF APPLICANT
ON THE PLEA SHEET PUT
IN RECORD SINCE HEARING

The hearing of this post conviction relief action was held on April 25, 2006, when it was discovered that neither the office of the attorney general, trial attorney nor counsel for the applicant had a copy of the plea sheet referenced by the trial judge in the transcript. (Page 5, line 8, transcript). The post conviction relief trial judge asked for it during hearing, at which time it could not be produced, and the clerk of court did not have the file. This is when the post conviction relief judge notified all parties that the court would hold the record open for three weeks for the file to be located for the hopeful retrieval of the plea sheet therefrom. Also, if found within the time allowed, the office of the attorney general was to serve a copy of the same upon counsel for the applicant, who would have ten (10) days to file a position regarding the plea sheet with the court. The date of the letter of the attorney general to counsel for applicant is May 2, 2006.

This document constitutes the applicant's response to entry of the plea sheet into the record. Generally, it is the position of the applicant that the plea sheet should not be a substitute for the required colloquy of the court in the proper canvassing of the plea in open court with the applicant being affirmatively advised in the record by the court of all of his constitutional rights and then asked

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for an affirmative admission of guilt to be accepted by the court, which did not happen in the record. Therefore, the plea was never affirmatively made and accepted by the court for the applicant's constitutional rights to be waived. See last sentence of the plea sheet, which provides an acceptance-of-plea condition before applicant's constitutional rights could be waived. See also Section 17-23-80, S.C. Code of Laws, 1976, as amended, which provides: "No person indicted for an offense shall be convicted thereof unless by confession of his guilt in open court, by admitting the truth of the charge against him by his plea or demurrer, by the verdict of a jury accepted and recorded by the court or as provided in Section 17-23-40." Furthermore, it is the position of applicant that the plea sheet in and of itself fails to provide the constitutional requirements of our federal and state courts for the proper canvassing of a guilty plea proceeding. It was signed in a holding cell by applicant and his attorney. Consequently, the trial court specifically failed to ensure the applicant's plea was voluntarily, knowingly and intelligently made with respect to it being shown in the record made by the court.

Under Boykin v. Alabama, 395 U.S. 242, 89 S.Ct. 1709 (1969), the US Supreme Court stated that the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. It was held that before a Court can accept a guilty plea, a defendant must be advised of the constitutional rights being waived, which include the privilege against self incrimination, right to a jury trial, and right to confront one's accusers.

In addition to these constitutionally required rights that must be given to defendants as outlined in Boykin, our Supreme Court has repeatedly held that a defendant is also entitled to be aware of the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, the nature of the constitutional rights being waived, and being asked affirmatively for an

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admission of guilt. See Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999), State v. Dover, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980).

In Pittman, in which the applicant was afforded a new trial, there was also a checklist for a guilty plea, and the plea sheet in this case should not be substituted for the affirmative canvassing of the plea the court was required to conduct. Though there is a question the plea sheet in this case that states: "Has your lawyer gone over your rights and all circumstances of the charge(s) against you," the plea sheet does not include the elements of the crime which are not covered by the court in the transcript of this case. Also, the plea sheet in this case does not specifically advise the applicant of his constitutional right to a jury trial though a trial is referenced in some of the list of items included on the form. Furthermore, the beginning of the plea sheet states "The Defendant avers that the Defendant desires to plead guilty," but the guilty plea was never affirmatively given because the trial judge did not ask the applicant whether he was guilty on either of the charges. Until the plea is accepted the state and the defendant are free to withdraw the negotiated plea. See State v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct.App. 1999), which states that a plea agreement is nothing more than an offer until it is approved by the court. The offer can be withdrawn by the defendant or State, before being accepted by the court. In this matter, there is no record of guilt being affirmatively made or affirmatively accepted in open court. The plea sheet starts off with language that the Defendant wished to plead guilty and it ended with "if accepted" by the court language.

The post conviction relief hearing judge should not permit a plea sheet form which does not spell out the requirements of Boykin and our case law to cure the numerous defects contained in the transcript of the guilty plea proceeding in this case. The post conviction relief judge should also

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consider the requirements for a guilty plea as contained in Rule 11 of the Federal Rules of Criminal Procedure which require the court to make the required constitutional requirements in open court in the record.

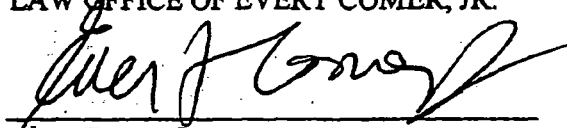
Attached hereto and incorporated herein, where relevant, are four (4) letters of applicant sent to his counsel with dates of April 29, 2006, May 2, 2006, May 3, 2006, and May 13, 2006 (May 13, 2006, date incorrect as letter was received on May 5, 2006). These letters were sent by applicant to his counsel in response to being provided with a copy of the form Order of the post conviction relief judge and later with the plea sheet. It is the position of the applicant and his counsel that the plea sheet does not cure the defects of the guilty plea proceeding and that the post conviction relief court should provide to applicant affirmative relief on his application for post conviction relief.

The applicant further incorporates all other positions advanced in his application, amendment to his application and the hearing of his post conviction relief hearing in this matter, where relevant on the issue of the plea sheet in this matter, as if fully stated herein.

Respectfully submitted,

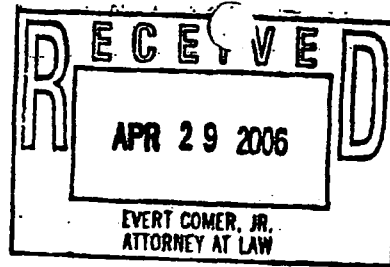
LAW OFFICE OF EVERT COMER, JR.

By:


Evert Comer, Jr.
PO Box 386
Denmark, SC 29042
(803) 793-3403

Denmark, South Carolina

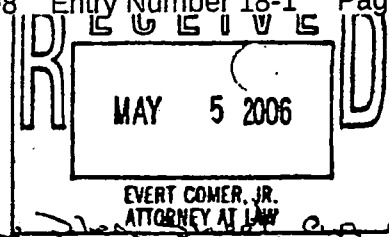
Dated: May 11, 2006



4/27/06

Hello Mr. Comer, I'm writing you concerning that sheet they are looking for. Go back to Pittman v. State 524 SE 2d 624. At (c) Criminal Law 273.1(4) It reads Although the court is not required to direct defendant attention to each right and obtain a separate waiver the record should indicate the defendant was fully aware of the consequences of his guilty plea. (And further on in the case it reads) Although Pittman, signed a check list for guilty plea the date on this document is one month prior to the court appearance an entrance of the guilty plea. The list does not include the crimes Pittman, was charged, the elements of the charged crimes or further more these defects was not cured by information provided at the guilty plea proceeding. Please read back over Pittman case. I never signed a sheet explaining me the charges nor the elements. Can you relate this information to Judge Williams. Please respond back. Thank you for your immediate attention.

89
Jonathan



Mr. Comer,

May 13, 2006

I was going over the ~~plea sheet~~, a question (Q) (Read as follow). Have you made any statements in which you admitted all or any part of the crimes to which you want to plead guilty. I checked No, I never admitted guilt on the plea sheet either, nor did I make an admission of guilt in the transcript of record. The trial judge never accepted the plea sheet as part of the record. Under (State v. Becker) 511 SE 2d 396.. A plea agreement is only an "offer" until the defendant enter a court approved guilty, plea and a defendant accepts the offer, by pleading guilty; thus until formal acceptance of the plea by the courts has occurred the plea binds, no one not the defendant the state, or the court... A defendant is free to renege on a promise to so plea. Also under Fed. R. crim. P. 11(c) Provides that the court must address the defendant personally in open court and inform the defendant of the nature of the charges to which the plea is offered. Which didn't take place! That plea sheet was done in the holding cell, not in open court. Fed. R. crim P 11 (D) Requires the court to assure that the plea is voluntary knowing and intelligent. That's question 20, on the plea sheet, but the trial judge never activated the plea sheet by accepting my plea in open court. My plea can not be accepted in the holding cell, It has to be accepted in open court,

(2)
 Constitutional Law Key (265.5) once a defendant enters a guilty plea on the plea is ACCEPTED by the court due Process requires the plea bargain be honored U.S.C.A. Const. Amend (14) Due Process never took place, Because the court never accepted the plea. The trial judge should have canvassed matter with me, and then established record affirmatively showing voluntary, freely before accepting the plea. - No person indicted for an offense shall be convicted thereof unless by CONFESSION of his guilt in OPEN COURT by admitting the truth of the charge against him by his plea or by the verdict of a jury accepted. (17-23-80.) Not the holding cell, were the plea sheet will fill out. (407) (Record of Factors Relevant to Determination of Voluntariness) Federal rules,⁽⁸⁰⁾ and state statutes and rules, some of which are modeled on the federal rules⁽⁸¹⁾ are designed to produce a complete record of the factors relevant to a determination of the voluntariness of a guilty plea, in order to insulate the plea from appellate and collateral attack⁽⁸²⁾ under the Federal Rules of Criminal Procedure, a verbatim record of the proceedings at which the defendant enters a plea shall be made and if there is a plea of guilty or nolo contendere, the record shall include, without limitation, the court's advice to the defendant, the inquiry into the voluntariness of the plea including any plea agreement, and the

(3)

inquiry into the accuracy of a guilty plea⁽⁸³⁾
 In order to uphold a guilty plea as knowing
 and voluntary, the record must demonstrate⁽⁸⁴⁾
 by an unequivocal⁽⁸⁵⁾ or affirmative showing⁽⁸⁶⁾
 that accused made a voluntary waiver of
 his constitutional rights⁸⁷

① Plea - The first pleading by a criminal defendant
 the defendant declaration in Open Court
 Of guilty or Not guilty. The defendant
 answer to the charges made in the indictment
 or information.

I never did this in open court. So
 how can the Plea stand. Once again
 I fill that Plea sheet out in the holding
 cell. And that sheet ~~was~~ is a plea
 agreement or negotiation sheet - were the
 Prosecutor & Attorney recommend a sentence
 to the Judge. An the Trial Judge will
 accept it if he want to. Which didn't
 take Place. That why at the bottom of
 Page(3) of the Plea sheet it read IF THE
 PLEA IS ACCEPTED! NO where in the
 transcript did I made and admission or
 said another way Plea guilty and there

no where in the transcript did the trial judge asked me how do I plea to the charges, and then accepted my plea as part of the record. Under criminal law (1188) A finding that is with out evidentiary support must be Reversed!

Like it says in (Pittman v. State). Being asked AFFIRMATIVELY for an admission of guilt. Also look up Berines v. State 517 SE 2d 439

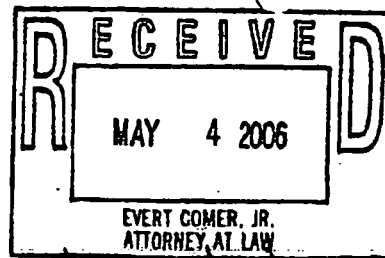
Mr Comer, what I'm saying is that the record must be established, by the trial judge not by my Attorney & the Prosecutor. And it must be established in open Court.

If possible can you relate this information to Judge Williams, before he makes his ruling. And he will see that I never made an admission of guilt on the record nor on the plea sheet (question 15) My plea was not accepted as part of the Record.

With all Due Respect,

Jonathan James

P.S. Please Respond Back, as soon as possible. Thank you.



May 2, 06

Mr. Comer, How you doing today? I received your letter on today. As I was reading over the Plea sheet, the word IF, came up again. Read the bottom of page(3) of the recommendation sheet. (It states as follow)... I certify that the above questions were answered by the defendant after a full explanation of each question by the undersigned and in my opinion the defendant understands the possible punishment for the charges and his/her constitutional rights that will be waived, **IF THE PLEA IS ACCEPTED!** Then Mr. Culler, sign off on it, Don't the recommendation still have to go in front of the Trial Judge, and the Trial Judge can accept it, If he want to which he didn't, as the record speak, there was no Admission of guilt. Pursue S.C.R. Civ. Proc Rule 61, Harmless Error, Guilty Plea was not accepted on Record. Here I find my U.S.C.A 6th & 14th Amend rights violated by the judicial officer of the Court Chiefly Rule 502 violation, of the Judge failure

to acknowledge receipt of my plea
of guilt which was not ever did
verbatum was record.

Will you please relate this information
with yours to Mr. Williams before
he make his ruling? (Look over first)

Also I would like to know is I'm
coming back to court for the ruling?

The Trial Judge never activate
the waiver, Pittman v. State ALSO 17-23-80

There must be a Plea in order
to activate the waiver.

Respectfully submitted, Please
Respond Back.

Jonathan James

May 2, 2006

P.S. If the plea is accepted!

Also the trial judge signature is no
way on that sheet. So it should have
to go in front of him so he can
activate it. Please Respond Back as
soon as possible.

S.C. Rules of Civil Procedure (61)

Pittman v. State

17-23-80

Fed. R. Crim. P. 11(3)

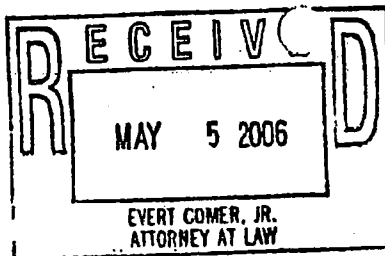
Rule 11

U.S. v. Medina-Silverio 30 F.3d 1

This assertion fails to survive scrutiny as well, simply because we cannot make presumptions because the record is silent.

A court can not force a defendant to plea guilty because of a promise in a plea agreement unless and until a court accepts a guilty plea, a defendant is free to renege on a promise to ~~say~~ plea.

Total Failure to conduct the plea colloquy mandated by Rule 11 cannot be considered harmless error. "A written document is not a sufficient for personal examination by the court."



May 3, 2006

Mr Comer, have's some more cases I would like you to look into concerning Oral & written sentencing.

(Orally) Pronounced sentence controls (over) judgement and commitment and order when the two (conflict) *US. v. Blackner*, 901 F2d 853 Sentence Orally (Pronounced from bench) is sentence and (controls) over any (variance or conflict) with (written judgement) and commitment order. *US. v. Savely*, 814 F.Supp 1519; 827 F.Supp. 668 (Reconsideration Granted) See: (214 F3d 549)

General Rule, when written sentence is in conflict with oral pronouncement (Oral) pronouncement (controls) 214 F3d 594. This all fall under conflict with judgement.

Also That sheet is a plea Bargaining with ^{the} attorney & the solicitor. The Judge was not part of this Plea Bargaining, Are we don't suppose to be a part of it. That why it say at the bottom of page (3) IF THE PLEA IS ACCEPTED, The record speak for itself. I never made an admission of guilty in open court.

. Also the Burglary First Charge, If Mr. Culler, explain the element of that charge to me he explain the elements of breaking into my own house. Cause that's what the indictment stated. Which he never explain any thing to me! Alfred V-State, S.C. 140 SE2d 261 C/S/C. There were no medical exam taken. 16-3-1350

And the other charge which was A.B.W.I.K The Trial Judge referred to Kidnapping Mr. Culler never explain anything to me he didnt do nothing to help me on these charges. I Pray you look into these cases and let me know what you think about them. Please respond Back. Every day I'm looking for more information to help in this matter. Also I would like to Thank you again for all you have done & doing in me & my family behalf.

Respectfully Jonathan Gama

Please Respond Back! 98 May 3, 2006

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	04-CP-38-1327
	)	
Jonathan James, #185547	)	
	)	
Applicant,	)	
	)	
v.	)	STATE'S RESPONSE TO POSITION
	)	OF APPLICANT ON PLEA SHEET
State of South Carolina,	)	
	)	
Respondent.	)	

This document constitutes the State's Response to the Position of the Applicant dated May 11, 2006.

The State contends that the guilty plea of Applicant of July 15, 2002, was entered into knowingly and voluntarily as demonstrated by the totality of the circumstances surrounding the plea itself. A review of the entire record, taken as a whole, demonstrates Applicant's knowing and voluntary guilty plea. The entire record consists of the transcript of the guilty plea, the guilty plea sheet, the sentencing sheets, and the PCR pleadings, testimony, and evidence.

The South Carolina Supreme Court has addressed the issue of knowing and voluntary guilty pleas in the cases of LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978); State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975), and State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976).

In LoPiano, the defendant pled guilty to voluntary manslaughter and attempted housebreaking and was sentenced to 28 years. He filed a PCR action alleging involuntary guilty

plea, which was denied, and LoPiano appealed. The Supreme Court affirmed the denial.

In the LoPiano PCR application, Applicant contended he was not advised of (1) the elements of the offenses, or any defenses; (2) the constitutional rights he was waiving; (3) the nature of the charges; or (4) sentencing possibilities. LoPiano at 565, 449. The PCR Court reviewed the guilty plea transcript and found evidence that the Applicant testified at the guilty plea that he understood the nature of the crime and the sentencing possibilities. During the colloquy with the guilty plea court, Applicant responded affirmatively to the court sixteen (16) times when the court asked him questions concerning his knowledge and understanding of his rights (including jury trial and witness confrontation), the charges, the sentencing possibilities, and whether he was satisfied with his counsel.

In the instant case, the guilty plea colloquy included Applicant's multiple affirmative responses to the Court's inquiries regarding Applicant's rights to a jury trial (Tr. p. 5), witness confrontation (p. 7) and self-incrimination (p. 7). Additionally, the guilty plea court explained the charges (Tr. p. 4, 5, 6, 7), sentencing possibilities (p. 4, 6, 8, 17, 18), state's burden of proof (p. 5), and waiver of defenses (p. 6, 7). Guilty plea counsel acknowledged to the Court that he had gone over all Applicant's rights listed on the plea sheet in some detail (p. 8). Applicant acknowledged this discussion with guilty plea counsel (p. 7).

The Applicant in the instant case claims that, under Boykin, Rule 11 of the Federal Rules of Criminal Procedure applies to his case. Rule 11 requires an enumeration of the specific federal constitutional rights which are waived upon a plea of guilty. The South Carolina Supreme Court has considered Applicant's argument in a post-Boykin case: State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). The Lambert court held:

The test established by *Boykin v. Alabama*, . . . is whether the record establishes that a guilty plea was voluntarily and understandingly made. If the record shows that the plea was so entered, then it is not silent as to the waiver of his constitutional rights. We do not read *Boykin* . . . to require that the trial judge direct the defendant's attention to each and every constitutional right and obtain a separate waiver of each. *Wade v. Coiner*, 468 F.2d 1059, 1061 (4th Cir. 1972). We believe that an enumeration of specific rights waived is not required where the record otherwise reveals affirmative awareness of the consequences of a guilty plea. *Stinson v. Turner*, 473 F.2d 913 (10th Cir. 1973). (Emphasis added).

The LoPiano court adopted the Lambert rule and held that the plea was entered freely, voluntarily and intelligently. LoPiano, at 569, 451. Therefore, strict adherence to Boykin is not required so long as defendant has awareness of the consequences of a guilty plea.

In the case at bar, the guilty plea Court satisfied itself that Applicant had awareness of the consequences of a guilty plea, since Applicant clearly knew (1) he could not present any defenses if he pled guilty (p. 7); (2) he faced sentences of thirty years (p. 6) and life (p.8); (3) the State was recommending a 20-year sentence (p. 9, 15); and (4) he would have to serve at least 85 per cent of any sentence (p. 15, 16, 17). The two-page guilty plea sheet clearly shows Applicant's signature on page 2, and on page 1 of the plea sheet, Applicant's initials appear beside the notation "CSC -30."

The State contends, therefore, that the guilty plea Court in this case was assured that Applicant was aware of the consequences of a guilty plea.

In addition to the requirements that a guilty plea is entered into knowingly and voluntarily, the guilty plea Court must assure that there is a sufficient factual basis for the plea. This was also addressed in LoPiano. There, Applicant claimed that the trial judge erred in failing to establish a factual basis for the plea. LoPiano, at 569, 451. However, the Supreme Court's

review showed that the guilty plea judge had been presented with an accurate account of the circumstances which gave rise to the charges against LoPiano in conformance with the Court's established procedure and holding in State v. Armstrong, 263. S.C. 594, 211 S.E.2d 889 (1975). The Supreme Court refused to grant LoPiano's PCR claim that there was an insufficient factual basis for the plea, holding that, by pleading guilty, he had waived his right to attack his conviction on that ground. LoPiano, at 569, 451.

In Armstrong, the defendant was tried and found guilty of assault of a high and aggravated nature. During the trial, the jury was excused from the courtroom in anticipation of a plea of guilty to simple assault and battery. To make a determination that the plea was knowing and voluntary, the trial court engaged defendant in a colloquy, at the end of which the defendant stated he wished to continue with the hearing. During the colloquy, the defendant expressed concerns about having a criminal conviction against his employment record. The Court did not accept the guilty plea. The trial resumed and the jury returned a verdict of guilty of assault of a high and aggravated nature. Defendant appealed, stating he was confused about pleading to the lesser charge of simple assault and battery. The Supreme Court held that Applicant's argument on the basis of confusion had no merit, since "No request was made to recess for consultation and at no later time during the trial did appellant request to plead guilty to a lesser charge or any charge," even though counsel was at defendant's side and available for consultation. Armstrong at 599, 891.

The Armstrong Court further held:

We are compelled to hold that the trial judge is free to use any appropriate procedure for determining the accuracy of the guilty plea. The judge must be certain that the defendant understands the charge and the consequences of

the plea and that the record indicates a factual basis for the plea. The court must give the defendant adequate warning of the consequences of the plea in every case. The court's warning should include an explanation of the defendant's waiver of constitutional rights and a realistic picture of all sentencing possibilities. *Thompson v. State*, 248 S.C. 475, 151 S.E.2d 221 (1966). Furthermore, abandonment of these rights cannot be due to ignorance or incomprehension for a plea of guilty is more than an admission of conduct, it is a conviction. (Emphasis added)

State v. Armstrong, 263 S.C. 594, 598, 211 S.E.2d 889, 891.

Here, as in Armstrong, counsel was at Applicant's side during the guilty plea and was available to Applicant for consultation. Applicant did not request a delay in the proceedings at any time. Applicant never requested withdrawal before sentencing. The United States Supreme Court and the South Carolina Supreme Court have recognized the finality of a plea of guilty when proper safeguards have been afforded the defendant. State v. Armstrong, 263 S.C. 594, 211 S.E.2d, citing Brady v. United States, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970); McMann v. Richardson, 397 U.S. 759, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970); Parker v. North Carolina, 397 U.S. 790, 90 S.Ct. 1458, 25 L.Ed.2d 785 (1970). In the case at bar, the guilty plea Court imposed a sentence. Thus, the effect of Applicant's failure to stop the proceedings and the court's subsequent imposition of sentence bars Applicant from claiming his plea was not accepted by the Court.

It is clear from the guilty plea transcript in the case at bar that Applicant knew he was in court to plead guilty, admitted his guilt of the crimes charged,¹ understood the nature of his

¹"This time it just got out of control that night, and I wasn't going to kill her, I know I wasn't going to ... it just got out of control, it got out of hand. And I'm sorry, I told her I was sorry." See page 17 of the guilty plea transcript for this statement of defendant to the guilty plea judge during the colloquy.

charges, knew he faced a substantial period of incarceration, and knew he was giving up important constitutional rights, including the privilege granted against self-incrimination, the right to jury trial, and the right to confront witnesses. Therefore, Applicant's guilty plea was knowing and voluntary.

Applicant in the instant case claims as a sufficient reason to grant the application for post-conviction relief that there was no affirmative admission of guilt which was accepted by the guilty plea Court. The State contends that Applicant has failed to make the requisite showing of involuntary guilty plea since Applicant has failed to review the totality of the circumstances of the guilty plea record as a whole. All the crucial elements of a valid guilty plea are present in the record:

1. A sufficient factual basis was presented by the State and acknowledged by Applicant and his counsel.
2. Applicant was informed of his constitutional rights during the colloquy with the Court and when counsel went over the plea sheet in detail.
3. Applicant understood the nature of the charges, the sentencing possibilities and the consequences of the guilty plea.

The State respectfully contends that Applicant's reliance on Pittman is misplaced. In that case, our Supreme Court held that the Lambert standard (defendant fully aware of the consequences of his guilty plea) was not met because the guilty plea Court did not fully inform Pittman of a mandatory minimum ten-year sentence or the crucial elements of the charged offenses. While a similar checklist was used in Pittman as in the case at bar, the Pittman checklist was substandard because it was signed one month before the guilty plea date and contained neither an explanation of the charges nor a statement about mandatory minimum

penalties. The guilty plea court did not cure the defects in the checklist during the plea colloquy. Pittman v. State, 337 S.C. 597, at 600-601; 524 S.E.2d 623, at 625. Furthermore, the defendant in Pittman had very limited advice of counsel at the time he signed it. Pittman, at 600, 625.

Attached hereto and incorporated herein are the sentencing sheets, the plea sheet, and the guilty plea transcript. The State respectfully contends that this Court should examine the totality of the circumstances in the entire record surrounding the guilty plea, including the transcript, the plea sheet, and the sentencing sheets. Upon such examination, the State contends that this Court will find Applicant's guilty plea knowing and voluntary.

Therefore, the application for post-conviction relief should be denied

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

TERESSA H. SALANE
Assistant Attorney General

By *Teressa H. Salane*
ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina
June 16, 2006

mailed
7/17/08

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG.)

IN THE COURT OF COMMON PLEAS
CASE NO. 04-CP-38-1327

JONATHAN JAMES,)
Plaintiff,)

VS.)

ORDER

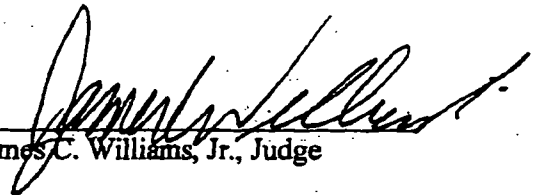
STATE OF SOUTH CAROLINA,)
Defendant.)

This matter is before me on a PCR proceeding wherein the Defendant has raised an Ineffective Assistance of Counsel argument.

Upon examination of the entire record, it is apparent that the Defendant never entered a Guilty Plea. He was never asked how he pled and never made any statement that could be construed as an admission of guilt.

THEREFORE, THIS MATTER IS REMANDED to the Court of General Sessions for further proceedings by the Trial Court.

AND IT IS SO ORDERED.


James C. Williams, Jr., Judge

DATED: June 7, 2006

Orangeburg, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

Jonathan James, 185547

☐ Plaintiff

v.

State Of South Carolina

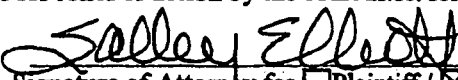
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

04-CP-38-1327

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Evert Comer, Jr., Bar No. Address: PO Box 386, Denmark, SC 29042 phone: 803-793-3403 fax: 803-793-3550 e-mail: other:	Defendant's Attorney: Salley W. Elliott, Bar No. 1871 Address: PO Box 11549, Columbia, SC 29211 phone: 803-734-3727 fax: 803-734-4113 e-mail: selliot@ag.state.sc.us other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant July 17, 2006 Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: ☒ EXEMPT:	
(check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS)

04-CP-38-1327)

Jonathan James, #185547)

Applicant,)

v.)

MOTION TO RECONSIDER OR TO ALTER OR
AMEND)

State of South Carolina,)

Respondent.)

The Respondent, hereby moves this Court to reconsider or to alter or amend its Order dated June 7, 2006, finding the Applicant never entered a guilty plea and remanding the matter to the Court of General Sessions for further proceedings. The Respondent received written notice of entry of the June 7, 2006 Order on July 10, 2006. In so moving, the Respondent 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 Orangeburg County Clerk of Court. The Applicant was indicted at the October 2001 term of the Orangeburg County Grand Jury for assault and battery with intent to kill (01-GS-38-1916); 1st degree criminal sexual conduct (01-GS-38-1917); and 1st degree burglary (01-GS-38-1918). He was represented by Michael Culler, Esquire. On July 15, 2002, the Applicant pled guilty as charged. He was sentenced by the Honorable J. Ernest Kinard, Jr. to confinement for a concurrent period of 17 years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. James, Op. No. 2003-UP-600 (S.C. Ct. App. filed October 20, 2003).

The Applicant thereafter filed an application for post-conviction relief on October 19, 2004. The State made return on July 21, 2005. An evidentiary hearing was held on April 25, 2006, at which time the Applicant was present and was represented by Everette Comer, Esquire. Respondent was represented by Assistant Deputy Attorney General Teressa H. Salane. This Court had before it the testimony of the Applicant and the Applicant's trial attorney. This Court also had before it the records of the Orangeburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the Applicant's appellate records. The record of this matter was left open to allow the Respondent the opportunity to locate and submit a plea sheet utilized by the guilty plea court and the Applicant's attorney at the time of the guilty plea. The plea sheet was subsequently made a part of the record in this case, and the Applicant submitted a Position of Applicant on Plea Sheet in response. On June 16, 2006, the Respondent submitted a Response to Applicant's Position. It appears the Order of this Court was issued on June 7, 2006, before the submission of the Respondent's Response. However, Respondent had no notice of and was not served with the Order until July 10, 2006.

II.

Respondent, therefore, incorporates fully herein and attaches hereto its Response to the Applicant's Position on Pleas Sheet and asks this Court to accept the Respondent's arguments in its Response as grounds for reconsidering and/or altering or amending the June 7, 2006 Order to deny relief and dismiss the application as lacking in merit.

III.

The Applicant asserted to the post-conviction relief court that the guilty plea court failed to obtain an admission of guilt from the Applicant during the guilty plea proceeding and that the guilty plea, therefore, was never affirmatively made or accepted. He also asserted the guilty plea court failed to conduct an adequate colloquy with Applicant during the guilty plea because Federal Criminal Procedure Rule 11 was not followed. He argued his guilty plea attorney was ineffective when he failed to ensure an adequate guilty plea inquiry. He offers Federal Criminal Procedure Rule 11 and Pittman v. State, 337 S.C. 697, 524 S.E.2d 623 (1999) as support for his claims.

Respondent submits that an affirmative admission of guilt to the offenses is not required for acceptance of a guilty plea and that the colloquy outlined in Federal Criminal Procedure Rule 11 is not mandated in our state courts. Respondent also submits that Pittman is distinguishable and does not require the grant of relief. As set forth below, Respondent submits this Court misapprehended the precedent of this state and the facts of this case in granting post-conviction relief.

First, Respondent submits that it is not necessary for the guilty plea court to obtain an admission of guilt for the offense before accepting a guilty plea. See Knight v. Johnson, 699 F.2d 162 (4th Cir. 1983). In fact, "a defendant may, as part of a plea bargain agree to plead guilty to a crime for which he has been indicted but of which he is not guilty." Rollison, at 510, 552 S.E.2d at 511; see North Carolina v. Alford, 400 U.S. 91 (1970); see also In the matter of English, 367 S.C. 297, 625 S.E.2d 919 (2006) ("The court emphasizes that while a criminal defendant may plead guilty without any evidence of his guilt being submitted. . . ."); In re

Beckham, 365 S.C. 637, 620 S.E.2d 69 (2005)(same). Nevertheless, the plea court questioned the Applicant about the facts surrounding the crime and the record reflects the Applicant's admission in his apology and other statements to the court. (See Trans. p. 17, lines 12-22) Even if this Court rejects the defendant's statements as an admission of guilt, Respondent submits the inference gleaned from the entire plea colloquy and testimony of Applicant's guilty plea counsel makes clear the defendant was appearing before the plea court to admit the acts with which he was charged and to submit to sentencing. The Applicant admitted his understanding at the guilty plea that if he pled guilty, he was admitting he did it. (Trans. p. 6). It is also the clear implication that the "trial judge found the pleas voluntary or he would not have entered sentences for all three offenses. "That the judge failed to state expressly his findings as to voluntariness . . . does not defeat the fact that the record itself reveals a voluntary waiver." Gaines v. State, 335 S.C. 376, 381, 517 S.E.2d 439, 442 (1999).

Second, our supreme court has clearly determined that Federal Rule 11 which requires a trial court to direct the defendant's attention to each and every constitutional right and obtain a waiver of each right is not required by our trial courts. It is necessary only that the record reveals an affirmative awareness of the consequences of the guilty plea. LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978). In our state courts, no specific inquiry by the judge is mandated, and the judge is not required to direct the defendant's attention to each and every right and obtain a separate waiver as to each as long as the record indicates the defendant was fully aware of the consequences of the plea. In re Arisha K.S., 331 S.C. 288, 501 S.E.2d 128 (Ct. App. 1998); Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000); State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975); see also Gaines v. State, 335 S.C. 376, 517 S.E.2d 439 (1999).

The United States Supreme Court has stated that "[a] plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." Boykin v. Alabama, 395 U.S. 238, 242 (1969); see also In re Arisha K.S., 331 S.C. 288, 501 S.E.2d 128 (Ct. App. 1998). "All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, the constitutional rights he is waiving, and that the record reflect a factual basis for the plea." Rollison v. State, 346 S.C. 506, 552 S.E.2d 290 (2001), citing Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000). "Several constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination, . . . second is the right to a trial by jury, . . . (and) third is the right to confront one's accusers." Boykin, at 243.

Additionally, the voluntariness of a guilty plea is not determined by an examination of the guilty plea transcript alone but is determined from both the guilty plea transcript and the testimony and evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000); Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000); Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984); Lambert v. State, 260 S.C. 617, 198 S.E.2d 118 (1973).

The evidence before this Court in the form of the guilty plea, the guilty plea sheet, and testimony and evidence offered at the post-conviction relief hearing reflect the Applicant's guilty plea was voluntarily and intelligently entered. The Applicant was well aware a guilty plea constituted an admission of guilt and a conviction of the charges and that he was pleading guilty to first degree burglary, first degree criminal sexual conduct and assault and battery with intent to

kill and understood the potential sentences he faced. On the plea sheet, the Applicant affirmed his desire to enter guilty pleas to the offenses, his discussion with counsel and understanding of the charges, penalties, and pertinent constitutional rights, including the right to a jury trial, right to confront witnesses, and right against self-incrimination as well as the fact that the guilty plea waived those rights. The Applicant also affirmed his understanding on the plea sheet that his guilty plea constituted a finding of guilt. At the guilty plea, the Applicant also affirmed the plea sheet and truth of his answers on the plea sheet. He further affirmed his understanding of the charges and applicable penalties, the right to a jury trial, right to confront witnesses against him, and right against self-incrimination as well as the fact that the guilty plea would waive those rights. He also affirmed his understanding that the plea acts as an admission of his culpability. (Trans. pp. 4 - 8).

Unlike in Pittman, trial counsel presented specific testimony concerning advice and discussions with Applicant as to the crucial elements of the offenses, the applicable punishment, the Applicant's pertinent constitutional rights, the effect of a guilty plea and the possible consequences of a plea and trial. Moreover, the guilty plea checklist in this case is not dated one month before the plea as it was in Pittman but was dated the day of the guilty plea.

The entire record before this Court reflects the Applicant was advised either by trial counsel, the trial court, or both of the crucial elements of the charges, applicable sentences, and pertinent constitutional rights he was waiving with the plea. Further, there was a sufficient factual basis presented for all of the charges. (See Trans. pp. 9 - 14). "This is all that is required and the plea was proper." Rollison v. State, at 511, 552 S.E.2d at 283.

Respondent submits the Applicant failed to meet his burden of showing counsel was

ineffective in failing to ensure a more specific inquiry at the guilty plea. See Burnett v State, 352 S.C. 589, 576 S.E.2d 144 (2003) (stating a defendant who pleads upon the advice of counsel may collaterally attack the voluntariness of the plea only upon a showing that counsel was ineffective and that but for counsel's errors, the defendant would not have pled guilty.).

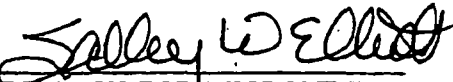
For the foregoing reasons, Respondent moves this Court to reconsider or to alter or amend its June 7, 2006 Order to deny post-conviction relief.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 17, 2006

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

2004-CP-38-1327

Jonathan James, 185547,

Applicant,

vs.

State of South Carolina,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Attorney General's Office.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Motion to Alter or Amend Pursuant to Rule 59(e) in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

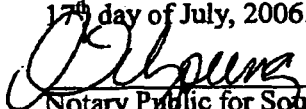
Evert Comer, Jr., Esquire
Post Office Box 386
Denmark, South Carolina 29042

DATED this 17th day of July, 2006.



KATHY W. SCOTT
Administrative Assistant
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

SWORN to before me this
17th day of July, 2006.


Notary Public for South Carolina
My Commission Expires: 10/28/2014

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Paw

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
COURT OF COMMON PLEAS)

JUDGMENT ON TRIAL OR ORDER BY THE COURT

RECEIVED

AUG 17 2006

CASE NO. 04 ATTORNEY GENERAL'S 1327
ARRIVE

VS

Jonathan James,
185547

State of S.C.

PLAINTIFF(S)

DEFENDANT(S)

- () JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND THE JURY HAS RENDERED ITS VERDICT.
- () DECISION BY COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION HAS BEEN RENDERED.
- () ACTION DISMISSED. () RULE 40 (J) OF SCRPC, () RULE 12 (B) OF SCRPC,
() SETTLED. () VOL. NONSUIT. () OTHER _____

IT IS ORDERED AND ADJUDGED: () SEE ATTACHED ORDER, () STATEMENT OF JUDGMENT BY COURT

The Motion to reconsider is denied

DATED AT ORANGEBURG, SOUTH CAROLINA, THIS 14 DAY OF August, 2006.

James W. Elliott
JUDGE/CLERK OF COURT

THIS JUDGMENT WAS ENTERED ON THE 15 DAY OF Aug, 2006
AND A COPY MAILED FIRST CLASS THIS 15 DAY OF Aug, 2006
TO ATTORNEYS OF RECORD OR TO PARTIES (WHEN APPEARING PRO SE) AS FOLLOWS:

Evert Comer, Jr.

Sally W. Elliott

ATTORNEY(S) OR PLAINTIFF(S)

ATTORNEY(S) FOR DEFENDANT(S)

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHAN JAMES,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

MOTION TO REMAND FOR A NEW TRIAL

Petitioner, by and through undersigned counsel, would respectfully show unto this Court:

1. Respondent was indicted at the October 2001 term of the Orangeburg County Court of General Sessions for assault and battery with intent to kill; 1st degree criminal sexual conduct and 1st degree burglary. On July 15, 2002, the Respondent pled guilty as charged. He was sentenced by the Honorable J. Ernest Kinard, Jr., to confinement for concurrent terms of 17 years.

2. A timely Notice of Appeal was filed and an appeal was perfected. The South Carolina Court of Appeals affirmed the conviction and sentence. State v. James, Op. No. 2003-UP-600 (S.C. Ct. App. filed October 20, 2003).

3. Respondent thereafter filed an application for post-conviction relief on October 19, 2004. An evidentiary hearing was held on April 25, 2006, at which time the Respondent was present and represented by counsel. Petitioner was represented by Assistant Attorney General Teresa H. Salane. By order dated June 7, 2006, the Honorable James C. Williams granted Respondent's application for post-conviction relief. Petitioner filed a Motion to Reconsider. By order dated August 14, 2006, Judge Williams denied the Motion to Reconsider.

4. Petitioner filed and served notice of appeal on September 13, 2006.

5. Also on September 13, 2006, Petitioner requested Court Reporter Harry A. Walker to prepare a copy of the Post-Conviction Relief hearing transcript.

6. Petitioner has been advised by Court Reporter Walker that her notes and tapes were stolen from her home and she is unable to prepare the transcript of the post-conviction relief hearing. (See attached letter from the Court Reporter).

7. Petitioner submits that in order to determine available issues for appeal, to provide full support for its arguments and to allow for meaningful appellate review, a full record of the evidentiary hearing is needed.

8. Therefore, Petitioner moves this Court to remand the matter for a new hearing or, alternatively, for reconstruction of the post-conviction relief hearing transcript. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); Christy v. Christy, 347 S.C. 503, 556 S.E.2d 701 (Ct. App. 2001); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968).

Based upon the foregoing, Petitioner requests that this Court remand the matter to the circuit court for a new post-conviction relief hearing or, alternatively, for a hearing to reconstruct the post-conviction relief hearing transcript.

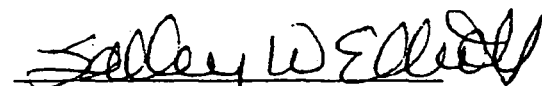
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

By:



Salley W. Elliott
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR PETITIONER

November 8, 2006

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHAN JAMES,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

PROOF OF SERVICE

I, Kathy W. Scott, certify that I have served the Motion to Remand for a New Trial by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Evert Comer, Jr., Esquire, Post Office Box 386, Denmark, South Carolina 29042.

I further certify that all parties required by Rule to be served have been served.

This 8th day of November, 2006.



KATHY W. SCOTT
Administrative Assistant
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

HARRY A. WALKER
COURT REPORTER, FIRST JUDICIAL CIRCUIT
P. O. BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

OCTOBER 6, 2006

MR. TOMMY McGRATH
LEGAL ASSISTANT
OFFICE OF ATTORNEY GENERAL

RE: STATE OF SOUTH CAROLINA VS. JONATHON JAMES
CASE NO. 2004-CP-38-1328
DATE OF HEARING: APRIL 25, 2006
PRESIDING JUDGE: HONORABLE JAMES C. WILLIAMS, JR.

DEAR MR. McGRATH:

AS PER MY TELEPHONE CONVERSATION WITH YOU, THIS IS TO
ADVISE IN WRITING THAT MY RECORDS OF THE ABOVE HEARING WERE
STOLEN FROM MY HOME ON SEPTEMBER 30, 2006. THEREFORE, I AM
UNABLE TO FURNISH A TRANSCRIPT OF THIS HEARING.

I DEEPLY REGRET THIS BUT IT IS BEYOND MY CONTROL.

SINCERELY,

Harry A. Walker
HARRY A. WALKER

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHAN JAMES,

Respondent.

v.

STATE OF SOUTH CAROLINA,

Petitioner.

RETURN TO MOTION TO REMAND FOR A NEW TRIAL

Respondent, in opposition to the Motion to Remand for a New Trial of Petitioner in this Post-Conviction Relief matter dated November 8, 2006, by and through the undersigned counsel, would respectfully show unto this Court:

1. That Respondent filed a PCR petition on October 9, 2004, which was subsequently amended, which is attached hereto as Respondent's Exhibit One.
2. That the Petitioner thereafter filed its response by Return dated July 21, 2005, a copy of which is attached as Respondent's Exhibit Two.
3. That on April 27, 2006, a PCR evidentiary hearing involving a guilty plea proceedings was held by the PCR judge on which date the PCR judge permitted the record to remain open for

-2-

the supplying by the Petitioner of an absent plea sheet referred to in the Transcript of Record of July 15, 2002. which was not presented at the hearing or was otherwise available in the clerk of court's records at the time. See the Transcript of Record of July 15, 2002, attached hereto as Respondent's Exhibit Three.

4. That in the same evidentiary hearing the PCR court requested counsel for the Respondent to file a position regarding the effect of the plea sheet (Respondent's Exhibit Four), if located, on the issue of whether Respondent had entered a guilty plea at the guilty plea hearing.

5. That once provided the plea sheet, counsel for the Respondent submitted a Position of Applicant on the Plea Sheet dated May 11, 2006, which is attached as Respondent's Exhibit Five.

6. That by letter of the PCR court dated May 24, 2006, the PCR judge requested that the Petitioner to respond to the position of the Respondent, and further stated, "Please point out where in the record Mr. James ever actually pled guilty." (See Respondent's Exhibit Six.)

7. That by letter of July 5, 2006, the Petitioner submitted to the PCR judge its response dated June 16, 2006, to the position of the Respondent on the plea sheet and guilty plea issue, which letter and response are attached hereto, attached hereto as Respondent's Exhibits Seven and Eight.

8. That, however, the PCR judge by its Order dated June 7, 2006, copy of which is attached hereto as Respondent's Exhibit Nine, and which apparently was later received by the Petitioner until July 10, 2006 (as stated in its Motion to Reconsider or to Alter or Amend), the PCR court ordered for the case to be remanded apparently for a new trial.

9. That the Petitioner thereafter on July 17, 2006, filed its Motion to Reconsider or to Alter or Amend, a copy of which is attached hereto, in which it stated that it did not receive the Order remanding the case to trial court until July 10, 2006. (Respondent's Exhibits Ten).

10. The motion for reconsideration was denied by Order of the PCR judge dated August 15.

-3-

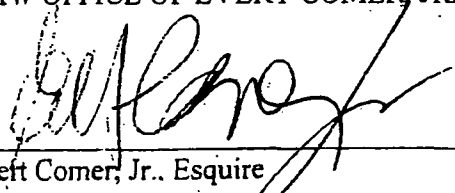
2006, as shown with Respondent's Exhibit Eleven.

It is the position of the Respondent that a sufficient record exists due to the issues having been fully briefed in documents of written arguments, which are readily apparent, presented to the PCR court for this Court to make a meaningful review and ruling in this case. For the above reasons, the case should not be remanded as there is a sufficient record for the court to review and make a ruling based upon the record on all issues for appeal. See Bankers Trust of South Carolina v. South Carolina National Bank of Charleston, 284 S.C. 328, 325 S.E.2d 81 (Ct.App. 1985). (Though parties omitted all pleadings from transcript of record, Court of Appeals would consider issues argued by appellant in its brief and in oral argument because the issues were either fully briefed, argued or were readily available to parties during the course of the appeal.)

Based upon the foregoing, the Respondent objects to the remanding of this matter to the PCR judge for a new post-conviction relief hearing or, alternatively, for a hearing to reconstruct the post-conviction relief hearing transcript.

Respectfully submitted,

LAW OFFICE OF EVERT COMER, JR.

By: 

Evert Comer, Jr., Esquire
PO Box 386
Denmark, South Carolina 29042
(803) 793-3403
Attorney for Respondent

Denmark, South Carolina

Dated: November 20, 2006

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHAN JAMES,

Respondent,

v.

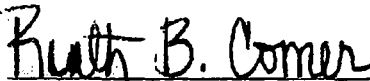
STATE OF SOUTH CAROLINA,

Petitioner.

PROOF OF SERVICE

I, Ruth B. Comer, certify that on the 20th day of November, 2006, served the Return To Motion To Remand for New Trial of the Respondent in the above entitled case by depositing two copies of the same in the United States mail, postage prepaid, addressed to counsel for the Petitioner, Assistant Deputy Attorney General Salley W. Elliott, Office of the Attorney General, PO Box 11549, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.



Ruth B. Comer
Legal Secretary
Law Office of Evert Comer, Jr.
Denmark, SC 29042
(803) 793-3403

Denmark, South Carolina
Dated: November 20, 2006

RECEIVED

A F F I D A V I T

NOV 14 2006

PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, ATTORNEY GENERALS
FOR THE STATE OF SOUTH CAROLINA, HARRY A. WALKER, COURT
REPORTER OR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
SOUTH CAROLINA, AND MADE THE FOLLOWING WRITTEN DECLARATION
UNDER OATH:

IN RE: STATE OF SOUTH CAROLINA VS. JONATHON JAMES
CASE NO. 2005-CP-18-0754
DATE OF HEARING: APRIL 25, 2006
PRESIDING JUDGE: HONORABLE JAMES C. WILLIAMS, JR.

MY PRIMARY AND BACKUP RECORDS OF THE HEARING IN
THE ABOVE CASE WERE STOLEN FROM MY RESIDENCE ON SEPTEMBER
30, 2006, AND I AM UNABLE TO FURNISH A TRANSCRIPT FOR
APPEAL PURPOSES.

SWORN TO BEFORE ME THIS 20th
DAY OF OCTOBER, A. D. 2006.

Harry A. Walker

HARRY A. WALKER

(SEAL)

[Signature]
NOTARY PUBLIC, S. C.

MY COMMISSION EXPIRES: 5-1-2011

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHON JAMES,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The Respondent was indicted at the October 2001 term of the Orangeburg County Grand Jury for assault and battery with intent to kill (01-GS-38-1916); criminal sexual conduct in the first degree (01-GS-38-1917); and burglary in the first degree (01-GS-38-1918). He was represented by Michael Culler, Esquire. (App. pp. 39-53). On July 15, 2002, the Respondent pleaded guilty as charged. (App. p. 39; pp. 44;49; pp. 20-37; pp. 83-84). He was sentenced by the Honorable J. Ernest Kinard, Jr. to confinement for concurrent terms of 17 years. (App. pp. 39; 44; p. 49; p. 37, lines 15-18).

A timely Notice of Appeal was filed on Respondent's behalf and an appeal was perfected. Following a review pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals affirmed Respondent's convictions and sentences. State v. James, Op. No. 2003-UP-600 (S.C. Ct. App. filed October 20, 2003): (App. pp. 68-70).

The Respondent thereafter filed an application for post-conviction relief on October 19, 2004 as well as an amendment to the application. (App. pp. 1-10). The State made return on July 21, 2005. (App. pp. 15-19). An evidentiary hearing was held on April 25, 2006, at which time the Respondent was present and was represented by Everette Comer, Esquire. The State was represented by Assistant Attorney General Teressa H. Salane. The testimony of the Respondent, Respondent guilty plea attorney, and the attorney's investigator was presented at the hearing. Also before the post-conviction relief court at the hearing were the records of the Orangeburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the Respondent's appellate records. (App. p. 16). The record of the matter was left open to allow

the State the opportunity to locate and submit a plea sheet utilized by the guilty plea court and the Respondent at the time of the guilty plea. (App. p. 81). The plea sheet was subsequently made a part of the record in this case, and the Respondent submitted a Position of Applicant on Plea Sheet in response. (App. pp. 82-98). On June 16, 2006, the State submitted a Response to Respondent's Position. (App. pp. 99-105). The Order of the post-conviction relief court was issued on June 7, 2006, before the submission of the State's Response. (App. p. 106). However, the State had no notice of and was not served with the Order until July 10, 2006. (App. p. 108). Upon receipt of the June 7, 2006 Order, the State moved the circuit court to alter or amend the Order. (App. pp. 108-114). The State's motion was denied by order of the post-conviction relief court dated August 14, 2006. (App. p. 116).

The State filed and served notice of appeal and ordered the transcript of the post-conviction relief hearing. However, the court reporter present at the post-conviction relief hearing advised the State the transcript was not available as the tape and notes of the hearing were stolen from her home. The State moved this Court for a new post-conviction relief hearing or, alternatively, for a remand to reconstruct the record of the post-conviction relief hearing. (See State's Motion to Remand or for a New Trial). The Respondent opposed both requests, and this Court denied the State's motion finding the issue available for appeal is clear from the order and that the only transcript necessary to provide full support to the State's argument and to allow for a meaningful review is the transcript of the guilty plea proceeding. (See December 6, 2006 Order of this Court). The State's petition for writ of certiorari follows.

QUESTION PRESENTED

Did the post-conviction relief court err in finding that Respondent never entered a guilty plea?

ARGUMENT

Did the post-conviction relief court err in finding that Respondent never entered a guilty plea?

Among a number of challenges to his guilty plea, Respondent asserted below that his guilty plea was not voluntarily and knowingly entered due to trial counsel's failure to ensure the guilty plea court conducted the required plea colloquy in that the court failed to obtain Respondent's admission of guilt. (App. p. 7). He offered Federal Criminal Procedure Rule 11 and Pittman v. State, 337 S.C. 697, 524 S.E.2d 623 (1999) as support for his claim. *Following a full evidentiary hearing, the post-conviction relief court issued an order finding Respondent never entered a guilty plea because the guilty plea court failed to ask Respondent how he pled and because Respondent never made a statement that could be construed as an admission of guilt. The State submits the evidence does not support the finding of the post-conviction relief court that Respondent never entered a guilty plea. The grant of post-conviction relief must be reversed and the guilty plea reinstated.

The State submits that contrary to the post-conviction relief court's findings, the record reflects Respondent clearly indicated his desire to plead guilty and acknowledged his guilt. Nevertheless, the State submits that an affirmative admission of guilt to the offenses is not required for acceptance of a guilty plea and that the specific colloquy outlined in Federal Criminal Procedure Rule 11 is not mandated in our state courts. Respondent further submits that Pittman is distinguishable and does not require the grant of relief. As set forth below, the State submits the post-conviction relief court misapprehended the precedent of this Court and the facts of this case and erred in granting post-conviction relief.

First, Respondent submits that it is not necessary for the guilty plea court to obtain a specific verbal admission of guilt for the offenses before accepting a guilty plea. See Knight v. Johnson, 699 F.2d 162 (4th Cir. 1983)(stating the defendant's protestation of innocence does not in itself invalidate the plea). In fact, "a defendant may, as part of a plea bargain agree to plead guilty to a crime for which he has been indicted but of which he is not guilty." Rollison v. State, 346 S.C. 506, 510, 552 S.E.2d 290, 292 (2001); see North Carolina v. Alford, 400 U.S. 25, 37 (1970)(stating "while most pleas of guilty consist of both a waiver and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of a criminal penalty. An individual accused of a crime may voluntarily, and understandingly consent to imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime."); see also In the matter of English, 367 S.C. 297, 625 S.E.2d 919 (2006) ("The court emphasizes that while a criminal defendant may plead guilty without any evidence of his guilt being submitted. . . ."); In re Beckham, 365 S.C. 637, 620 S.E.2d 69 (2005)(same); State v. Ray, 310 S.C. 431, 427 S.e.2d 171 (1993)(stating the death penalty may be imposed when a defendant pleads guilty without expressly admitting guilt where plea was knowingly and voluntarily entered). The plea is not invalid because the Respondent was not specifically asked if he admitted guilt of the offenses.

Nevertheless, the plea court in this case questioned the Applicant about the facts surrounding the crime and the record reflects the Applicant's admission of guilt in his apology and other statements to the court as well as in the Respondent's certified answers in the plea sheet stating it was his desire to plead guilty to each of the charges and that he was pleading guilty freely and voluntarily. (See App. p. 36, lines 12-22; pp. 83 - 84).

Even if this Court rejects the defendant's statements as express admissions of guilt, the State submits the inference gleaned from the entire plea colloquy and plea sheet is that the Respondent was appearing before the plea court to enter guilty pleas to the charges and to submit to sentencing. The Respondent admitted his understanding at the guilty plea that if he pleaded guilty, he was admitting he did it. (App. p. 6, lines 9-21). It is also the clear implication that the "trial judge found the pleas voluntary or he would not have entered sentences for all three offenses. That the judge failed to state expressly his findings as to voluntariness . . . does not defeat the fact that the record itself reveals a voluntary waiver." Gaines v. State, 335 S.C. 376, 381, 517 S.E.2d 439, 442 (1999).

Second, this Court has determined that Federal Rule 11 which requires a trial court to specifically direct the defendant's attention to each and every constitutional right and obtain a waiver of each right is not required by our plea courts. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975); State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). It is necessary only that the record reveals an affirmative awareness of the consequences of the guilty plea. LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978). No specific inquiry by the plea judge is mandated, and the judge is not required to direct the defendant's attention to each and every right and obtain a separate waiver as to each as long as the record indicates the defendant was fully aware of the consequences of the plea. In re Arisha K.S., 331 S.C. 288, 501 S.E.2d 128 (Ct. App. 1998); Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000); State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975); see also Gaines v. State, 335 S.C. 376, 517 S.E.2d 439 (1999).

The United States Supreme Court has stated that "[a] plea of guilty is more than a

confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.” Boykin v. Alabama, 395 U.S. 238, 242 (1969); see also In re Arisha K.S., 331 S.C. 288, 501 S.E.2d 128 (Ct. App. 1998). “All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, the constitutional rights he is waiving, and that the record reflect a factual basis for the plea.” Rollison v. State, 346 S.C. 506, 552 S.E.2d 290 (2001), citing Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000). “Several constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination, . . . second is the right to a trial by jury, . . . (and) third is the right to confront one’s accusers.” Boykin, at 243.

Additionally, the voluntariness of a guilty plea is not determined by an examination of the guilty plea transcript alone but is determined from both the guilty plea transcript and the testimony and evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000); Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000); Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984); Lambert v. State, 260 S.C. 617, 198 S.E.2d 118 (1973).

The evidence before this Court in the form of the guilty plea and evidence offered at the post-conviction relief hearing reflect the Respondent’s guilty plea was voluntarily and intelligently entered. The Respondent was well aware a guilty plea constituted an admission of guilt to and a conviction of the charges, that he was pleading guilty to first degree burglary, first degree criminal sexual conduct and assault and battery with intent to kill, and that he understood the potential sentences he faced. (App. p. 83; p. 4, line 14 - p. 5, line 5; p. 8, line 22 - p. 9, line

2). On the plea sheet which was incorporated by reference during the guilty plea, the Respondent affirmed his desire to enter guilty pleas to the offenses, his discussion with counsel and understanding of the charges, penalties, and pertinent constitutional rights, including the right to a jury trial, right to confront witnesses, and right against self-incrimination as well as the fact that the guilty plea waived those rights. (App. pp. 83-84). The Respondent also affirmed on the plea sheet his desire to plead guilty to the charges and his understanding that his guilty plea constituted a finding of guilt. (App. pp. 83-84). The Respondent also signed the sentence sheets for each offense indicating his desire to enter a guilty plea to each charge. (App. p. 39; p. 44; p. 49). At the guilty plea, the Applicant also twice affirmed the plea sheet and truth of his answers on the plea sheet. (App. p. 5, lines 8-11; p. 8, lines 3-7). He further affirmed during the plea colloquy his understanding of the charges and applicable penalties, the right to a jury trial, right to confront witnesses against him, and right against self-incrimination as well as the fact that the guilty plea would waive those rights and any defenses he might have. He also affirmed his understanding that the plea acts as an admission of his culpability. (App. p. 5, line 17 - p. 7, line 25; pp. 83-84). Respondent additionally acknowledged during the guilty plea his understanding that, with a guilty plea, he is saying he did it, would waive any defenses he might have to the charges and agree to sentencing. (App. p. 5, line 17 - p. 7, line 25). Respondent had no questions about anything and admitted no one caused him any physical pain to cause him to plead guilty. (App. p. 8, lines 8-11). Respondent also denied that he was under the influence of medication, alcohol, or controlled substances. (App. p. 8, lines 12-19). Respondent specifically acknowledged his understanding that his guilty plea meant he would be found guilty without a trial and would waive the right to trial and rights pertaining thereto. (App. p. 84) Respondent

indicated he understood what he was doing and the rights he was giving up. (App. p. 84). Respondent also indicated in writing that he was pleading guilty freely and voluntarily. (App. p. 84). Further, there was a sufficient factual basis presented for all of the charges. (App. p. 28, line 4 - p. 33, line 33). "This is all that is required and the plea was proper." Rollison v. State, at 511, 552 S.E.2d at 283.

Unlike in Pittman, Respondent was informed of the pending charges, the mandatory minimum and maximum penalties associated with the charges and constitutional rights. Also, unlike Pittman, the plea court carefully questioned Respondent at the plea and in the plea sheet to ensure the Respondent's understanding of the consequences and voluntary and knowing nature of the plea. The guilty plea checklist in this case was not dated one month before the plea as it was in Pittman but was dated the day of the guilty plea.¹

The evidence reflects the Respondent expressed his desire to plea guilty and knowingly and voluntarily entered guilty pleas to the charges. The post-conviction relief court's finding Respondent did not plead guilty is without the requisite evidentiary support and should be reversed.

¹ Also, unlike in Pittman, trial counsel presented specific testimony concerning advice and discussions with Applicant as to the crucial elements of the offenses, the applicable punishment, the Applicant's pertinent constitutional rights, the effect of a guilty plea and the possible consequences of a plea and trial. However, the transcript of counsel's testimony is not available.

CONCLUSION

Based upon the foregoing, the State prays that this Court grant the Petition for Writ of Certiorari and reverse the order of the post-conviction relief court.
the lower court.

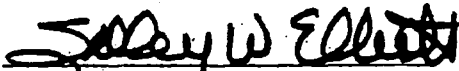
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March 6, 2007

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHON JAMES,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

PROOF OF SERVICE

I, Kathy W. Scott, certify that I have served the Petition for Writ of Certiorari and Appendix by depositing two copies of the same in the United States mail, postage prepaid, addressed to Evert Comer, Jr., Esquire, Post Office Box 386, Denmark, South Carolina 29042.

I further certify that all parties required by Rule to be served have been served.

This 6th day of March, 2007.



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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHAN JAMES,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

AMENDED RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Due to a domestic disturbance on June 6, 2000, involving his estranged wife, with whom there had been prior occasions of domestic disturbances, (App. p. 32, lines 21-22, and 24-25; p. 34, lines 20-25; p. 35, lines 1-3; p. 36, lines 8-12, and 19-20), the Respondent was indicted at the October 2001 term of the Orangeburg County Grand Jury for Assault and Battery with intent To Kill (01-GS-38-1916); Criminal Sexual Conduct in the First Degree (01-GS-38-1917), and Burglary in the First Degree (01-GS-38-1918). He was represented on these charges by Michael Culler, Esquire, of the Orangeburg Public Defenders' Office. (App. Pp. 39-53). Though, according to the Solicitor on the July 15, 2002, day of the guilty plea proceeding, the case was scheduled for trial the "Monday of next week," (App. p. 32, lines 1-2), the Respondent and his counsel signed a plea sheet on July 15, 2002, (App. p. 83-84), prior to appearing before the plea court judge on July 15, 2002, for guilty pleas, (App. p. 20), and he was sentenced by the Honorable J. Ernest Kinard, Jr. to confinement for concurrent terms of 17 years. (App. pp. 37, lines 15-18; pp. 44 and 49). In his ineffective assistance of counsel claims, the Respondent stated in his PCR application that he had met with his trial counsel only once "in eleven months to discuss the case, and then the discussion was only about pleading to the charges." (App. p. 8). The Respondent also said that his trial counsel did not do anything to help him with the charges and did not go over the elements of the charges with him. (App. pp. 97-98).

Following the trial court proceedings, the Respondent timely filed a Notice of Appeal which was perfected, and following a review pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals affirmed Respondent's convictions and sentences: State v. James, Op. No. 2003-UP-600 (S.C. Ct. App. filed October 20, 2003.) (App. pp. 78-80).

The Respondent thereafter on October 19, 2004, filed an application for post-conviction relief followed by an amendment to the application. (App.pp.1-10). The Petitioner made a return on July 21, 2005. (App.pp.15-19). An evidentiary hearing was held on April 25, 2006, at which time the Respondent was present and represented by his attorney, Evert Comer, Jr., Esquire, of the Bamberg County Bar. The Petitioner was represented by Assistant Attorney General Teressa H. Salane. The testimony of the Respondent, his guilty plea attorney, and the investigator of the Respondent were presented at the hearing. However, there is no transcript of record of the PCR hearing due to reasons stated herein below. Also, at the post-conviction relief court hearing were most of the records of the Orangeburg County Clerk of Court regarding the Respondent's convictions, the Respondent's records from the South Carolina Department of Corrections, the guilty plea transcript, and the Respondent's appellate records. (App.p.16). The record of the matter was left open for three (3) weeks by Order of the PCR judge dated April 26, 2006, to allow the Petitioner the opportunity to locate and submit a missing plea sheet utilized by the guilty plea court and the Respondent at the time of the guilty plea hearing. (App.p.81). The Respondent by letter of the Petitioner dated May 2, 2006, received a copy of the plea sheet which was made a part of the record. The Respondent submitted a Position of Applicant on Plea Sheet dated May 11, 2006. (App.pp.85-98). In a letter of the PCR judge dated May 24, 2006, the PCR judge stated to the Petitioner: "Dear Ms. Salane: Please respond to Mr. Comer's position. Please point out where in the record Mr. James ever actually pled guilty." On June 16, 2006, the Petitioner submitted a Petitioner's Response to Applicant's Position (App.pp.99-105). The Order of the post-conviction relief court granting relief to the Respondent, however, was issued on June 7, 2006, before the submission of the Petitioner's Response. (App.p.106). However, the Petitioner advised it had no notice of and was not served with the Order

until July 10, 2006. (App.p.108). Upon receipt of the June 7, 2006, Order in favor of the Respondent, the Petitioner moved the circuit court to alter or amend the Order by motion dated July 17, 2006. (App.pp. 108-114). The Petitioner's motion was denied by Order of the post-conviction relief court dated August 14, 2006. (App.p.116).

In response to the ineffective assistance of counsel claims of the Respondent and a review of the entire record, the PCR judge found the plea never took place and remanded the case in accordance with his ruling. (App. p. 106)

The Petitioner filed and served Notice of Appeal and ordered the transcript of the post-conviction relief hearing. However, the court report for the post-conviction relief hearing advised the Petitioner the transcript was not available as the tapes and notes of the hearing were stolen from her home. The Petitioner moved this Court for a new post-conviction relief hearing or a hearing to reconstruct the record. (See Petitioner's Motion to Remand for a New Trial). The Respondent opposed the motion. (See Respondent's Return to Motion to Remand for New Trial.) This Court denied the Petitioner's motion finding the issue available for appeal was clear from the Order of the PCR judge and that the only transcript necessary to provide full support to the Petitioner's argument and to allow for a meaningful review was the transcript of the guilty plea proceeding. (See December 6, 2006, Order of this Court). The Petitioner filed a Petition for Writ of Certiorari, which was stricken as untimely, with a subsequent Petition for Writ of Certiorari, and in response thereto, the Respondent submits this Return.

QUESTION PRESENTED

Whether the Respondent actually pled guilty to the charges, and if he did, whether the pleas should be deemed involuntary?

ARGUMENT

The Respondent never pled guilty to the charges, and if he did, the pleas were involuntary, and the findings and rulings of the PCR judge should be affirmed.

In the instant case, to argue voluntariness of pleas and admission of guilt not shown in the transcript of record, which was the finding of the PCR court, Petitioner endeavors to incorporate the plea sheet and other extraneous documents in failed attempts to show the pleas were knowingly, voluntarily, and intelligently made. Under Boykin v. Alabama, 395 U.S. 242, 89 S.Ct. 1709 (1969), the US Supreme Court stated that the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. It was held that before a Court can accept a guilty plea, a defendant must be advised of the constitutional rights being waived, which include the privilege against self incrimination, right to a jury trial, and right to confront one's accusers. In addition to these constitutionally required rights that must be given to defendants as outlined in Boykin, our Supreme Court has repeatedly held that a defendant is also entitled to be aware of the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, and the nature of the constitutional rights being waived, and being asked affirmatively for an admission of guilt. See Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999) (finding that the trial court did not affirmatively ask the defendant for an admission of guilt), State v. Dover, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). See also Section 17-23-80, S.C. Code of Laws, 1976, as amended, which provides: "No person indicted for an offense shall be convicted thereof unless by confession of his guilt in open court, by admitting the truth of the charge against him by his plea or demurrer, by the verdict of a jury accepted and recorded by the court or as provided in Section 17-23-40."

Though the plea judge asked the Respondent whether his attorney had gone over the plea sheet with him, and whether all answers were true and correct, to which he pled yes, (App. p. 24, lines 8-10 and App. p 27, lines 3-6), the plea judge did not ensure the plea colloquy was conducted in the record in a way to satisfy the constitutional standards. Though, according to the Solicitor on the July 15, 2002, day of the guilty plea proceeding, the case was scheduled for trial the "Monday of next week," (App. p. 32, lines 1-2), the Respondent and his counsel signed a plea sheet in a holding cell on July 15, 2002, (App. p. 83-84), prior to appearing before the trial court judge on the same day for guilty pleas on the charges. (App. p. 20). In his PCR application, (App. pp. 1-9), the Respondent stated he had met with his trial counsel only once "in eleven months to discuss the case, and then the discussion was only about pleading to the charges." (App. p. 8). This is not controverted in the Return of Petitioner. The Respondent also said that his trial counsel did not do anything to help him with the charges, and among other failures, did not go over the elements of the charges with him. (App. pp. 97-98).

With respect to his return to the writ, Respondent incorporates every claim of ineffective assistance of counsel contained in his application for PCR relief. (App. pp. 7-9), respecting various failures of the plea court to conduct a proper canvassing of each guilty plea, and his trial counsel to adequately meet with him, investigate the charges, prepare for trial instead of meeting with him in his holding cell the day of court to sign a plea sheet and all other claims contained in his PCR application.

Respondent now addresses the canvassing of the guilty plea on each charge plus one charge for which he had not been charged, "kidnapping," (App. p. 25, lines 14-15), as contained in the record.

With respect to the burglary first charge, the trial court failed to advise Respondent of his right against self incrimination, his right to a jury trial, and his right to confront one's accusers. The trial judge also failed on this charge to advise Respondent of the nature and crucial elements of the offense. In the colloquy with the Respondent on this charge, the trial judge advised the Respondent only of the following: 1) he did not have to prove himself not guilty "during the trial"; 2) the State had a beyond a reasonable doubt burden of proof with twelve jurors being unanimous; 3) the State had to prove each element of the crime. "You do understand that you don't have to prove you're not guilty during trial?" The trial judge did advise Respondent that burglary first carried fifteen years to life. (App. p. 23, lines 14 - p. 24, 25, lines 1-2). The trial judge also told Respondent that the Burglary First charge was a violent crime, most serious crime, that it constituted a strike; "two strikes, you're out, three strikes, you're out, etc. (App. 23, lines 18-20). The trial judge also told Respondent that he was picking up enough strikes "to put you in jail for the rest of your life if, when you get out, you commit any other violent crime or most serious crime. (App. 24, lines 1-4). Though the trial judge, during his discussion of this charge with the Respondent mentioned the plea sheet, it does not outline the constitutional rights afforded to him under Boykin respecting constitutional rights being waived, which include the privilege against self incrimination, right to a jury trial, and right to confront one's accusers in addition to being advised of the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, and the nature of the constitutional rights being waived. (App. p. 24, lines 6-10). The trial judge told Respondent, in his discussion of the burglary first charge that "if that was your house or something, you know, you might have had the right to enter there . . . " (App. 24, lines 24-25). The trial judge also said to the Respondent regarding this charge, "But if you plead guilty to it, you're saying you did it, do you understand

that?" (App. p. 25, lines 11-2). This was the extent of the canvassing of the burglary first charge with Respondent, except at one time the trial judge appeared to be under the impression the burglary charge, due to its wording, occurred at the residence of the Respondent and his wife, in which case, the burglary charge would not have been an appropriate charge for someone to burglarize his own home which would have warranted a motion to quash by Respondent's counsel, which did not occur. (App. 24, lines 22-24; p. 28, lines 14-15).

With respect to the criminal sexual conduct in the first degree charge, which trial counsel failed to investigate in the specifics outlined in Respondent No. 4 claim of his amendment to his post-conviction relief application, the trial judge did not mention any of the constitutional rights outlined in Boykin nor the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, the nature of the constitutional rights being waived. He did mention at the onset of addressing the Respondent that he could be sentenced up to thirty years, without mentioning a minimum. (App. 25, line 11). The trial judge also went on to say: "And criminal sexual conduct in the first degree, if you pull somebody in off the street that you don't know, the State can pretty much convict you in a hurry. If it's your spouse involved, it could have been consensual, and that's a position out there. The jury might convict you." (App. 25, lines 4-9). This was basically the extent of what the trial judge said to the Respondent on the charge of criminal sexual conduct first degree. Nothing is said by the trial judge during the discussion of this specific charge about the constitutional rights outlined in Boykin nor the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, the nature of the constitutional rights being waived. The trial judge did, however, mention at the onset when addressing all of the charges the Respondent was faced with that "Criminal sexual conduct, first carries up to thirty." (App. p. 23, lines 24-25).

With respect to the assault and battery with intent to kill charge, the trial judge did not address any specifics about it, except earlier when he first addressed the Respondent and told him that he had some pretty serious charges, at which time he named the three charges. (App. p. 23, lines 20-21). All he told the Respondent about this charge was what he said at the onset when addressing all three of the charges with respect to their seriousness. "Assault and battery with intent to kill carries up to twenty." (App. p. 23, lines 23-24). Nothing else is said about it specifically, except when the trial judge generally says about all charges that the Respondent did not have to prove himself not guilty (App. p. 24, lines 12-13), the State had the burden of proof beyond a reasonable doubt and has to convince twelve jurors unanimously that you committed the crime (App. p. 24, lines 17-19), and there was some discourse by the trial judge about whether the Respondent would have to serve eighty-five or one hundred per cent of the sentence he could give the Respondent, (App. 36, lines 24-25 - p. 37, lines 1-12), and earlier when he first told the Respondent he was looking at eighty-five per cent no matter what sentence was imposed. (App. p. 27, lines 24-25). Which is right, eighty-five or one hundred per cent, with respect to how much time the Respondent would have to serve? See Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (holding a judge's misinformation to defendant about required time in jail before parole eligibility invalidated voluntary nature of guilty pleas), quoted in Pittman. Thus, under Brown, even if a plea was made, it would be considered involuntary if the trial judge gave a defendant misinformation about how much time he would have to serve before parole eligibility.

The charge the trial judge addressed next was an offense which the Respondent was not charged with: Kidnapping, when he stated: "Kidnapping, we're talking about hauling your wife away. The jury might not feel like you were taking her away without her consent." (App. 25, lines

14-17). "If you plead guilty to it, though, you subject yourself to being sentenced to thirty years . . . (App. 25, lines 19-20). Trial counsel and the solicitor did not bring to the plea judge's attention the fact that kidnapping was not one of the charges. The plea judge did mention following the discussion of this charge that a jury might convict him, he could confront witnesses, and he had a right not to testify, but did not say Respondent's not testifying could be used against him. (App. p. 25, lines 24-25; App. p. 26, lines 1-22). The trial judge proceeded to tell Respondent before the solicitor and trial counsel addressed the court that during a trial he gets to be present in the courtroom, look at the state's witnesses, and listen to what they say, question them through his attorney, that his wife may not make a good witness, that he had various defenses throughout that he could present, that he could call witnesses to testify for him, that he had a right not to testify. (App. p. 25, lines 24-25; p. 26, lines 1-22). The trial judge further inquired of the Respondent whether he was satisfied with his attorney, how long he had been incarcerated, whether he had been harmed, about any medication he was taking, and told him how much time he was facing. "I could sentence you all the way up to life, and you're looking at eighty-five per cent no matter what sentence I impose. (App. p. 27, lines 1-25). But the trial judge also told the Respondent later, "You might have to serve a hundred per cent of whatever I give you." (App. p. 37, lines 1-2).

In the present case, the Trial judge in the canvassing of the guilty pleas said to the Respondent four (4) times "If you plead guilty . . ." (App. 25, line 1 and 19; App. 26, lines 19 and 20; App. 27, lines 22-23). The trial judge never asked the Respondent whether he was in fact guilty, whether he was pleading guilty because he was guilty on neither of the charges, and the trial record is void of any statement of the Respondent that he was pleading guilt, was guilty as charged, and pleading guilty freely and voluntarily on each of the three charges. This is not contained in the

entire transcript of the proceeding.

Petitioner in its petition for certiorari asserts that it is not necessary for the guilty plea court to obtain a specific verbal admission of guilty for the offenses before accepting a guilty plea and submits four cases in support of this assertion: Knight v. Johnson, 699 F.2d 162 (4th Cir. 1983); Rollison v. State, 346 S.C. 506, 510, 552 S.E.2d 290, 292 (2001), North Carolina vs. Alford, 400 U.S. 25, 37 (1970), In the matter of English, 367 S.C. 297, 625 S.E.2d 919 (2006), In re Beckham, 365 S.C. 637, 620 S.E.2d 69 (2005), and State v. Ray, 310 S.C. 431, 427 S.E.2d 171 (1993). In Knight, a State of Virginia case, the defendant actually pled; also in Rollison and North Carolina v. Alford. In the English and Beckham case, which are not PCR cases but cases involving disciplinary proceeding for two different Magistrates. All these cases are distinguishable in that in all of them, the defendants actually pled. The North Carolina v. Alford is also distinguishable in that it involves a situation where the defendant actually entered an Alford plea.

In Pittman, in which the appellant was afforded a new trial, there was also a checklist for a guilty plea, and the plea sheet in this case should not be substituted for the affirmative canvassing of the plea the court was required to conduct. Though there is a question the plea sheet in this case that states: "Has your lawyer gone over your rights and all circumstances of the charge(s) against you," the plea sheet does not include the elements of the crime which are not covered by the court in the transcript of this case. Also, the plea sheet in this case does not specifically advise the Respondent of his constitutional rights though some may be mentioned in the numbered items in passing, secondarily in some of the questions. (App. pp. 83-34). Furthermore, the beginning of the plea sheet states "The Defendant avers that the Defendant desires to plead guilty," but the guilty plea was never affirmatively given because the trial judge did not ask the Respondent whether he was

guilty on either of the charges. (App. p. 83). Until the plea is accepted the State and the defendant are free to withdraw the negotiated plea. See State v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct.App. 1999), which states that a plea agreement is nothing more than an offer until it is approved by the court. The offer can be withdrawn by the defendant or State, before being accepted by the court. In this matter, there is no record of guilt being affirmatively made or affirmatively accepted in open court. The plea sheet starts off with language that the Defendant wished to plead guilty and it ended with "if accepted" by the court language. Furthermore, in Pittman, the Court does not resort to a plea sheet and other extraneous documents to fulfill the requirements of Boykin but only addressed the transcript of the case.

The plea sheet does not spell out the requirements of Boykin, our case law and statutes to cure the numerous defects contained in the transcript of the guilty plea proceeding in this case. Based upon the applicable scope of review for PCR guilty plea proceedings, this Court, upon a search of the record, will find evidence to support the PCR judge's finding and should not substitute its view of the facts for that of the PCR judge. It cannot be said that there is no evidence to support the PCR judge's finding on the three charges the trial judge had before the trial court. Should this Court find that the Respondent actually pled, then it should find the same to be involuntary due to the absence of all of the requirements of Boykin, and our state law and statutes relating to a defendant being made aware of the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, and the nature of the constitutional rights being waived, and being asked affirmatively for an admission of guilt, and the holding in Brown, supra.

Based upon the foregoing, the pleas of the Respondent were not given, and, should the court deem them to have been given, then the Court should consider them to be involuntary due to the

numerous violations of Respondent's rights as outlined in Boykin, our case and statutory law in that the same were not made in accordance with the requirements of our federal, state and statutory law, and the apparent misinformation regarding time to be served before parole eligibility or release.

In the Pittman case, there was no resort to the guilty plea checklist, which is Petitioner's principal basis of support for arguments in support of a guilty plea. Also, the Petitioner relies heavily on the signing of the sentencing sheets and such things as an apology of the Respondent to support arguments of guilty pleas being given. The Petitioner also stated in its argument on Page 8 without supporting references the following, which is not contained specifically in the record, "He further affirmed during the plea colloquy his understanding of the charges and applicable penalties, the right to a jury trial, right to confront witnesses against him, and right against self-incrimination as well as the fact that the guilty plea would waive those rights and any defenses he might have."

It has also been held that a PCR judge must analyze the trial record and the testimony introduced at the PCR hearing to determine whether a guilty plea was taken in accordance with constitutional standards. Vickery v. State, 258 S.C. 33, 186 S.E. (2d) 827 (1972).

The trial record in this case is devoid of such questions of the sort: "How do you wish to plead to these charges?", "Are these your pleas?", "Are you guilty?", or "Did you enter these pleas freely and voluntarily?". The trial court repeatedly said to the Respondent, "If you plead guilty . . ." (twice on Page 6, one time on Pages 7 and 8). There is not one place in the plea transcript where the Respondent was asked, "How do you plead to these charges?" or "Are you guilty of these charges?" "Are you pleading freely and voluntarily to these charges?", etc.

Furthermore, the plea sheet, which should not be substituted for the making of proper inquiries of the trial judge, also states at its end, "... if the plea is accepted." No where in the record

does the trial judge say that a guilty plea is accepted because it was never given or asked for in the record.

Petitioner has combed the entire transcript of the canvassing of the guilty pleas and documents outside of the transcript to show what is not present: an affirmative admission of guilty, the requirement of the plea court to ensure any given pleas were voluntary and made in accordance with constitutional and state law standards. Furthermore, should this Court in some way find an admission of guilt, then, due to the many failures on the part of the plea court and trial counsel, the plea should be deemed involuntary. The guilty plea should be clear and unequivocal and not be an act of the Respondent shown by extraction of portions of extraneous documents not embodied in the transcript or the colloquy of the guilty plea proceeding, which in and of themselves also failed to show an admission of guilt or a voluntary plea.

The South Carolina Supreme Court has consistently held that where there is "any" evidence of probative value to support the findings of a PCR judge, the PCR judge ruling will be upheld.; also on appeal from order granting post-conviction relief, review of the Supreme Court is limited to whether there is any evidence to support trial judge's finding of fact. Griffin v. Warden, 277 S.C. 288, 286 S.E.2d 145 (1982), cert denied, 459 U.S. 942, 103 S.Ct. 255, 741 L.Ed2d 199 (1982, State v. Davis, 274 S.C. 549, 265 S.E.2d 679 (1980). In the instant case, the PCR judge stated in his Order of remand for further proceedings by the Trial Court, as follows: "Upon examination of the entire record, it is apparent that the Defendant never entered a Guilty Plea. He was never asked how he pled and never made any statement that could be construed as an admission of guilt." (App. p. 106). The PCR judge analyzed the trial record and the testimony of the Respondent, his trial attorney and investigator in addition to the testimony of the Solicitor adduced at the PCR hearing, the Position

of Applicant on the Plea Sheet, the State's Response to Applicant's Position and made the determination that the guilty plea was not taken in accordance with constitutional standards. The PCR judge also had the State's Motion to Reconsider with respect to his ruling, which was not changed.

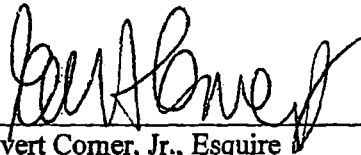
CONCLUSION

Based upon the foregoing arguments, there is some evidence in the record to support the findings and rulings of the PCR judge. Furthermore, the record shows a lack of an intelligent, knowing and voluntary plea on each of the charges should the pleas be deemed to have been made. Therefore, the Writ of Certiorari should be denied.

Respectfully submitted,

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By:



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Dated: June 11, 2007

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHAN JAMES,

Respondent,

VS.

STATE OF SOUTH CAROLINA,

Petitioner.

PROOF OF SERVICE

I, Ruth B. Comer, certify that on the 11th day of June, 2007, I served a Motion to Amend the Return To Petition for Writ of Certiorari of the Respondent in the above entitled case by depositing six copies of the same in the United States mail, postage prepaid, addressed to-counsel for the Petitioner, Assistant Deputy Attorney General Salley W. Elliott, Office of the Attorney General, State of South Carolina, PO Box 11549, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

Ruth B. Comer

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Denmark, South Carolina

Dated: June 11, 2007

The Supreme Court of South Carolina

Jonathan James,

Respondent,

v.

State of South Carolina,

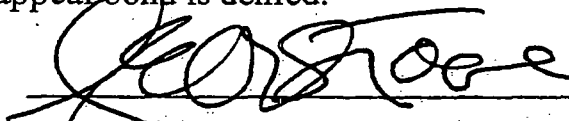
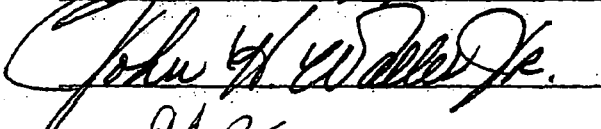
Petitioner.

ORDER

This matter is before the Court on a petition for a writ of certiorari and a motion for appeal bond.

We grant the petition for a writ of certiorari. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 227(j), SCACR.

The motion for appeal bond is denied.

 C. J.
 J.
 J.
 J.
 J.

Columbia, South Carolina

August 9, 2007

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHON JAMES,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

BRIEF OF PETITIONER

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QUESTION PRESENTED

Did the post-conviction relief court err in finding that Respondent never entered a guilty plea?

STATEMENT OF THE CASE

The Respondent was indicted at the October 2001 term of the Orangeburg County Grand Jury for assault and battery with intent to kill (01-GS-38-1916); criminal sexual conduct in the first degree (01-GS-38-1917); and burglary in the first degree (01-GS-38-1918). He was represented by Michael Culler, Esquire. (App. pp. 39-53). On July 15, 2002, the Respondent pleaded guilty as charged. (App. p. 39; pp. 44; 49; pp. 20-37; pp. 83-84). He was sentenced by the Honorable J. Ernest Kinard, Jr. to confinement for concurrent terms of 17 years. (App. pp. 39; 44; p. 49; p. 37, lines 15-18).

A timely Notice of Appeal was filed on Respondent's behalf and an appeal was perfected. Following a review pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals affirmed Respondent's convictions and sentences. State v. James, Op. No. 2003-UP-600 (S.C. Ct. App. filed October 20, 2003). (App. pp. 68-70).

The Respondent thereafter filed an application for post-conviction relief on October 19, 2004 as well as an amendment to the application. (App. pp. 1-10). The State made return on July 21, 2005. (App. pp. 15-19). An evidentiary hearing was held on April 25, 2006, at which time the Respondent was present and was represented by Everette Comer, Esquire. The State was represented by Assistant Attorney General Teresa H. Salane. The testimony of the Respondent, Respondent guilty plea attorney, and the attorney's investigator was presented at the hearing. Also before the post-conviction relief court at the hearing were the records of the Orangeburg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the Respondent's appellate records. (App. p. 16). The record of the matter was left open to allow

the State the opportunity to locate and submit a plea sheet utilized by the guilty plea court and the Respondent at the time of the guilty plea. (App. p. 81). The plea sheet was subsequently made a part of the record in this case, and the Respondent submitted a Position of Applicant on Plea Sheet in response. (App. pp. 82-98). On June 16, 2006, the State submitted a Response to Respondent's Position. (App. pp. 99-105). The Order of the post-conviction relief court was issued on June 7, 2006, before the submission of the State's Response. (App. p. 106). However, the State had no notice of and was not served with the Order until July 10, 2006. (App. p. 108). Upon receipt of the June 7, 2006 Order, the State moved the circuit court to alter or amend the Order. (App. pp. 108-114). The State's motion was denied by order of the post-conviction relief court dated August 14, 2006. (App. p. 116).

The State filed and served notice of appeal and ordered the transcript of the post-conviction relief hearing. However, the court reporter present at the post-conviction relief hearing advised the State the transcript was not available as the tape and notes of the hearing were stolen from her home. The State moved this Court for a new post-conviction relief hearing or, alternatively, for a remand to reconstruct the record of the post-conviction relief hearing. (See State's Motion to Remand or for a New Trial). The Respondent opposed both requests, and this Court denied the State's motion finding the issue available for appeal is clear from the order and that the only transcript necessary to provide full support to the State's argument and to allow for a meaningful review is the transcript of the guilty plea proceeding. (See December 6, 2006 Order of this Court). The State's petition for writ of certiorari was granted and this brief follows.

ARGUMENT

Did the post-conviction relief court err in finding that Respondent never entered a guilty plea?

Among a number of challenges to his guilty plea, Respondent asserted below that his guilty plea was not voluntarily and knowingly entered due to trial counsel's failure to ensure the guilty plea court conducted the required plea colloquy in that the court failed to obtain Respondent's admission of guilt. (App. p. 7). He offered Federal Criminal Procedure Rule 11 and Pittman v. State, 337 S.C. 697, 524 S.E.2d 623 (1999) as support for his claim. Following a full evidentiary hearing, the post-conviction relief court issued an order finding Respondent never entered a guilty plea because the guilty plea court failed to ask Respondent how he pled and because Respondent never made a statement that could be construed as an admission of guilt. The State submits the evidence does not support the finding of the post-conviction relief court that Respondent never entered a guilty plea. The grant of post-conviction relief must be reversed and the guilty plea reinstated.

The State submits that contrary to the post-conviction relief court's findings, the record reflects Respondent clearly indicated his desire to plead guilty and acknowledged his guilt. Nevertheless, the State submits that an affirmative admission of guilt to the offenses is not a prerequisite for acceptance of a guilty plea and that the specific colloquy outlined in Federal Criminal Procedure Rule 11 is not mandated in our state courts. Respondent further submits that Pittman is distinguishable and does not require the grant of relief. As set forth below, the State submits the post-conviction relief court misapprehended the precedent of this Court and the facts of this case and erred in granting post-conviction relief.

First, Respondent submits that it is not necessary for the guilty plea court to obtain a specific verbal admission of guilt for the offenses before accepting a guilty plea. See Knight v. Johnson, 699 F.2d 162 (4th Cir. 1983)(stating the defendant's protestation of innocence does not in itself invalidate the plea). In fact, "a defendant may, as part of a plea bargain agree to plead guilty to a crime for which he has been indicted but of which he is not guilty." Rollison v. State, 346 S.C. 506, 510, 552 S.E.2d 290, 292 (2001); see North Carolina v. Alford, 400 U.S. 25, 37 (1970)(stating "while most pleas of guilty consist of both a waiver and an express admission of guilt, the latter element is not a constitutional requisite to the imposition of a criminal penalty. An individual accused of a crime may voluntarily, and understandingly consent to imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime."); see also In the matter of English, 367 S.C. 297, 625 S.E.2d 919 (2006) ("The court emphasizes that while a criminal defendant may plead guilty without any evidence of his guilt being submitted. . ."); In re Beckham, 365 S.C. 637, 620 S.E.2d 69 (2005)(same); State v. Ray, 310 S.C. 431, 427 S.E.2d 171 (1993)(stating the death penalty may be imposed when a defendant pleads guilty without expressly admitting guilt where plea was knowingly and voluntarily entered). The plea is not invalid because the Respondent was not specifically asked if he admitted guilt of the offenses.

Nevertheless, the plea court in this case questioned Respondent about the facts surrounding the crime and the record reflects Respondent's admission of guilt in his apology and other statements to the court as well as in the Respondent's certified answers in the plea sheet stating it was his desire to plead guilty to each of the charges and that he was pleading guilty freely and voluntarily. (See App. p. 36, lines 12-22; pp. 83-84).

Even if this Court rejects Respondent's statements as express admissions of guilt, the State submits the inference gleaned from the entire plea colloquy and plea sheet is that the Respondent was appearing before the plea court to enter guilty pleas to the charges and to submit to sentencing. The Respondent admitted his understanding at the guilty plea that if he pleaded guilty, he was admitting he did it. (App. p. 6, lines 9-21). It is also the clear implication that the "trial judge found the pleas voluntary or he would not have entered sentences for all three offenses. That the judge failed to state expressly his findings as to voluntariness . . . does not defeat the fact that the record itself reveals a voluntary waiver." Gaines v. State, 335 S.C. 376, 381, 517 S.E.2d 439, 442 (1999).

Second, this Court has determined that Federal Rule 11 which requires a trial court to specifically direct the defendant's attention to each and every constitutional right and obtain a waiver of each right is not required by our plea courts. State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975); State v. Lambert, 266 S.C. 574, 225 S.E.2d 340 (1976). It is necessary only that the record reveals an affirmative awareness of the consequences of the guilty plea. LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978). No specific inquiry by the plea judge is mandated, and the judge is not required to direct the defendant's attention to each and every right and obtain a separate waiver as to each as long as the record indicates the defendant was fully aware of the consequences of the plea. In re Arisha K.S., 331 S.C. 288, 501 S.E.2d 128 (Ct. App. 1998); Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000); State v. Armstrong, 263 S.C. 594, 211 S.E.2d 889 (1975); see also Gaines v. State, 335 S.C. 376, 517 S.E.2d 439 (1999).

The United States Supreme Court has stated that "[a] plea of guilty is more than a

confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment.” Boykin v. Alabama, 395 U.S. 238, 242 (1969); see also in re Arisha K.S., 331 S.C. 238, 501 S.E.2d 128 (Ct. App. 1998). “All that is required before a plea can be accepted is that the defendant understand the nature and crucial elements of the charges, the consequences of the plea, the constitutional rights he is waiving, and that the record reflect a factual basis for the plea.” Rollison v. State, 346 S.C. 506, 552 S.E.2d 290 (2001), citing Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000). “Several constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination, . . . second is the right to a trial by jury, . . . (and) third is the right to confront one’s accusers.” Boykin, at 243.

Additionally, the voluntariness of a guilty plea is not determined by an examination of the guilty plea transcript alone but is determined from both the guilty plea transcript and the testimony and evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000); Anderson v. State, 342 S.C. 54, 535 S.E.2d 649 (2000); Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984); Lambert v. State, 260 S.C. 617, 198 S.E.2d 118 (1973).

The evidence before this Court in the form of the guilty plea and evidence offered at the post-conviction relief hearing reflect the Respondent’s guilty plea was voluntarily and intelligently entered. The Respondent was well aware a guilty plea constituted an admission of guilt to and a conviction of the charges, that he was pleading guilty to first degree burglary, first degree criminal sexual conduct and assault and battery with intent to kill, and that he understood the potential sentences he faced. (App. p. 83; p. 4, line 14 - p. 5, line 5; p. 8, line 22 - p. 9, line

2). On the plea sheet which was incorporated by reference during the guilty plea, the Respondent affirmed his desire to enter guilty pleas to the offenses, his discussion with counsel and understanding of the charges, penalties, and pertinent constitutional rights, including the right to a jury trial, right to confront witnesses, and right against self-incrimination as well as the fact that the guilty plea waived those rights. (App. pp. 83-84). The Respondent also affirmed on the plea sheet his desire to plead guilty to the charges and his understanding that his guilty plea constituted a finding of guilt. (App. pp. 83-84). The Respondent also signed the sentence sheets for each offense indicating his desire to enter a guilty plea to each charge. (App. p. 39; p. 44; p. 49). At the guilty plea, Respondent twice affirmed the plea sheet and the truth of his answers on the plea sheet. (App. p. 5, lines 8-11; p. 8, lines 3-7). He further affirmed during the plea colloquy his understanding of the charges and applicable penalties, the right to a jury trial, right to confront witnesses against him, and right against self-incrimination as well as the fact that the guilty plea would waive those rights and any defenses he might have. He also affirmed his understanding that the plea acts as an admission of his culpability. (App. p. 5, line 17 - p. 7, line 25; pp. 83-84). Respondent additionally acknowledged during the guilty plea his understanding that, with a guilty plea, he was saying he did it, would waive any defenses he might have to the charges and agreed to sentencing. (App. p. 5, line 17 - p. 7, line 25). Respondent had no questions about anything and admitted no one caused him any physical pain to force him to plead guilty. (App. p. 8, lines 8-11). Respondent also denied that he was under the influence of medication, alcohol, or controlled substances. (App. p. 8, lines 12-19). Respondent specifically acknowledged his understanding that his guilty plea meant he would be found guilty without a trial and would waive the right to trial and rights pertaining thereto. (App. p. 84). Respondent

indicated he understood what he was doing and the rights he was giving up. (App. p. 84).

Respondent also indicated in writing that he was pleading guilty freely and voluntarily. (App. p. 84). Further, there was a sufficient factual basis presented for all of the charges. (App. p. 28, line 4 - p. 33, line 33). "This is all that is required and the plea was proper." Rollison v. State, at 511, 552 S.E.2d at 283.

Unlike in Pittman, Respondent was informed of the pending charges, the mandatory minimum and maximum penalties associated with the charges and constitutional rights. Also, unlike Pittman, the plea court carefully questioned Respondent at the plea and on the plea sheet to ensure the Respondent's understanding of the consequences and voluntary and knowing nature of the plea. The guilty plea checklist in this case was not dated one month before the plea as it was in Pittman but was dated the day of the guilty plea.¹

The evidence reflects the Respondent expressed his desire to enter guilty pleas and knowingly and voluntarily entered guilty pleas to the charges. The post-conviction relief court's finding Respondent did not plead guilty is without the requisite evidentiary support and should be reversed.

¹ Also, unlike in Pittman, trial counsel presented specific testimony concerning advice and discussions with Respondent as to the crucial elements of the offenses, the applicable punishment, the Respondent's pertinent constitutional rights, the effect of a guilty plea and the possible consequences of a plea and trial. However, the transcript of counsel's testimony is not available.

CONCLUSION

Based upon the foregoing, the State prays that this Court reverse the order of the post-conviction relief court.

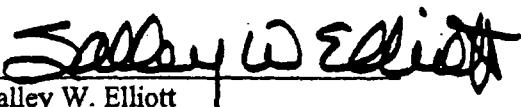
Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 10, 2007

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHON JAMES,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

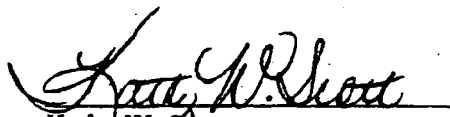
Petitioner.

PROOF OF SERVICE

I, Kathy W. Scott, certify that I have served the Brief of Petitioner by depositing three copies of the same in the United States mail, postage prepaid, addressed to Evert Comer, Jr., Esquire, Post Office Box 386, Denmark, South Carolina 29042.

I further certify that all parties required by Rule to be served have been served.

This 10th day of September, 2007.



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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable James C. Williams, Jr. Circuit Court Judge

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JONATHAN JAMES

Respondent

VS.

STATE OF SOUTH CAROLINA

Petitioner

BRIEF OF RESPONDENT

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QUESTION PRESENTED

Whether the Respondent entered a guilty plea and, if he did, whether the plea was voluntarily made?

STATEMENT OF THE CASE

Due to a domestic disturbance on June 6, 2000, involving his estranged wife, with whom there had been prior occasions of domestic disturbances, (R. p. 32, lines 21-22, and 24-25; p. 34, lines 20-25; p. 35, lines 1-3; p. 36, lines 8-12, and 19-20), the Respondent was indicted at the October 2001 term of the Orangeburg County Grand Jury for Assault and Battery with intent To Kill (01-GS-38-1916); Criminal Sexual Conduct in the First Degree (01-GS-38-1917), and Burglary in the First Degree (01-GS-38-1918). He was represented by Michael Culler, Esquire, of the Orangeburg Public Defenders' Office. (R. Pp. 39-53). Though, according to the Solicitor on the July 15, 2002, day of the guilty plea proceeding, the case was scheduled for trial the "Monday of next week," (R. p. 32, lines 1-2), the Respondent and his counsel signed a plea sheet on July 15, 2002, (R. p. 83-84), prior to appearing before the plea court judge on July 15, 2002, for a guilty plea, (R. p. 20), and he was sentenced by the Honorable J. Ernest Kinard, Jr. to confinement for concurrent terms of 17 years. (R. pp. 37, lines 15-18; pp. 44 and 49). In his ineffective assistance of counsel claims, the Respondent stated in his PCR application that he had met with his trial counsel only once "in eleven months to discuss the case, and then the discussion was only about pleading to the charges." (R. p. 8). The Respondent also said that his trial counsel did not do anything to help him with the charges and did not go over the elements of the charges with him. (R. pp. 97-98).

Following the trial court proceedings, the Respondent timely filed a Notice of Appeal which was perfected, and following a review pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals affirmed Respondent's convictions and sentences. State v. James, Op. No. 2003-UP-600 (S.C. Ct. App. filed October 20, 2003.) (R. pp. 78-80).

The Respondent thereafter on October 19, 2004, filed an application for post-conviction relief

followed by an amendment to the application. (R.pp.1-10). The Petitioner made a return on July 21, 2005. (R.pp.15-19). An evidentiary hearing was held on April 25, 2006, at which time the Respondent was present and represented by his attorney, Evert Comer, Jr., Esquire, of the Bamberg County Bar. The Petitioner was represented by Assistant Attorney General Teressa H. Salane. The testimony of the Respondent, his guilty plea attorney, and the investigator of the Respondent were presented at the hearing. However, there is no transcript of record of the PCR hearing due to reasons stated herein below. Also, at the post-conviction relief court hearing were most of the records of the Orangeburg County Clerk of Court regarding the Respondent's convictions, the Respondent's records from the South Carolina Department of Corrections, the guilty plea transcript, and the Respondent's appellate records. (R.p.16). The record of the matter was left open for three (3) weeks by Order of the PCR judge dated April 26, 2006, to allow the Petitioner the opportunity to locate and submit a missing plea sheet utilized by the guilty plea court and the Respondent at the time of the guilty plea hearing. (R.p.81). The Respondent by letter of the Petitioner dated May 2, 2006, received a copy of the plea sheet which was made a part of the record. The Respondent submitted a Position of Applicant on Plea Sheet dated May 11, 2006. (R.pp.85-98). In a letter of the PCR judge dated May 24, 2006, the PCR judge stated to the Petitioner: "Dear Ms. Salane: Please respond to Mr. Comer's position. Please point out where in the record Mr. James ever actually pled guilty." On June 16, 2006, the Petitioner submitted a Petitioner's Response to Applicant's Position (R.pp.99-105). The Order of the post-conviction relief court granting relief to the Respondent, however, was issued on June 7, 2006, before the submission of the Petitioner's Response. (R.p.106). However, the Petitioner advised it had no notice of and was not served with the Order until July 10, 2006. (R.p.108). Upon receipt of the June 7, 2006, Order in favor of the Respondent, the Petitioner moved

the circuit court to alter or amend the Order by motion dated July 17, 2006. (R.pp. 108-114). The Petitioner's motion was denied by Order of the post-conviction relief court dated August 14, 2006. (R.p.116).

In response to the ineffective assistance of counsel claims of the Respondent and a review of the entire record, the PCR judge found the plea never took place and remanded the case in accordance with his ruling. (R. p. 106)

The Petitioner filed and served Notice of Appeal and ordered the transcript of the post-conviction relief hearing. However, the court report for the post-conviction relief hearing advised the Petitioner the transcript was not available as the tapes and notes of the hearing were stolen from her home. The Petitioner moved this Court for a new post-conviction relief hearing or a hearing to reconstruct the record. (See Petitioner's Motion to Remand for a New Trial). The Respondent opposed the motion. (See Respondent's Return to Motion to Remand for New Trial.) This Court denied the Petitioner's motion finding the issue available for appeal was clear from the Order of the PCR judge and that the only transcript necessary to provide full support to the Petitioner's argument and to allow for a meaningful review was the transcript of the guilty plea proceeding. (See December 6, 2006, Order of this Court). The Petitioner filed a Petition for Writ of Certiorari, which was stricken as untimely, with a subsequent Petition for Writ of Certiorari, and in response thereto, the Respondent submits this Return.

ARGUMENT

The Respondent never entered a guilty plea, and if he did, the plea was involuntarily made.

In the instant case, to argue voluntariness of pleas and admission of guilt not shown in the transcript of record, which was the finding of the PCR court, Petitioner endeavors to incorporate the plea sheet and other extraneous documents in failed attempts to show the pleas were knowingly, voluntarily, and intelligently made. Under Boykin v. Alabama, 395 U.S. 242, 89 S.Ct. 1709 (1969), the US Supreme Court stated that the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. It was held that before a Court can accept a guilty plea, a defendant must be advised of the constitutional rights being waived, which include the privilege against self incrimination, right to a jury trial, and right to confront one's accusers. In addition to these constitutionally required rights that must be given to defendants as outlined in Boykin, our Supreme Court has repeatedly held that a defendant is also entitled to be aware of the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, and the nature of the constitutional rights being waived, and being asked affirmatively for an admission of guilt. See Pittman v. State, 337 S.C. 597, 524 S.E.2d 623 (1999) (finding that the trial court did not affirmatively ask the defendant for an admission of guilt), State v. Dover, 304 S.C. 433, 405 S.E.2d 391 (1991); State v. Hazel, 275 S.C. 392, 271 S.E.2d 602 (1980). See also Section 17-23-80, S.C. Code of Laws, 1976, as amended, which provides: "No person indicted for an offense shall be convicted thereof unless by confession of his guilt in open court, by admitting the truth of the charge against him by his plea or demurrer, by the verdict of a jury accepted and recorded by the court or as provided in Section 17-23-40." See also Federal Rules of Criminal Procedure Rule 11 requires the court to make the required constitutional requirements in open court in the record directing the

defendant's attention to each and every constitutional right and obtain a waiver of each right. The Respondent should be afforded the constitutional protection found in this federal rule pursuant to the constitutional protections and safeguards provided through the Fourth, Fifth and Fourteenth Amendments of the U.S. Constitution.

Though the plea judge asked the Respondent whether his attorney had gone over the plea sheet with him, and whether all answers were true and correct, to which he pled yes, (R. p. 24, lines 8-10 and R. p 27, lines 3-6), the plea judge did not ensure the plea colloquy was conducted in the record in a way to satisfy the constitutional standards. Though, according to the Solicitor on the July 15, 2002, day of the guilty plea proceeding, the case was scheduled for trial the "Monday of next week," (R. p. 32, lines 1-2), the Respondent and his counsel signed a plea sheet in a holding cell on July 15, 2002, (R. p. 83-84), prior to appearing before the trial court judge on the same day for guilty pleas on the charges. (R. p. 20). In his PCR application, (R. pp. 1-9), the Respondent stated he had met with his trial counsel only once "in eleven months to discuss the case, and then the discussion was only about pleading to the charges." (R. p. 8). This is not controverted in the Return of Petitioner. The Respondent also said that his trial counsel did not do anything to help him with the charges, and among other failures, did not go over the elements of the charges with him. (R. pp. 97-98).

With respect to this appeal, the Respondent incorporates every claim of ineffective assistance of counsel contained in his application for PCR relief. (R. pp. 7-9), respecting various failures of the plea court to conduct a proper canvassing of each guilty plea, and his trial counsel to adequately meet with him, investigate the charges, prepare for trial instead of meeting with him in his holding cell the day of court to sign a plea sheet and all other claims contained in his PCR application.

Respondent now addresses the canvassing of the guilty plea on each charge plus one charge for which he had not been charged, "kidnapping," (R. p. 25, lines 14-15), as contained in the record.

With respect to the burglary first charge, the trial court failed to advise Respondent of his right against self incrimination, his right to a jury trial, and his right to confront one's accusers. The trial judge also failed on this charge to advise Respondent of the nature and crucial elements of the offense. In the colloquy with the Respondent on this charge, the trial judge advised the Respondent only of the following: 1) he did not have to prove himself not guilty "during the trial"; 2) the State had a beyond a reasonable doubt burden of proof with twelve jurors being unanimous; 3) the State had to prove each element of the crime. "You do understand that you don't have to prove you're not guilty during trial?" The trial judge did advise Respondent that burglary first carried fifteen years to life. (R. p. 23, lines 14 - p. 24, 25, lines 1-2). The trial judge also told Respondent that the Burglary First charge was a violent crime, most serious crime, that it constituted a strike, "two strikes, you're out, three strikes, you're out, etc. (R. 23, lines 18-20). The trial judge also told Respondent that he was picking up enough strikes "to put you in jail for the rest of your life if, when you get out, you commit any other violent crime or most serious crime. (R. 24, lines 1-4). Though the trial judge, during his discussion of this charge with the Respondent mentioned the plea sheet, the trial judge does not outline the constitutional rights afforded to him under Boykin respecting constitutional rights being waived, which include the privilege against self incrimination, right to a jury trial, and right to confront one's accusers in addition to being advised of the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, and the nature of the constitutional rights being waived. (R. p. 24, lines 6-10). The trial judge told Respondent, in his discussion of the burglary first charge that "if that was your house or something, you know, you

might have had the right to enter there . . . " (R. 24, lines 24-25). The trial judge also said to the Respondent regarding this charge, "But if you plead guilty to it, you're saying you did it, do you understand that?" (R. p. 25, lines 11-2). This was the extent of the canvassing of the burglary first charge with Respondent, except at one time the trial judge appeared to be under the impression the burglary charge, due to its wording, occurred at the residence of the Respondent and his wife, in which case, the burglary charge would not have been an appropriate charge for someone to burglarize his own home which would have warranted a motion to quash by Respondent's counsel, which did not occur. (R. 24, lines 22-24; p. 28, lines 14-15).

With respect to the criminal sexual conduct in the first degree charge, which trial counsel failed to investigate in the specifics outlined in Respondent No. 4 claim of his amendment to his post-conviction relief application, the trial judge did not mention any of the constitutional rights outlined in Boykin nor the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, the nature of the constitutional rights being waived. He did mention at the onset of addressing the Respondent that he could be sentenced up to thirty years, without mentioning a minimum. (R. 25, line 11). The trial judge also went on to say: "And criminal sexual conduct in the first degree, if you pull somebody in off the street that you don't know, the State can pretty much convict you in a hurry. If it's your spouse involved, it could have been consensual, and that's a position out there. The jury might convict you." (R. 25, lines 4-9). This was basically the extent of what the trial judge said to the Respondent on the charge of criminal sexual conduct first degree. Nothing is said by the trial judge during the discussion of this specific charge about the constitutional rights outlined in Boykin nor the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, the nature of the constitutional rights being waived.

The trial judge did, however, mention at the onset when addressing all of the charges the Respondent was faced with that "Criminal sexual conduct, first carries up to thirty." (R. p. 23, lines 24-25).

With respect to the assault and battery with intent to kill charge, the trial judge did not address any specifics about it, except earlier when he first addressed the Respondent and told him that he had some pretty serious charges, at which time he named the three charges. (R. p. 23, lines 20-21). All he told the Respondent about this charge was what he said at the onset when addressing all three of the charges with respect to their seriousness. "Assault and battery with intent to kill carries up to twenty." (R. p. 23, lines 23-24). Nothing else is said about it specifically, except when the trial judge generally says about all charges that the Respondent did not have to prove himself not guilty (R. p. 24, lines 12-13), the State had the burden of proof beyond a reasonable doubt and has to convince twelve jurors unanimously that you committed the crime (R. p. 24, lines 17-19), and there was some discourse by the trial judge about whether the Respondent would have to serve eighty-five or one hundred per cent of the sentence he could give the Respondent, (R. 36, lines 24-25 - p. 37, lines 1-12), and earlier when he first told the Respondent he was looking at eighty-five per cent no matter what sentence was imposed. (R. p. 27, lines 24-25). Which is right, eighty-five or one hundred per cent, with respect to how much time the Respondent would have to serve? See Brown v. State, 306 S.C. 381, 412 S.E.2d 399 (1991) (holding a judge's misinformation to defendant about required time in jail before parole eligibility invalidated voluntary nature of guilty pleas), quoted in Pittman. Thus, under Brown, even if a plea was made, it would be considered involuntary if the trial judge gave a defendant misinformation about how much time he would have to serve before parole eligibility.

The charge the trial judge addressed next was an offense which the Respondent was not

charged with: Kidnapping, when he stated: "Kidnapping, we're talking about hauling your wife away. The jury might not feel like you were taking her away without her consent." (R. 25, lines 14-17). "If you plead guilty to it, though, you subject yourself to being sentenced to thirty years . . . (R. 25, lines 19-20). Trial counsel and the solicitor did not bring to the plea judge's attention the fact that kidnapping was not one of the charges. The plea judge did mention following the discussion of this charge that a jury might convict him, he could confront witnesses, and he had a right not to testify, but did not say Respondent's not testifying could be used against him. (R. p. 25, lines 24-25; R. p. 26, lines 1-22). The trial judge proceeded to tell Respondent before the solicitor and trial counsel addressed the court that during a trial he gets to be present in the courtroom, look at the state's witnesses, and listen to what they say, question them through his attorney, that his wife may not make a good witness, that he had various defenses throughout that he could present, that he could call witnesses to testify for him, that he had a right not to testify. (R. p. 25, lines 24-25; p. 26, lines 1-22). The trial judge further inquired of the Respondent whether he was satisfied with his attorney, how long he had been incarcerated, whether he had been harmed, about any medication he was taking, and told him how much time he was facing. "I could sentence you all the way up to life, and you're looking at eighty-five per cent no matter what sentence I impose. (R. p. 27, lines 1-25). But the trial judge also told the Respondent later, "You might have to serve a hundred per cent of whatever I give you." (R. p. 37, lines 1-2).

In the present case, the Trial judge in the canvassing of the guilty pleas said to the Respondent four (4) times "If you plead guilty . . ." (R. 25, line 1 and 19; R.26, lines 19 and 20; R. 27, lines 22-23). The trial judge never asked the Respondent whether he was in fact guilty, whether he was pleading guilty because he was guilty on neither of the charges, and the trial record

is void of any statement of the Respondent that he was pleading guilt, was guilty as charged, and pleading guilty freely and voluntarily on each of the three charges. This is not contained in the entire transcript of the proceeding. Petitioner in its brief asserts that it is not necessary for the guilty plea court to obtain a specific verbal admission of guilty for the offenses before accepting a guilty plea and submits four cases in support of this assertion: Knight v. Johnson, 699 F.2d 162 (4th Cir. 1983); Rollison v. State, 346 S.C. 506, 510, 552 S.E.2d 290, 292 (2001), North Carolina vs. Alford, 400 U.S. 25, 37 (1970), In the matter of English, 367 S.C. 297, 625 S.E.2d 919 (2006), In re Beckham, 365 S.C. 637, 620 S.E.2d 69 (2005), and State v. Ray, 310 S.C. 431, 427 S.E.2d 171 (1993). In Knight, a State of Virginia case, the defendant actually pled; also in Rollison and North Carolina v. Alford. In the English and Beckham case, which are not PCR cases but cases involving disciplinary proceeding for two different Magistrates. All these cases are distinguishable in that in all of them, the defendants actually pled. The North Carolina v. Alford case is also distinguishable in that it involves a situation where the defendant actually entered an Alford plea.

In Pittman, in which the appellant was afforded a new trial, there was also a checklist for a guilty plea, and the plea sheet in this case should not be substituted for the affirmative canvassing of the plea the court was required to conduct. Though there is a question the plea sheet in this case that states: "Has your lawyer gone over your rights and all circumstances of the charge(s) against you," the plea sheet does not include the elements of the crime which are not covered by the court in the transcript of this case. Also, the plea sheet in this case does not specifically advise the Respondent of his constitutional rights though some may be mentioned in the numbered items in passing, secondarily in some of the questions. (R. pp. 83-34). Furthermore, the beginning of the plea sheet states "The Defendant avers that the Defendant desires to plead guilty," but the guilty plea was

never affirmatively given because the trial judge did not ask the Respondent whether he was guilty on either of the charges. (R. p. 83). Until the plea is accepted the State and the defendant are free to withdraw the negotiated plea. See State v. Becka, 333 S.C. 676, 511 S.E.2d 396 (Ct.App. 1999), which states that a plea agreement is nothing more than an offer until it is approved by the court. The offer can be withdrawn by the defendant or State, before being accepted by the court. In this matter, there is no record of guilt being affirmatively made or affirmatively accepted in open court. The plea sheet starts off with language that the Defendant wished to plead guilty and it ended with "if accepted" by the court language. Furthermore, in Pittman, the Court does not resort to a plea sheet and other extraneous documents to fulfill the requirements of Boykin but only addressed the transcript of the case.

The plea sheet does not spell out the requirements of Boykin, case law and statutes to cure the numerous defects contained in the transcript of the guilty plea proceeding in this case. Based upon the applicable scope of review for PCR guilty plea proceedings, this Court, upon a search of the record, will find evidence to support the PCR judge's finding and should not substitute its view of the facts for that of the PCR judge. It cannot be said that there is no evidence to support the PCR judge's finding on the three charges the trial judge had before the trial court. Should this Court find that the Respondent actually pled, then it should find the same to be involuntary due to the absence of all of the requirements of Boykin, and our state law and statutes relating to a defendant being made aware of the nature and crucial elements of the offense, the maximum and mandatory minimum penalty, and the nature of the constitutional rights being waived, and being asked affirmatively for an admission of guilt, and the holding in Brown, *supra*.

Based upon the foregoing, the pleas of the Respondent were not given, and, should the court

deem them to have been given, then the Court should consider them to be involuntary due to the numerous violations of Respondent's rights as outlined in Boykin, our case and statutory law in that the same were not made in accordance with the requirements of our federal, state and statutory law, and the apparent misinformation regarding time to be served before parole eligibility or release.

In the Pittman case, there was no resort to the guilty plea checklist, which is Petitioner's principal basis of support for arguments in support of a guilty plea. Also, the Petitioner relies heavily on the signing of the sentencing sheets and such things as an apology of the Respondent to support arguments of guilty pleas being given. The Petitioner also stated in its argument on Page 8 without supporting references the following, which is not contained specifically in the record, "He further affirmed during the plea colloquy his understanding of the charges and applicable penalties, the right to a jury trial, right to confront witnesses against him, and right against self-incrimination as well as the fact that the guilty plea would waive those rights and any defenses he might have." There is no reference to the record to support this statement.

It has also been held that a PCR judge must analyze the trial record and the testimony introduced at the PCR hearing to determine whether a guilty plea was taken in accordance with constitutional standards. Vickery v. State, 258 S.C. 33, 186 S.E. (2d) 827 (1972).

The trial record in this case is devoid of such questions of the sort: "How do you wish to plead to these charges?", "Are these your pleas?", "Are you guilty?", or "Did you enter these pleas freely and voluntarily?". The trial court repeatedly said to the Respondent, "If you plead guilty . . ." (twice on Page 6, one time on Pages 7 and 8). There is not one place in the plea transcript where the Respondent was asked, "How do you plead to these charges?" or "Are you guilty of these charges?" "Are you pleading freely and voluntarily to these charges?", etc.

Furthermore, the plea sheet, which should not be substituted for the making of proper inquiries of the trial judge, also states at its end, "... if the plea is accepted." No where in the record does the trial judge say that a guilty plea is accepted because it was never given or asked for in the record.

Petitioner has combed the entire transcript of the canvassing of the guilty pleas and documents outside of the transcript to show what is not present: an affirmative admission of guilty, the requirement of the plea court to ensure any given pleas were voluntary and made in accordance with constitutional and state law standards. Furthermore, should this Court in some way find an admission of guilt, then, due to the many failures on the part of the plea court and trial counsel, the plea should be deemed involuntary. The guilty plea should be clear and unequivocal and not be an act of the Respondent shown by extraction of portions of extraneous documents not embodied in the transcript or the colloquy of the guilty plea proceeding, which in and of themselves also failed to show an admission of guilt or a voluntary plea.

The South Carolina Supreme Court has consistently held that where there is "any" evidence of probative value to support the findings of a PCR judge, the PCR judge ruling will be upheld. In the instant case, the PCR judge stated in his Order of remand for further proceedings by the Trial Court, as follows: "Upon examination of the entire record, it is apparent that the Defendant never entered a Guilty Plea. He was never asked how he pled and never made any statement that could be construed as an admission of guilt." (R. p. 106). The PCR judge analyzed the trial record and the testimony of the Respondent, his trial attorney and investigator in addition to the testimony of the Solicitor adduced at the PCR hearing, the Position of Applicant on the Plea Sheet, the State's Response to Applicant's Position and made the determination that the guilty plea was not taken in

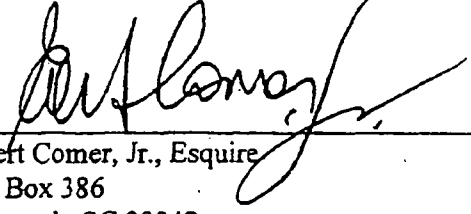
accordance with constitutional standards. The PCR judge also had the State's Motion to Reconsider with respect to his ruling, which was not changed.

CONCLUSION

Based upon the foregoing arguments, the order of the post-conviction relief court should be affirmed.

Respectfully submitted,

LAW OFFICE OF EVERT COMER, JR.

By: 

Evert Comer, Jr., Esquire
PO Box 386
Denmark, SC 29042
(803) 793-3403
ATTORNEY FOR RESPONDENT

Denmark, South Carolina

Dated: October 10, 2007

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Honorable James C. Williams, Jr., Circuit Court Judge

2004-CP-38-1327

JONATHAN JAMES,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

PROOF OF SERVICE

I, Andrea S. Reed, certify that on the 10th day of October, 2007, I served the Brief of the Respondent in the above entitled case by depositing three (3) copies of the same in the United States mail, postage prepaid, addressed to counsel for Petitioner, Assistant Deputy Attorney General Salley W. Elliott, Office of the Attorney General, State of South Carolina, PO Box 11549, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.



Andrea S. Reed
Legal Secretary
Law Office of Evert Comer, Jr.
Denmark, SC 29042
(803) 793-3403

Denmark, South Carolina

Dated: October 10, 2007



RECEIVED

MAR 27 2008

OFFICE

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 26, 2008

REMITTITUR

The Honorable Lisa Mizell
190 Gibson Street
PO Box 9000
Orangeburg, SC 29116-9000

Re: James, Jonathan v. The STATE – 2004-CP-38-01327

Dear Ms. Mizell:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,


CLERK

DES/jj

cc: Assistant Deputy Attorney General Salley W. Elliott
Evert Comer, Jr., Esquire

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Salley
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Jonathan James, Respondent,

v.

State of South Carolina, Petitioner.

ON WRIT OF CERTIORARI

Appeal from Orangeburg County
James C. Williams, Jr., Circuit Court Judge

Opinion No. 26449
Submitted January 23, 2008 – Filed March 10, 2008

REVERSED

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, and Assistant Deputy
Attorney General Salley W. Elliott, of Columbia, for
Petitioner.

Evert Comer, Jr., of Denmark, for Respondent.

CHIEF JUSTICE TOAL: This is an appeal from a grant of post-conviction relief ("PCR") to Respondent Jonathan James. Respondent appeared in court for a plea hearing, and at the conclusion of the hearing, the plea court sentenced Respondent to seventeen years imprisonment. On collateral review, the PCR court found that Respondent never entered a plea of guilty and granted relief. This Court granted the State's request for a writ of certiorari. Because the record unequivocally reflects that Respondent entered a guilty plea, we reverse.

FACTUAL/PROCEDURAL BACKGROUND

The State charged Respondent with several crimes as a result of a rather violent domestic disturbance involving Respondent and his estranged wife.¹ Respondent appeared in court for a plea hearing roughly one week prior to the scheduled beginning of his trial, and immediately prior to the plea hearing, Respondent executed a "plea sheet" – a document which described several rights associated with a criminal trial and which required Respondent to list the offenses to which he desired to plead guilty as well as the maximum penalties for the charges. Respondent submitted this sheet to the plea court during the hearing, and at the conclusion of the hearing, the court sentenced Respondent to seventeen years imprisonment. Respondent appealed, and the court of appeals affirmed Respondent's convictions and sentence after performing a review of the case pursuant to the decision *Anders v. California*, 386 U.S. 738 (1967).

Respondent filed an application for PCR, contending that he did not voluntarily, knowingly, and intelligently enter a guilty plea. After a hearing, the PCR court granted relief. The PCR court held, "[u]pon examination of the entire record, it is apparent that [Respondent] never entered a guilty plea. He was never asked how he pled and never made any statement that could be construed as an admission of guilt." This Court granted the State's request for a writ of certiorari to review the PCR court's decision, and the State presents the following issue for review:

¹ Specifically, the State charged Respondent with assault and battery with intent to kill, first degree criminal sexual conduct, and first-degree burglary.

Did the PCR court err in finding that Respondent never entered a guilty plea?

STANDARD OF REVIEW

This Court gives great deference to the PCR court's findings and conclusions. *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000) (citing *McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995)). A PCR court's findings will be upheld on review if there is any evidence of probative value supporting them. *Cherry v. State*, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In the context of a challenge to a guilty plea, a PCR applicant must establish both that his plea counsel's representation was deficient and that there is a reasonable probability that but for counsel's deficient representation, the applicant would not have pled guilty. *Smith v. State*, 369 S.C. 135, 137, 631 S.E.2d 260, 261 (2006) (citing *Hill v. Lockhart*, 474 U.S. 52, 56-58 (1985)).

LAW/ANALYSIS

The State argues that the PCR court erred in finding that Respondent never entered a guilty plea. We agree.

There are two fatal flaws in the PCR court's order. The first relates to the court's conclusion that Respondent never made any statement that could be construed as an admission of guilt. As a primary matter, it is well-settled that a defendant need not admit guilt in order to enter a valid guilty plea. *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). Instead, a guilty plea need only represent a voluntary and intelligent choice among alternative courses of action open to the defendant. *Id.* For this reason, the implication that an admission of guilt is a necessary prerequisite to a guilty plea does not accurately characterize the law.

But this point is not determinative, because even if a guilty plea required an admission of guilt, Respondent admitted his guilt at the plea hearing. The solicitor at the hearing recounted the factual basis for the charges at length, and when the court asked Respondent if he had anything to offer, he responded, "This time it just got out of control that night, and I

wasn't going to kill her, I know I wasn't going to – it just got out of control, it got out of hand[,] and I'm sorry.” In light of this statement, the PCR court's conclusion that Respondent did not admit his guilt at the plea hearing is directly contrary to the evidence in the record.

The second flaw in the PCR court's order is in its attachment of unnecessary significance to the fact that the plea court never specifically asked Respondent “how do you plea?” The argument goes that the plea court's failure to ask this question is tantamount to a failure by Respondent to enter a plea. In our opinion, however, this failure is not fatal to the plea's validity.

Respondent incorrectly focuses only on the fact that the plea court did not specifically ask for his plea. The transcript of the plea hearing cannot be viewed in isolation, but must be considered in the full context of the record. *Harres v. Leake*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984); *State v. Lambert*, 266 S.C. 574, 579, 225 S.E.2d 340, 342 (1976). This context requires that we consider both the transcript and Respondent's conduct relating to the execution of the written plea sheet.

The plea sheet is instructive because it contains a written manifestation of Respondent's desire to plead guilty and was executed by Respondent immediately prior to the plea hearing. Respondent submitted the sheet to the court during the plea hearing, and the court examined Respondent regarding the information provided in the plea sheet during the hearing. Respondent indicated to the plea court that his attorney reviewed the plea sheet with him and that his answers were true and correct. This indication, that the answers provided in the plea sheet were correct, is the most instructive. This presumably applies to Respondent's affirmative response to the final question on the sheet which reads “Are you pleading guilty freely and voluntarily?” The plea sheet and Respondent's conduct at the plea hearing thus unequivocally expressed his desire to plead guilty.²

² Similarly, the plea court's imposition of a sentence clearly evidences that the court accepted Respondent's plea. *Cf. Gaines v. State*, 335 S.C. 376, 381, 517 S.E.2d 439, 441-42 (1999) (providing that “[t]he clear implication is that

Accordingly, we hold that the PCR court erred in determining that Respondent did not enter a guilty plea.

CONCLUSION

For the foregoing reasons, we reverse the PCR court's grant of relief.

MOORE, WALLER and BEATTY, JJ., concur. PLEICONES, J., concurring in result only.

the trial judge found the pleas voluntary[,] otherwise he would not have entered [the] sentences.”).

(footnote continues)

Interestingly, the record in the instant case also contains three “sentencing sheets” – documents executed by both Respondent and the plea court containing the caption of Respondent’s case, a criminal charge, an indication that Respondent has pled guilty to the listed charge, and a sentence for the listed charge. This evidence further undercuts the proposition that Respondent never pled guilty.

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

JONATHAN JAMES, #185547

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2011-CP-38 - 00487

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Allendale Correctional Institution
2. Name and location of Court which imposed sentence Orangeburg County Court of General Sessions; 190 Gibson Street, Orangeburg, SC 29115
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2001-GS-38-1916: Assault and Battery With Intent to Kill
 - (b) 2001-GS-38-1917: Criminal Sexual Conduct in the First Degree
 - (c) 2001-GS-38-1918: Burglary in the First Degree
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 7/15/01: Seventeen years imprisonment (concurrent)
 - (b) 7/15/01: Seventeen years imprisonment (concurrent)
 - (c) 7/15/01: Seventeen years imprisonment (concurrent)

ATTEST: TRUE COPY

Wynne B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Revised 3/2003

6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - 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. 10/23/03
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2003-UP-600
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of PCR Counsel
 - (b) _____

- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached Memorandum of Law
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Application for Post-Conviction Relief
 - ii. Appeal from Grant of PCR
 - iii. Petition for Writ of Habeas Corpus
 - iv. Appeal from Denial of Writ of Habeas Corpus
- (b) the name and location of the Court in which each was filed:
- i. Orangeburg County Court of Common Pleas
 - ii. Supreme Court of South Carolina
 - iii. United States District Court for the District of South Carolina
 - iv. United States Court of Appeals for the Fourth Circuit
- (c) the disposition thereof:
- i. Granted
 - ii. Reversed
 - iii. Denied
 - iv. Dismissed
- (d) the date of each such disposition:
- i. 6/7/06

- ii. 3/10/08
- iii. 2/17/09
- iv. 9/3/09
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. Jonathan James v. State, 377 S.C. 81, 659 S.E.2d 148 (2008)
 - iii. Jonathan James v. George T. Hagan, Warden, 2009 WL 398092 (D.S.C. 2009)
 - iv. Jonathan James v. George T. Hagan, Warden, 332 Fed.Appx. 35 (4th Cir. 2009)
- 14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
- 15. If you answered "yes" to (14) identify:
 - (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) See Attached Memorandum of Law
 - (b) _____
 - (c) _____
- 17. Were you represented by an attorney at any time during the course of:
 - (a) your arraignment and plea? Yes
 - (b) your trial, if any? _____
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of

sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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

(a) the name and address of each attorney who represented you:

i. Michael R. Culler, Jr., Esquire; Culler & Brown, LLP; 1540 Russell Street, SE Suite 103; Orangeburg, SC 29115

ii. Daniel T. Stacey, Esquire; 2409 Monroe Street; Columbia, SC 29205

iii. Evert Comer, Esquire; P.O. Box 386; Denmark, SC 29042

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

i. Plea and sentencing

ii. Direct appeal

iii. PCR and PCR appeal

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

Belated appeal from denial of PCR

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

No

STATE OF SOUTH CAROLINA)

County of Orangeburg)

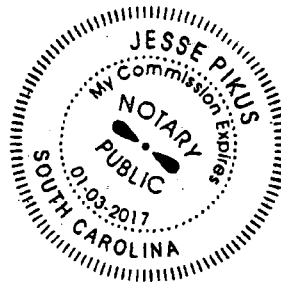
VERIFICATION

I, Jeremy A. Thompson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 20th
day of April, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: 1/3/17



2011 APR 21 11:27
FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

ATTEST: TRUE COPY

Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

JONATHAN JAMES, #185547,
Applicant,

v.

STATE OF SOUTH CAROLINA,
Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2011-CP-38-00487

MEMORANDUM OF LAW IN SUPPORT
OF APPLICATION FOR POST-
CONVICTION RELIEF

FILED FOR RECORD
WILLIAM B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2011 APR 21 A 11:23

NOW COMES the Applicant in the above-captioned action, hereby submitting this Memorandum of Law in Support of Application for Post-Conviction Relief. The Application is being filed jointly with this Memorandum. In support of his Application, the Applicant would show unto this Honorable Court the following:

FACTUAL AND PROCEDURAL HISTORY

The Applicant pleaded guilty to ABWIK, criminal sexual conduct in the first degree, and first degree burglary. After an unsuccessful direct appeal, the Applicant filed for Post-Conviction Relief. A hearing was held on the matter, in which he presented three issues: (1) ineffective assistance of counsel for failing to investigate a defense for the burglary charge; (2) ineffective assistance of counsel for failing to investigate a defense for the CSC charge; and (3) the guilty plea was invalid because he did not actually plead guilty. The Honorable James C. Williams, Jr., presiding circuit judge, issued an order granting the PCR which read, in its entirety:

This matter is before me on a PCR proceeding wherein the Defendant has raised an Ineffective Assistance of Counsel argument.

ATTEST: TRUE COPY

William B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Upon examination of the entire record, it is apparent that the Defendant never entered a Guilty Plea. He was never asked how he pled and never made any statement that could be construed as an admission of guilt.

THEREFORE, THIS MATTER IS REMANDED to the Court of General Sessions for further proceedings by the Trial Court.

IT IS SO ORDERED.

Although the State filed a Rule 59(e), SCRCP, motion to alter or amend the judgment, PCR counsel did not do so.

On the State's appeal, it was discovered that the court reporter's tapes of the PCR hearing had been stolen and no transcript of the proceeding could be produced. Although the State moved to have the case remanded, the Supreme Court denied the motion, finding that "based on Judge Williams' ruling, the only transcript necessary to provide full support for the State's argument and to allow for a meaningful review by this Court is the transcript of the guilty plea proceeding." James v. State, Sup. Ct. Order dated December 6, 2006. The Supreme Court then reversed Judge Williams' grant of relief, finding that although the Applicant never said the words "I plead guilty," several factors—including the Applicant's statements at the guilty plea and his signing of plea and sentencing sheets—led the Court to conclude that the Applicant had indeed pleaded guilty. James v. State, 377 S.C. 81, 659 S.E.2d 148 (2008). PCR counsel did not file a cross-appeal to allow the Applicant to argue his remaining issues that were not successful below, nor did PCR counsel include those issues in any argument presented to the Supreme Court.

Following the Supreme Court's decision, the Applicant filed for federal habeas corpus relief. His petition included the claims that had not been ruled upon by Judge Williams. The District Court dismissed these claims, finding that the Applicant's failure to file a Rule 59(e),

SCRCP, motion to preserve those claims for appeal, as well as his failure to raise those issues on appeal, resulted in the Petitioner procedurally defaulting on those claims. James v. Hagan, 2009 WL 398092 (D.S.C. 2009). The Fourth Circuit denied a certificate of appealability and dismissed the Applicant's appeal from the denial of habeas relief. James v. Hagan, 332 Fed.Appx. 35 (4th Cir. 2009). This second PCR follows.

DISCUSSION

In this Application, the Applicant contends that this Court should order that the Applicant receive a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).¹ However, a belated PCR appeal on the record as it stands would be virtually meaningless since there were no findings of fact or conclusions of law with respect to the Applicant's allegations of ineffective assistance of counsel for failing to investigate available defenses. Inasmuch as no Rule 59(e), SCRCP, motion was filed by PCR counsel following receipt of Judge Williams' order, the Supreme Court will not now review these claims on the merits in a PCR appeal. See Marlar v. State, 375 S.C. 407, 410, 653 S.E.2d 266, 267 (2007) ("Because respondent did not make a Rule 59(e) motion asking the PCR judge to make specific findings of fact and conclusions of law on his allegations, the issues were not preserved for appellate review"). Therefore, the Applicant makes an additional allegation of ineffective assistance of PCR counsel for failing to file a Rule 59(e), SCRCP, motion.

The Applicant argues that such an allegation is cognizable in PCR. In Aice v. State, 305 S.C. 448, 409 S.E.2d 392, the Supreme Court held that "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' allowing for a successive PCR application under §17-27-90." 305 S.C. at 451, 409 S.E.2d at 394. Ordinarily, this means that a PCR

¹ Such a claim is not barred by the statute of limitations found at S.C. Code Ann. §17-27-45. See Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999).

applicant cannot file a second PCR arguing ineffective assistance of PCR counsel. However, Austin provides that an allegation of ineffective assistance of PCR counsel *can* be raised where PCR counsel failed to file an appeal from the denial of PCR. Importantly, in Aice, the Supreme Court distinguished Aice from Austin, holding that

Austin never received a full “bite” at the [PCR] apple, *as he was prevented from seeking any review of the denial of his PCR application.* We therefore provided him with a remedy in order to effectuate the purposes of the Uniform Act and of the PCR rules. Conversely, Aice seeks to have more than one procedural “bite” at the apple. Aice has filed an original PCR application, *and has been allowed to seek review of the ruling against him.* We refuse to grant his request for a second chance....

Aice at 452, 409 S.E.2d at 395 (emphasis added).

The Applicant submits that the difference between Aice and Austin, as described by the Supreme Court, is not the opportunity to *file* a PCR appeal. Instead, the difference between the two decisions is that Aice wanted a second full PCR after the Supreme Court had completely reviewed the earlier decision against him whereas Austin was prevented from “seeking any review of the denial of his PCR application” in the Supreme Court by PCR counsel’s actions. Aice at 452, 409 S.E.2d at 395. Since the Supreme Court will **categorically** refuse to review any claims on PCR appeal that were not preserved by a Rule 59(e), SCRCP, motion, *see Marlar, supra*, any PCR appeal subject to Marlar’s procedural bar prevents a PCR applicant from “seeking any review of the denial of his PCR application.” Aice at 452, 409 S.E.2d at 395.

The Petitioner submits that under the logic of Aice and Austin, an allegation of ineffective assistance of PCR counsel for failing to file a Rule 59(e), SCRCP, motion is cognizable in a second PCR application. To hold otherwise is to argue that the grant of a belated PCR appeal that will be dismissed pursuant to Marlar satisfies the “one bite at the apple”

standard of Aice and Austin. Such a result is clearly absurd and runs contrary to the Supreme Court's reasoning in both decisions.

Finally, to effectuate the belated PCR appeal and to conserve judicial resources, the Applicant argues that this Court should hold a hearing to reconstruct the record of the first PCR hearing. The Applicant submits that this Court would have to hold such a hearing eventually, as the Supreme Court cannot review the claims that would be presented in a belated PCR appeal without a transcript. Furthermore, in order to provide findings of fact and conclusions of law for the Supreme Court to review on appeal, this Court must know what was presented at the first PCR hearing.

To summarize, the Applicant requests that this Court take the following actions:

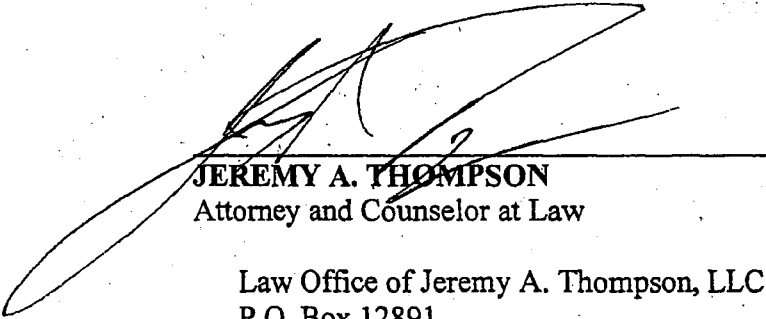
- (1) Find that PCR counsel was ineffective for failing to file a cross-appeal from Judge Williams' order granting the first PCR;
- (2) Find that PCR counsel was ineffective for failing to file a Rule 59(e), SCRCP, motion after receiving Judge Williams' order granting the first PCR to preserve the Applicant's remaining claims for appeal;
- (3) Hold a reconstruction hearing to provide a record for the belated PCR appeal where the remaining claims of ineffective assistance of plea counsel are addressed; and
- (4) Issue an order providing findings of fact and conclusions of law for the remaining claims of ineffective assistance of counsel.

The Applicant respectfully submits that taking these actions is the only way to effectuate the Supreme Court's holdings in Austin and Aice in this case.

CONCLUSION

WHEREFORE, having set forth his grounds, the Applicant respectfully requests that this Court grant the Applicant the relief requested in his Application for Post-Conviction Relief and this memorandum in support of that Application.

Respectfully submitted,



JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 FAX
jeremyatlaw@yahoo.com

ATTORNEY FOR APPLICANT.

This 20th day of April, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Jonathan James, #185547,

2011-CP-38-0487

Applicant,

v.

RETURN AND MOTION TO DISMISS

State of South Carolina,

Respondent.

The Respondent, making its Return to the Application for Post-Conviction Relief filed April 21, 2011, 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 Clerk of Court for Orangeburg County. The Applicant was true bill indicted at the October 15, 2011, term of the Orangeburg County Grand Jury for Criminal Sexual Conduct in the First Degree, Burglary in the First Degree, and Assault and Battery with Intent to Kill (2001-GS-38-1916/1917/1918). Applicant was represented by Michael Culler, Esquire. On July 15, 2002, Applicant pled guilty as indicted before the Honorable J. Ernest Kinard, Jr., and was sentenced to seventeen (17) years imprisonment on each charge, all to run concurrent.

A timely Notice of Appeal was filed and an appeal was perfected. The South Carolina Court of Appeals affirmed the decision of the trial court. Op. No. 2003-UP-600 (S.C. Ct. App. filed October 20, 2003). The remittitur was sent on November 21, 2003.

Applicant filed a timely application for post-conviction relief on October 19, 2004. (2004-CP-38-1327). In that application, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel; and
2. Lack of Due Process.

The State made its return on July 21, 2005. He was represented by Evert Comer, Esq., in the action. The matter was called for evidentiary hearing on April 25, 2006, at the Orangeburg County Courthouse at which time the record was left open to allow Respondent the opportunity to locate and submit a plea sheet utilized by the guilty plea court and the Applicant's attorney at the time of the plea. The plea sheet was subsequently made a part of the record in that case, and the Applicant submitted a Position of Applicant on Plea Sheet in response to such. On June 16, 2006, the Respondent submitted a Response to Applicant's Position. By order dated June 7, 2006, and served on Respondent on July 10, 2006, the Honorable James C. Williams, Jr., granted the application based on Applicant's failure to make "any statement that could be construed as an admission of guilt" during his plea. Respondent submitted a Motion to Reconsider or to Alter or Amend the Order pursuant to Rule 59(e), SCRPC, on July 17, 2006. The motion was denied by Judge Williams on August 15, 2006.

Thereafter, Respondent filed and served a timely Notice of Appeal on September 13, 2006. Due to the theft of the court reporter's notes from the evidentiary hearing, on November 8, 2006, Respondent requested the matter be remanded to reconstruct the record of the evidentiary hearing, or in the alternative for a new hearing, to be used on appeal. Applicant submitted a Return to the Motion to Remand November 20, 2006, objecting to Motion to Remand stating "[i]t is the position of the [Applicant] that a sufficient record exists due to the issues having been

fully briefed in documents of written argument, which are readily apparent, presented to the PCR court for this Court to make a meaningful review and ruling in this case.” By order dated December 6, 2006, the Supreme Court denied Respondent’s motion, allowing the Petition for Certiorari to go forward without a copy of the PCR hearing transcript after finding there was sufficient information without the transcript to conduct an appeal.

Respondent submitted its Petition for Writ of Certiorari to the Supreme Court March 6, 2007, which was followed by Applicant’s Return to the Petition on June 11, 2007. By order dated August 9, 2007, the Court granted the Petition and proceeded to briefing. After the submission of briefs, the Supreme Court reversed the PCR court’s grant of relief on the application, holding the PCR court erred in determining that Applicant did not enter a guilty plea. State v. James, Op. No. 26449 (S.C. S.Ct. filed March 10, 2008). The Remittitur was sent March 26, 2008.

Attached herewith and incorporated herein by reference are the records of the Orangeburg County Clerk of Court regarding the subject convictions, the Applicant’s records from the Department of Corrections, the Applicant’s plea transcript, and the Applicant’s appellate and prior PCR records.

II.

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

1. Ineffective Assistance of PCR Counsel for Failing to File a Rule 59(e) SCRCF Motion

- a. Applicant contends this court should order the Applicant received a belated PCR appeal pursuant to

Austin v. State; However, a belated appeal would be virtually meaningless since there were no findings of fact or conclusions of law with respect to the Applicant's allegations of ineffective assistance of counsel. No Rule 59(e) Motion was filed by PCR counsel following receipt of Judge Williams' order.

b. Applicant argues this Court should hold a hearing to reconstruct the record of the first PCR hearing...as the Supreme Court cannot review the claims that would be presented in a belated PCR appeal without a transcript.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Stalk v. State, 375 S.C. 289, 297, 652 S.E.2d 402, 405 (Ct. App. 2007) (citations omitted); 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.'" Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007) (citing Strickland v. Washington, 466 U.S. 668, 669 (1984); Butler v. State, 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. Id.

A two-pronged test is used to evaluate allegations of ineffective assistance of counsel. Dalton v. State, 654 S.E.2d 870, 873 (Ct. App. 2007). "In order to prove that counsel was ineffective, a PCR applicant must show that: (1) counsel's performance was deficient; and (2) there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Id. (citations omitted). "Furthermore, when a defendant's conviction is challenged, the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. Id. (citations omitted). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Id. (citations omitted). The applicant must overcome this strong presumption in order to obtain relief. Stalk, supra (citation omitted).

IV.

The current application for post-conviction relief should be dismissed as Applicant's claim that he received ineffective assistance of counsel on his prior post-conviction relief application is not a ground for relief.

Applicant contends that he is entitled to a belated appeal of his 2004 application for post-conviction relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), and that because no transcript exists from the original hearing to be submitted on appeal, he is also entitled to special hearing to reconstruct the record from that hearing. Further, Applicant alleges that because the PCR order does not address plea counsel's failure to investigate a potential alibi defense, and PCR counsel failed to file a Rule 59(e) motion to have such addressed, the belated

PCR appeal would be futile as the issue was not preserved for review on appeal. Applicant contends this omission by PCR counsel rendered his assistance ineffective, resulting in Applicant's inability to appeal.

Failure to File Rule 59(e) Motion

Respondent submits Applicant's brief, while creative, at its core is still simply a masked attempt to raise a claim of ineffective assistance of collateral counsel, which is not a cognizable ground for relief. There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under § 17-27-90." Aice v. State, 305 S.C. at 451, 409 S.E.2d at 394. Applicant's allegation that PCR counsel failed to file a Rule 59(e) Motion to Reconsider or in the Alternative to Alter or Amend is an obvious attempt to allege ineffective assistance of PCR counsel, and therefore must be dismissed.

Failure to File Cross-Appeal

The Supreme Court has stated that a belated PCR appeal may only be afforded to an Applicant "as a safeguard to the right to appeal" where he has been "denied the opportunity to seek appellate review". Austin at 454, 396. The Court in Austin went on to note, "[b]ut see Aice v. State, (citation omitted) submitted in conjunction with this Opinion, wherein we hold that once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel." In Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), the Court

referenced its decision in Austin, stating “[t]his Court has allowed successive PCR applications where the applicant has been denied *complete access* to the appellate process.” (emphasis added), Odom at 261, 755. “A PCR applicant is entitled to an Austin appeal if the PCR judge... finds either: (1) the applicant requested and was denied an opportunity to seek appellate review; or (2) the right to appellate review... was not knowingly and intelligently waived.” Odom at 262, 756. Applicant here does not make any allegation that he requested counsel file a cross appeal or that he somehow unintelligently waived his right to appellate review while the case moved on to the appellate process. While Respondent submits it is clearly the intention of the Court is to provide an avenue for PCR applicants to seek appellate review where they had previously been entirely denied access to the appellate process and such is not the case here, therefore this issue should be summarily dismissed.

Reconstruction Hearing

Applicant finally contends that, should this court grant him a belated appeal of his 2004 PCR application, he is entitled to a hearing to reconstruct the record from the 2005 PCR hearing in order to provide a complete and accurate record to the Supreme Court for the belated appeal. Respondent submits this allegation should be barred under the doctrine of *res judicata*, as the Supreme Court made a final determination on this issue when reviewing the matter for appeal. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. Further, Applicant is collaterally estopped from requesting this relief at this time, as Respondent previously raised the

reconstruction issue, which was opposed by Applicant, and the Court entered a final judgment on the matter. (See Richburg v. Baughman, 290 S.C. 431, 351 S.E.2d 164 (1986) (Under doctrine of collateral estoppel, once final judgment on the merits has been reached in prior claim, relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded in any subsequent action based upon a different claim.) Applicant is now attempting to relitigate the same issue in direct contrast to his original stance on the matter.

After filing its timely Notice of Appeal on September 13, 2006, Respondent made a Motion to Remand the PCR for a hearing to reconstruct the record as the court reporter's notes from the hearing had been stolen. Applicant responded by way of a document entitled "Return to the Motion to Remand" (attached herein) on November 20, 2006, in which he vehemently opposed the matter being remanded for such a purpose, stating "[i]t is the position of the [Applicant] that a sufficient record exists due to the issues having been fully briefed in documents of written argument, which are readily apparent, presented to the PCR court for this Court to make a meaningful review and ruling in this case...[Applicant] objects to the remanding of this matter to the PCR judge for a new post-conviction relief hearing or, alternatively, for a hearing to reconstruct the post-conviction relief hearing transcript." Thereafter, the Court issued an order in agreement with Applicant, stating "[t]he issue available for appeal is clear from Judge Williams' order. Moreover...the only transcript necessary to provide full support for the State's argument and to allow for a meaningful review...is the transcript of the guilty plea proceeding."

Therefore, Respondent submits this request by Applicant for a reconstruction hearing is barred by the doctrines of *res judicata* and collateral estoppel. Applicant is attempting to raise an issue previously raised by Respondent, responded to by Applicant, and ruled on by the Supreme Court. Further, Applicant's own objections secured the absence of the transcript, as Respondent

moved to reconstruct the record when the parties involved had full memory of the proceedings. For that reason, this Court should deny Applicant's request for a reconstruction hearing into the matter to provide a record on appeal, should this Court grant such an appeal.

V.

The Applicant has filed this application over nine (9) years after he was convicted and five (5) years since his PCR hearing. The Respondent submits that the doctrine of laches bars the Applicant from raising this allegation in a post-conviction relief application at this time. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Furthermore the South Carolina legislature has recognized this problem and instituted a one-year statute of limitations. See S.C. Code Ann. §17-27-45(a).

The Applicant's unexplained delay in pursuing this belated PCR appeal issue has greatly prejudiced the Respondent. Due to the five (5) year delay between the granting of his PCR and the filing of this allegation, it is unlikely that the attorneys' files will be available or that those involved in the case would have great memory of the case due to the lapse of time. Therefore, the

Court should summarily dismiss the Application based on the Applicant's lack of diligence in processing his claim for relief.

VI.

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

VII.

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

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

By: 
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November 1, 20 11

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

2011-CP-38-0487

JONATHAN JAMES, 185547,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

Jeremy A. Thompson, Esquire
 Law Office of Jeremy A. Thompson, LLC
 Post Office Box 12891
 Columbia, SC 29211

DATED this 1st day of November, 2011.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT

2011-CP-38-0487

Jonathan James,
Plaintiff,

V.

State of South Carolina,
Defendant.

Transcript of Record

May 21, 2012
Orangeburg, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge

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

Spencer, Esquire
Attorney for the State

Thompson, Esquire
Attorney for the Defendant

Hilda M. Jordan, CVR-M
Circuit Court Reporter

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I N D E X

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WITNESS/DESCRIPTIONPAGE NO.

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Hearing

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EXHIBITS:

8

No exhibits were marked to this proceeding.

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Certificate of Court Reporter 15

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1 MR. SPENCER: Your Honor, could be bring Jonathan James
2 out.

3 This is 2011-CP-38-487. This is Jonathan James verses
4 State. This is the successive application that was filed
5 April 21, 2011. State has a motion to dismiss this case.

6 Mr. James was indicted for, looks like CSC first
7 degree, burglary in the first degree, and assault and
8 battery with intent to kill. He was indicted, he pled
9 guilty, as I have indicated, and sentenced to 17 years in
10 prison on each charge and they all run concurrent. He did
11 enjoy the right to direct appeal, however, the conviction
12 and sentence was affirmed. The remittitur was issued in
13 2003. He filed a timely PCR application in October of 2004.
14 There was a hearing on it. He was represented by Mr. Evert
15 Comer. He was called for an evidentiary hearing in April
16 2006. Ultimately, Judge Williams had granted post
17 conviction relief. We had actually submitted a Rule 59(e)
18 on that which was denied. And there was a -- then we
19 appealed the post conviction relief and the Supreme Court
20 reversed the granting of the motion -- excuse me -- granting
21 relief and the conviction and sentence were reinstated.

22 During the pendency of the PCR appeal it was determined
23 that the actual record, the transcript of the PCR hearing
24 was, I believe it was stolen -- the tapes were stolen from
25 the court reporter and was unavailable. We -- the State, at

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1 that time made a motion to try and reconstruct the PCR
2 record, the record of the PCR hearing and that was opposed
3 by Mr. Comer and the Supreme Court found, denied our motion
4 to reconstruct the record and found there was sufficient
5 evidence for them to look at the record and determine
6 whether or not probative evidence supported the granting the
7 relief and they ultimately determined that it didn't and
8 reversed the grant of relief.

9 We have several motions in regards to this. We're
10 first moving under the statute of limitations. Any issues
11 raised should have been raised in one year from the
12 remittitur in 2003, should have been raised in the first
13 application, which also goes to our second motion in terms
14 of dismissing this as excessive. Further, we would also
15 move to dismiss this case under laches. Quite frankly we
16 would be prejudiced in what I believe they're seeking is to
17 review the other issues that were raised at the evidentiary
18 hearing at the first PCR application. We would be
19 prejudiced in our ability to defend our ability to
20 reconstruct the record in that, and that's how we're
21 prejudiced by the passage of time. By the same token, we
22 also move to dismiss on res judicata because there was an
23 opportunity to reconstruct the record. It may not have been
24 successful even then but at least contemporaneously in 2006
25 as opposed to now in 2012. Excuse me, I think that was more

1 in 2007 when they raised that motion. However, the number
2 of years ago we could have tried to reconstruct the record
3 and there was a chance it could have been done and it is
4 extremely unlikely now that the parties and the judge
5 involved in the potential reconstruction would be able to do
6 that. Absent a record, it's very difficult for us -- to
7 prejudice the State's ability to defend -- if there were to
8 be some sort of further review based on that first PCR
9 application.

10 My understanding about what is being raised today and
11 I'm certain we'll have Mr. Thompson speak to this, is that
12 they are seeking to review other issues that were raised in
13 the first evidentiary hearing that were not raised on
14 appeal, that were not raised in the cross-appeal or anything
15 of that nature, and, in that regards, that's not a
16 sufficient reason. That's based upon an allegation of
17 ineffective assistance of PCR counsel. That's not a valid
18 allegation that can be raised *Ace (sp) v. State*.
19 Ineffective assistance of PCR counsel is not a valid claim.
20 Martinez, of course, avoided the very issue of
21 constitutionality of ineffective assistance of counsel and
22 just determined that where there is a procedural default,
23 not the fault of the applicant and a petitioner that they
24 will review it in Federal habeas rather than using their own
25 procedural rules to dismiss it out of hand. But there is

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1 still no constitutional right to effective assistance of PCR
2 counsel. Further, Martinez makes clear that it applies to
3 the first court, not the second court, and what's required
4 as effective, what they're looking at is whether counsel --
5 whether the applicant had counsel assist them at evidentiary
6 hearing the first day of court is the way they phrased it,
7 and Martinez makes clear it doesn't apply to the second day
8 of court, it doesn't apply to appeal. So what could have
9 been raised on appeal, what could have been presented to the
10 Court by way of even Notice of Appeal or whatever, Martinez
11 does not reach, Martinez is fresh off the press. Martinez
12 is a March 2012 case. There's been a few cases that have
13 been interpreted since then, but I think they're all
14 consistent with the idea we're looking at the first
15 collateral evidentiary hearing and not anything thereafter.
16 So there is still no valid claim of ineffective assistance
17 of PCR counsel.

18 I believe Mr. Comer actually represented Mr. James both
19 at the evidentiary hearing and on appeal and further there
20 is no right to have something reviewed by the second court.
21 It's the first court and these issues were presented with
22 first court and one of them was good enough for the judge to
23 find or grant a relief. You know, was subsequently
24 reversed.

25 With that, we would renew all our motions to dismiss

1 and ask that this application be dismissed with prejudice.

2 THE COURT: Yes, sir.

3 MR. THOMPSON: May it please the Court, Your Honor.

4 I apologize for having confusing cases here today.

5 Essentially, what we're arguing for here today and what
6 we are requesting and there is kind of a logical succession
7 to them I suppose, is what we're requesting is first and
8 foremost a belated PCR appeal. That is the first basis for
9 filing this PCR. There is no statute of limitations for
10 filing a PCR based on getting a belated PCR appeal. And I
11 believe that's where their laches defense comes in because
12 they -- because they believe Mr. James waited too long to
13 file this PCR to get that belated PCR appeal, however, we
14 don't believe that there is any prejudice to them for filing
15 a belated PCR appeal because there wasn't -- and they
16 mentioned res judicata. Mr. Comer represented Mr. James on
17 the PCR and on the appeal. On appeal, the judge's order --
18 do you have a packet, did you give her a packet?

19 MR. SPENCER: I gave her a packet.

20 MR. THOMPSON: Yeah.

21 The Judge -- Judge Williams' order is one page long on
22 the granting Mr. James relief because he did not say I plead
23 guilty during the guilty plea process. There were other
24 issues raised by Mr. James at that first hearing.

25 Mr. Comer did oppose the request to remand but had Mr.

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1 Comer filed a cross-appeal to get Mr. James' other issues
2 that he had lost on in front of the Supreme Court, it's our
3 belief that the Supreme Court would have remanded for a
4 reconstruction hearing then. So it goes back to what we can
5 raise. That we can raise ineffective assistance of counsel
6 for failing to file a belated appeal as to why we're in this
7 posture here today.

8 Secondly, Your Honor, what we would be arguing is that
9 not only -- it's clear that Mr. James has a right to the
10 effective assistance of PCR counsel and that PCR counsel
11 must file an appeal or at least must speak with the
12 applicant regarding an appeal and obtain a waiver from the
13 client before deciding not to file an appeal. But we also
14 believe that -- again, there is no case one way or the other
15 holding this, and we're basically arguing an extension of
16 Austin that based on Marljar verses State, 375 SC 407 653
17 SE2d 266, which Marljar held that on appeal the Supreme Court
18 will not hear any issues, will not address any issues that
19 weren't covered in any order of dismissal or that a Rule
20 59(e) was not filed on following the order being issued. So
21 Mr. James would have been procedurally prevented from
22 raising -- let me rephrase that -- if you were to grant a
23 belated cross-appeal today Mr. James would lose that appeal
24 because there's nothing in the order, there's nothing in the
25 order raising his issues. And so that's why we would be

1 arguing Austin. In order to get your one bite of the apple
2 Mr. James did not have his full bite at the apple because he
3 did not have his appeal from the other issues he lost on.
4 That in order to preserve that -- because Marlar now, that
5 attorneys, PCR attorneys have to file a Rule 59(e) motion to
6 preserve the record because otherwise there is no bite at
7 the apple. You're giving someone a belated appeal, yes, but
8 there's nothing there -- there's nothing there for Mr. James
9 to pursue. So we are arguing that the rule in Austin
10 extends to filing 59(e) motions.

11 Now, Mr. James -- and we're not -- Mr. Spencer
12 referenced Martinez verses State. Mr. James, unfortunately,
13 pretty much got the bad end on both these, on both of these
14 cases. Mr. James went to federal court after he lost his
15 PCR appeal and was told by the federal courts your attorney
16 didn't file a 59(e). There is no transcript and it wasn't
17 raised on any appeal because your attorney didn't file an
18 appeal.

19 Well, now Mr. James can go into federal court because
20 of Martinez. If Martinez had been in place Mr. James could
21 make that argument now and argue that Mr. Comer was
22 ineffective and habeas -- he can't do it, it doesn't -- you
23 know, it's a federal decision, it's not a new constitutional
24 rule. It probably doesn't reset the statute of limitations
25 for federal court. So he's got to come here in State court

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1 to try and do it here. Try and get that belated appeal in
2 the first place. And I guess at the end, we don't have
3 everybody here for it. I think we're in agreement that it
4 wouldn't be proper to try and get everybody here for a
5 reconstruction hearing. But we would be asking for a
6 reconstruction hearing to provide some basis for the Supreme
7 Court to review the case, if, in fact, a belated appeal was
8 granted.

9 THE COURT: All right. Let me make sure I'm
10 understanding you.

11 So your position is that -- okay, so there's an appeal
12 of the PCR. He -- Judge Williams grants the relief that he
13 asks for?

14 MR. THOMPSON: Yes.

15 THE COURT: All right. They file a 59(e)?

16 MR. THOMPSON: Yes.

17 THE COURT: But Mr. Comer does not?

18 MR. THOMPSON: Correct.

19 THE COURT: Because he got what he asked for?

20 MR. THOMPSON: On that one issue. Yes.

21 THE COURT: Okay. So your position is on the other
22 issues he should have filed a 59(e)?

23 MR. THOMPSON: Yes.

24 THE COURT: All right. And -- Okay. All right.

25 MR. THOMPSON: And, again, Your Honor, going back to

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1 the laches defense. You know, Mr. James -- again, he went
2 into federal court. His federal -- he lost in the district
3 court and he appealed to the Fourth Circuit and lost that in
4 September of 2009. I will admit it's obviously been a
5 couple of years since that. I filed this PCR April 21,
6 2011. The reason why Mr. James and I could present Mr.
7 James' testimony on this point is -- the reason why Mr.
8 James did not file this PCR is because that he didn't
9 realize that the arguments that I'm making today could be
10 made. That these are -- I'm essentially arguing that you
11 create -- not you create, but that you recognize that there
12 is a right to effective assistance of PCR counsel and that
13 PCR counsel has to file a 59(e). Without that argument,
14 Your Honor, he's essentially got nothing to appeal. So he
15 wasn't aware that such an argument could be made.

16 THE COURT: Is that why he didn't file it within a
17 year; is that what you're saying?

18 MR. THOMPSON: Within a year of the Fourth Circuit's
19 decision. But even then within a year of the original PCR.
20 I'm not sure what date you want to start from because
21 technically speaking he didn't get a belated, he didn't get
22 an appeal right after his PCR was denied, so he could have
23 filed a PCR then, but he had -- he didn't realize that there
24 was a basis for filing a PCR until he hired me to review his
25 case and I realized what had happened and fashioned the

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1 appropriate arguments for him.

2 THE COURT: All right. Anything else?

3 MR. SPENCER: Your Honor, just one thing concerning
4 Martinez. As I think it's clear we've been arguing about
5 this since -- since we discussed it, is that merely a
6 federal habeas procedural rule that actually makes clear
7 that state's aren't even required still to appoint counsel
8 for an applicant who is having a hearing. Which is the case
9 in a lot of states. I think North Carolina for one. It's
10 just merely a procedural rule that would allow federal court
11 to review a state proceeding and that's what we're talking
12 about here is -- that's an argument that maybe could have
13 been raised in federal court based on what has ultimately
14 turned out to be Martinez. You know, I didn't have my case
15 reviewed here in federal court because my counsel didn't
16 file a 59(e) in state court. That's all Martinez -- that's
17 how Martinez reaches this case at all in a federal context,
18 and he's already been in federal court and I don't know
19 whether he gets to go back there or not. There's people
20 that know federal law better than I do that would handle it
21 for the state, but in this context, in a state proceeding
22 context he has had his bite at the apple. He had an
23 evidentiary hearing, his evidence was allowed to be
24 presented that he wanted. He enjoyed the assistance of
25 appellate counsel on the PCR appeal. Mr. Comer who actually

1 was the one who submitted a return to our petition for cert
2 and argued that the PCR court's findings should be supported
3 by -- should be affirmed because it was supported by
4 probative evidence.

5 So he's not entitled to Austin review. He's had his
6 bite at the apple, including the hearing, including the
7 appeal and we would move to dismiss on those grounds.
8 Further, we would be prejudiced because, I mean, trying to
9 reconstruct a record now some six years later is going to be
10 very difficult if it's at all possible and, you know, in
11 light of the fact that he did have his bite at the apple we
12 would re-raise laches, successive statute of limitations is
13 everything could and would have been raised back in 2004.

14 So I would just ask -- I do have one more case I want
15 to hand up to Your Honor. This is an Eighth Circuit case,
16 Eighth Circuit Court of Appeals. It's talking about -- and
17 I think it's more explicitly making the argument that I've
18 been making which is the distinction between first day and
19 second day of court, but it says it's clear that Martinez
20 did not concern attorney errors and other kinds of
21 proceedings including appeals from initial review,
22 collateral proceedings. Also unlike Martinez, Arnold Laury
23 (sp) had his day in Court. Deprivation of a second day does
24 not constitute cause. He didn't have deprivation in his
25 second day in this case. He did have his PCR appeal. but I

James v. State 5/21/12

14

1 would also make the Court aware of that Eighth Circuit case
2 that just came out in April.

3 With that, Your Honor, I would ask that State's motion
4 to dismiss be granted.

5 THE COURT: All right. I'm going to grant the State's
6 Motion to Dismiss based on the -- I find that the
7 application was beyond the statute of limitations, beyond
8 the year after the remittitur. Also that it successive.
9 Furthermore, that the State would be prejudiced at this
10 point in having to reconstruct the record, which is
11 something they asked for in 2007, at which time the
12 applicant objected to it.

13 So based on those grounds I am going to grant the
14 State's motion to dismiss and ask that Mr. Spencer prepare
15 the order.

16 All right. Thank you.

17 MR. SPENCER: Thank Your Honor.

18 MR. THOMPSON: Thank you.

19 THE COURT: Thank you.

20 (This proceeding was concluded.)
21
22
23
24
25

James v. State

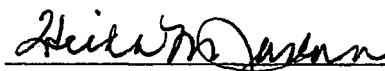
5/21/12

15

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

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CAUSE, IN THE COURT OF COMMON PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 21 DAY OF MAY, 2012.

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



Hilda M. Jordan, CVR-M

May 31, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. NO. 2011-CP-38-0487
COUNTY OF ORANGEBURG	)	
	)	
Jonathan James,	)	
S.C.D.C. No. 185547,	)	
	)	
Applicant,	)	ORDER OF DISMISSAL
	)	
VS.	)	
	)	
State of South Carolina,	)	ATTEST: TRUE COPY
	)	<i>Winnif B. Clark</i>
Respondent.	)	CLERK OF COURT
	)	ORANGEBURG COUNTY, SC

2012 AUG -3 AM 11:31

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 21, 2011. The State made its return and motion to dismiss on November 1, 2011. A hearing on the State's motion was convened at the Orangeburg County Courthouse on May 21, 2012, at which time Applicant was present in court and represented by Jeremy Thompson, Esquire. Respondent was represented by David Spencer of the South Carolina Office of the Attorney General.

This Court has before it the pleadings of both parties, the records from Applicant's prior PCR application, the Applicant's records from the South Carolina Department of Corrections, and the Clerk of Court's records.

PROCEDURAL HISTORY

Applicant is confined in the Department of Corrections pursuant to the orders of commitment by the Clerk of Court for Orangeburg County. Applicant was indicted at the October 15, 2001 term of the Orangeburg County Grand Jury for Criminal Sexual conduct in the First Degree, Burglary in the First Degree, and Assault and Battery with Intent to Kill (2001-GS-38-1916/1917/1918). Applicant was represented by Michael Culler, Esquire. On July 15, 2002, Applicant pled guilty as

indicted before the Honorable J. Ernest Kinard, Jr., and was sentenced to seventeen years imprisonment for each charge, all run concurrently.

A timely notice of appeal was filed and the Court of Appeals affirmed the conviction and sentence. Op. No. 2003-UP-600 (S.C. Ct. App., filed October 20, 2003). The remittitur was issued on November 21, 2003.

Applicant filed a PCR application on October 19, 2004. Applicant was represented by Evert Comer, Esquire at an evidentiary on April 25, 2006 at the Orangeburg County Courthouse before the Honorable James C. Williams, Jr. By order dated June 7, 2006, Judge Williams granted relief on the basis that Applicant failed to make "any statement that could be construed as an admission of guilt" during his plea. Respondent moved to alter or amend the judgment which was denied by Judge Williams on August 15, 2006.

Respondent appealed the grant of relief. Mr. Comer continued to represent Applicant on appeal. A transcript of the PCR hearing was unavailable due to the theft of the court reporter's notes. Respondent requested that the matter be remanded to reconstruct the record of the evidentiary hearing or in the alternative, a new hearing be held. Applicant, through his counsel, opposed the motion in his Return to the Motion to Remand. On December 6, 2006, the Supreme Court denied Respondent's motion. Subsequently, the Supreme Court granted Respondent's petition for writ of certiorari and after the submission of briefs, reversed the grant of relief. State v. James, Op. No. 26449 (S.C. S.Ct., filed March 10, 2008). The remittitur was sent on March 26, 2008.

DISCUSSION

The State moves to dismiss the application as successive, filed beyond the statute of limitations, and on the basis of laches. The State also makes the motion on the basis of res judicata.

Applicant argues that this application should not be dismissed because his prior PCR counsel failed to file a motion to alter amend pursuant to Rule 59(e) so that he could cross appeal the PCR application. Applicant relies on the recent United States Supreme Court case of Martinez v. Ryan, 132 S.Ct. 1309 (2012) to argue that PCR counsel's failure to file a rule 59(e) motion precluded James from cross-appealing and challenging the effective denial of relief on other grounds raised at the first PCR hearing. Applicant further moves to reconstruct the record so that Applicant may have a belated review of the issues raised at the first PCR hearing.

This Court finds that Martinez is inapplicable. First, Martinez is limited to the circumstance of whether the lack of adequate assistance of counsel at an initial review collateral proceeding may establish cause for a prisoner's procedural default on a claim of ineffective assistance at trial for purposes of federal review of a state conviction. Accordingly, Martinez is a procedural rule in federal court only and does not establish a constitutional right to assistance of counsel in a collateral proceeding. Second, Martinez explicitly does not apply to appeals from initial review collateral proceedings. Id., at 1320. Martinez was denied a collateral review proceeding because his appointed counsel for the collateral review action conceded by letter that Martinez did not have a colorable claim for post-conviction relief and the action was dismissed without a hearing. In the instant case, Applicant has had his day in court. As noted by the Eighth Circuit Court of Appeals, where an inmate has his day in court for a collateral proceeding, "deprivation of a second day does not constitute cause." Arnold v. Dormire, 675 F.3d 1082, 1087 (8th Cir. 2011).

Accordingly, this Court finds that the application should be dismissed as successive. Additionally, this Court also grants the State's motion to dismiss on the grounds of statute of

limitations. Applicant filed the instant application three years after the remittitur was issued from the appeal of his first PCR application.

This Court also grants the State's motion to dismiss on the grounds of laches. The State's motion to reconstruct the record was opposed when the State made the motion in close proximity to the original hearing, in December 2006. The State would be prejudiced in its ability to ensure an accurate record be reconstructed six years later. Further, this Court finds Applicant should be estopped from moving to reconstruct the record where Applicant, through his counsel, opposed the motion during the State's appeal of the first PCR application.

Accordingly, this Court dismisses this action with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes that this Application for Post-Conviction Relief must be dismissed with prejudice for the foregoing reasons.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied with prejudice;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of July, 2012.


DeAndrea G. Benjamin
Presiding Judge
1st Judicial Circuit

Columbia South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

JONATHAN JAMES, #185547,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2011-CP-38-0487

RULE 59(e), SCRCP, MOTION TO
ALTER OR AMEND

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG COUNTY, SC
2012 OCT 25 PM 3:19

NOW COMES the Applicant in the above-captioned matter, acting by and through undersigned counsel, hereby moving this Court to alter or amend its Order of Dismissal filed on August 3, 2012,¹ pursuant to Rule 59(e), SCRCP. In support of this motion, the Applicant would show unto this Honorable Court the following:

The Order of Dismissal finds that this case is successive, barred by the statute of limitations codified at S.C. Code Ann. §17-27-45(A), and is barred by laches. The Order of Dismissal, however, fails to identify the specific relief sought by the Applicant: that he should receive a belated PCR appeal. See Memorandum of Law in Support of Application for Post-Conviction Relief at 3 ("In this Application, the Applicant contends that this Court should order that the Applicant receive a belated PCR appeal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991)"). This failure to identify the relief sought by the Applicant is critical because the Applicant's primary ground for relief—a belated PCR appeal—is not successive. By definition, a second PCR alleging ineffective assistance of counsel pursuant to Austin cannot be successive because there is no possible way that the allegation could have been brought in the

¹ This order was not received by counsel for the Applicant until October 18, 2012. Inasmuch as this motion is filed within ten days of receipt of this order, this motion is timely. See Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order") (emphasis added).

Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

first PCR. See Aice v. State, 305 S.C. 448, 450, 409 S.E.2d 392, 394 (1991) (“[A]s long as it was possible to raise the argument in his first PCR application, an applicant may not raise it in a successive application”). Furthermore, a PCR alleging ineffective assistance of PCR counsel for failing to file an appeal from the denial of PCR is not subject to the one-year statute of limitations codified at §17-27-45(A). See Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999) (holding that Austin claims are not subject to §17-27-45(A)). Therefore, this Court has unmistakably erred in finding this Application successive and barred by the statute of limitations.

Moreover, this Court has erred in granting the Respondent’s motion to dismiss pursuant to the equitable defense of laches. This Court prevented the Applicant from presenting evidence and testimony from the Applicant and PCR counsel at the hearing convened in this case. This Court’s decision to do so is in direct contravention of the Supreme Court’s procedure for circuit courts presented with an Austin claim that is alleged to be barred by laches:

In cases where laches is properly raised as a defense to an Austin claim, the PCR court *shall hear evidence* on this defense at the same time *it hears the applicant's Austin claim on the merits*. In all such cases, the PCR judge shall make a specific finding on the laches issue as well as a specific finding on the Austin claim.

Whitehead v. State, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002) (emphasis added). This Court’s failure to hear evidence is critical as the Applicant could have testified about his efforts to obtain relief of his claims that were waived by PCR counsel’s failure to file a cross-appeal. Since Whitehead requires an evidentiary hearing before granting the State’s laches motion, this Rule 59(e) motion should be granted to permit such a hearing.

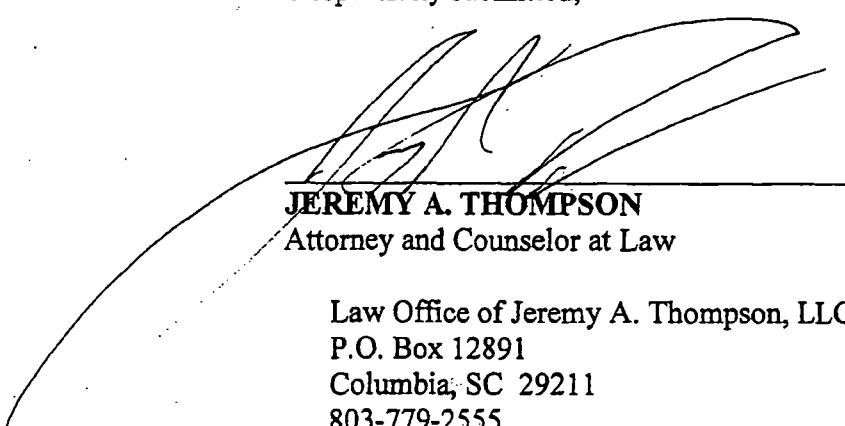
Additionally, the Applicant submits that this Court erred in granting the State’s laches motion. This Court’s primary basis for granting that motion laches is its conclusion that “[t]he State would be prejudiced in its ability to ensure that an accurate record [of the first PCR

hearing] be reconstructed six years later” and that the “Applicant should be estopped from moving to reconstruct the record where Applicant, through his counsel, opposed the motion during the State’s appeal of his first PCR application.” Order of Dismissal at 4. The Applicant respectfully submits this Court fails to take into consideration that the root cause of the Supreme Court’s denial of the State’s motion to reconstruct the record was that the claim raised on appeal could be evaluated purely on the guilty plea record. See James v. State, 377 S.C. 81, 659 S.E.2d 148 (2008). Had PCR counsel been effective and filed a cross-appeal for the Applicant, there can be no doubt that the Supreme Court would have ordered the hearing reconstructed during the appeal from the first PCR. In other words, this Court effectively holds that the Applicant is equitably foreclosed from seeking appellate review of the denial of his PCR claims due to his PCR attorney’s failure to file an appeal. Such a holding is in direct contravention of Austin and Odom, which exist to protect a PCR applicant from the failings of his attorney in relation to filing a PCR appeal. The Applicant respectfully submits that this Court should reconsider its findings with regard to laches, or, at the very least, reconsider its failure to grant the State’s motion without first holding an evidentiary hearing pursuant to Whitehead.

In conclusion, this Court holds that the Applicant’s PCR application is barred because it is successive, because it is filed after the one-year statute of limitations, and because of laches. This application is not successive. See Austin, supra. This application is not barred by the statute of limitations. See Odom, supra. This application required an evidentiary hearing before being barred by laches. See Whitehead, supra. Finally, this Court erred in granting the State’s laches motion. The Applicant respectfully contends that this Court should reconsider its Order of Dismissal that is incorrect as a matter of law with regard to all of its findings, and reconvene this matter for an evidentiary hearing.

WHEREFORE, having set forth his grounds, the Applicant respectfully requests that this Court alter or amend its Order of Dismissal pursuant to the arguments made above.

Respectfully submitted,



JEREMY A. THOMPSON
Attorney and Counselor at Law

Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 FAX
jeremyatlaw@yahoo.com

ATTORNEY FOR APPLICANT.

This 25th day of October, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

JONATHAN JAMES, #185547,)

Applicant,)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO.: 2011-CP-38-0487

CERTIFICATE OF SERVICE

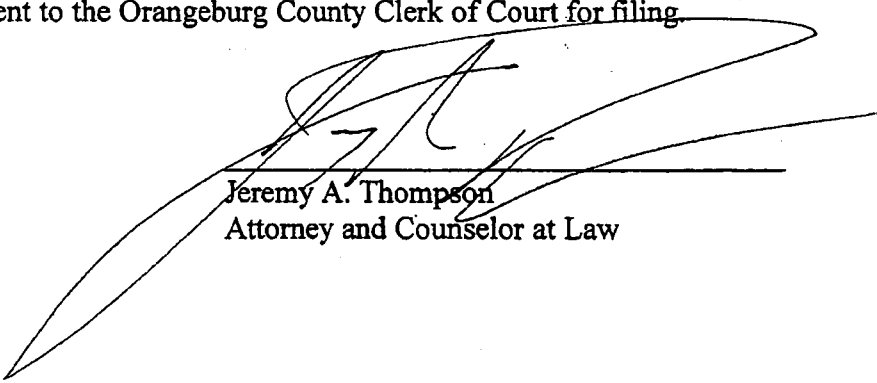
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WINNIE A. B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2012 OCT 25 PM 3:19

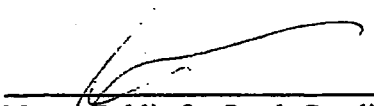
The undersigned hereby certifies that a true copy of the Rule 59(e), SCRPC Motion to Alter or Amend in the above matter has been served on the presiding judge this 25th day of October, 2012, by hand-delivery to:

The Honorable DeAndrea G. Benjamin
Presiding Judge, First Judicial Circuit
P.O. Box 192
Columbia, SC 29202

The original having been sent to the Orangeburg County Clerk of Court for filing.


Jeremy A. Thompson
Attorney and Counselor at Law

SWORN TO BEFORE ME this 28th day of
October, 2012.

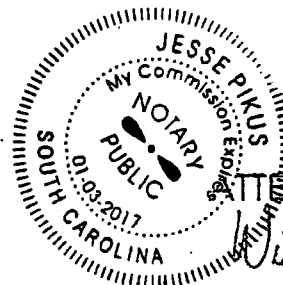


Notary Public for South Carolina

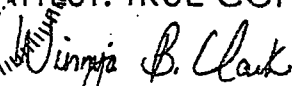
(L.S.)

My Commission Expires:

11/3/17



TEST: TRUE COPY


Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC



State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

DeAndrea Gist Benjamin
 Judge

Post Office Box 182
 1701 Main Street, Room 215
 Columbia, SC 29202
 Phone: (803) 576-1770
 Fax: (803) 576-1772
 dbenjaminj@sccourts.org

November 13, 2012

Orangeburg County Clerk of Court
 The Honorable Winnifa Clark
 1406 Amelia Street
 Orangeburg, SC 29118

FILED FOR RECORD
 CLERK OF COURT
 ORANGEBURG, SC

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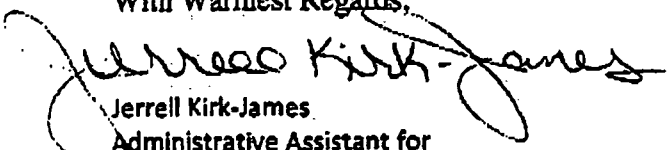
Dear Ms. Clark,

Please find enclosed an order "*Order Denying Rule 59(e)*" signed by Judge Benjamin case number **2011CP380487**.

Please file/clock the order with your office and return a clocked copy to our office in the enclosed envelope. Please mail a clocked copy to the appropriate parties. (envelope enclosed)

If you have any questions, comments, or concerns please contact our office as soon as possible.

With Warmest Regards,


 Jerrell Kirk-James
 Administrative Assistant for
 The Honorable DeAndrea Gist Benjamin
 Richland County Judicial Center
 1701 Main Street, Suite 215
 Columbia, SC 29201
 Phone: 803-576-1746
 Fax: 803-576-1777
www.sccourts.org
dbenjaminj@sccourts.org

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

Jonathan James,
S.C.D.C. No. 185547,

Applicant,

VS.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. NO. 2011-CP-38-0487

RECEIVED
11/23/12

ORDER DENYING
RULE 59(E) MOTION

2012 NOV 14 PM 10:38
FILED FOR F-5979
CLERK OF COURT
ORANGEBURG, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 21, 2011. The State made its return and motion to dismiss on November 1, 2011. A hearing on the State's motion was convened at the Orangeburg County Courthouse on May 21, 2012, at which time Applicant was present in court and represented by Jeremy Thompson, Esquire. Respondent was represented by David Spencer of the South Carolina Office of the Attorney General. After hearing arguments from both parties, this Court issued an Order of Dismissal on July 24, 2012 granting the State's motion to dismiss on Statute of Limitations, Successiveness, and Laches.

Applicant first argues that the order fails to address the claim that he is entitled to a belated appeal of his first PCR application. However, Applicant was granted PCR relief, so he was not entitled to a cross-appeal. Applicant references Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), which holds the statute of limitations does not apply where it is alleged that PCR counsel is ineffective for failing to file an appeal from the denial of a PCR application. That case is inapplicable, as Applicant was granted post-conviction relief, even if ultimately the PCR court's grant of relief was reversed. This Court noted that Applicant alleged that PCR counsel should have filed a Rule 59 motion to address the remaining allegations raised at the PCR hearing, and

appropriately rejected them as being a sufficient reason to hear a successive PCR application and rejecting the applicability of Martinez v. Ryan, 132 S.Ct. 1309 (2012) to the claim. This Court does not believe that Odom requires counsel to file a cross-appeal at Applicant's request if post-conviction relief is granted and rejects Applicant's invitation to extend Odom's holding in that manner.

Further, Applicant alleges that this Court should not have granted the State's motion on the ground of laches without an evidentiary hearing. This Court does not find a hearing as necessary, as it does not believe any pertinent facts are in dispute. Applicant filed this successive application five years after the hearing for his first PCR application and three years after the remittitur was issued from the conclusion of the State's appeal from his first PCR application. The transcript of the first PCR hearing was unavailable for appeal and the State's motion to reconstruct the record of the hearing was opposed by PCR counsel. Further, nine years have passed from Applicant's guilty plea hearing by the time the second PCR application was filed. These uncontested facts establish laches without a hearing. Accordingly, this Court finds insufficient reason has been presented to alter or amend its judgment and the Applicant's motion is denied.

IT IS THEREFORE ORDERED:

1. The Applicant's Rule 59(e), SCRCP motion is denied;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8 day of Nov, 2012.


 DeAndrea G. Benjamin
 Presiding Judge
 1st Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Presiding Judge

11-CP-38-0487

RECEIVED

DEC 20 2012

S.C. Supreme Court

JONATHAN JAMES, #185547,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITIONER'S EXPLANATION PURSUANT TO RULE 243(c), SCACR

NOW COMES the Petitioner in the above-captioned matter, acting by and through undersigned counsel, hereby submitting this explanation pursuant to Rule 243(c), SCACR, in conjunction with his Notice of Appeal in this matter. The Petitioner argues that "there is an arguable basis for asserting that the determination by the lower court" that the Petitioner's Application for Post-Conviction Relief was untimely and successive. Rule 243(c), SCACR.

In Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), this Court held that PCR applicants could file a second PCR alleging ineffective assistance of PCR counsel when PCR counsel failed to file an appeal from the denial of relief from the first PCR. In Odom v. State,

337 S.C. 256, 263, 523 S.E.2d 753, 756 (1999), this Court held that "[t]he one-year statute of limitations for PCR applications is not applicable to appeals filed pursuant to Austin." Taken together, Austin and Odom hold that a second PCR application, which is filed to seek belated review of the denial of the first PCR application, is not subject to being dismissed as successive or barred by the statute of limitations.

The Petitioner's first PCR was granted in part by the Honorable James C. Williams, Jr., on the basis that the Petitioner did not make an admission of guilt at his guilty plea proceeding. The Petitioner also raised additional grounds for relief which were not addressed in Judge Williams' order. PCR counsel did not file a Rule 59(e), SCRPC, motion to alter or amend the order, and he did not file a cross-appeal when the State filed an appeal from Judge Williams' order. This Court ultimately reversed Judge Williams' grant of PCR. See James v. State, 377 S.C. 81, 659 S.E.2d 148 (2008).

The Petitioner then attempted to pursue his arguments in federal court through a petition for a writ of habeas corpus. The federal courts found that the arguments that were not addressed in Judge Williams' order were procedurally barred because no Rule 59(e) motion was filed and because no appeal was taken from that order on the Petitioner's behalf. See James v. Hagan, 2009 WL 398092 (D.S.C. 2009); James v. Hagan, 332 Fed.Appx. 35 (4th Cir. 2009).

The Petitioner then filed his second PCR with the Orangeburg County Court of Common Pleas on April 21, 2011. In the second PCR, the Petitioner argued that PCR counsel was ineffective for failing to file a cross-appeal from Judge Williams' original order and that, in light of Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), PCR counsel was ineffective for failing to file a Rule 59(e) motion in order to preserve the Petitioner's arguments which were not addressed in the order for appellate review. See Attachment 3 at 3-5. Although an evidentiary

hearing was convened on May 21, 2012, before the Honorable DeAndrea G. Benjamin, Judge Benjamin ordered the Application dismissed without taking any testimony from PCR counsel or from the Applicant.

Judge Benjamin then filed an Order of Dismissal which granted the State's motion to dismiss on three grounds: (1) the statute of limitations; (2) the successive nature of the PCR application; and (3) laches.¹ See Attachment 1. However, this order did not acknowledge that the Petitioner was requesting a belated PCR appeal. The Petitioner then filed a Rule 59(e), SCRCF, motion, which argued that Judge Benjamin erred in failing to address the belated PCR appeal ground and that Judge Benjamin erred in each of her rulings. See Attachment 4. Judge Benjamin then filed an order denying the Rule 59(e) motion which set forth the central reasoning for her ruling on the statute of limitations and on successiveness:

Applicant references Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), which holds the statute of limitations does not apply where it is alleged that PCR counsel is ineffective for failing to file an appeal from the **denial** of a PCR application. That case is inapplicable, as Applicant was granted post-conviction relief, even if ultimately the PCR court's grant of relief was reversed. ... This Court does not believe that Odom requires counsel to file a cross-appeal at Applicant's request if post-conviction relief is granted and rejects Applicant's invitation to extend Odom's [sic] holding in that manner.

Attachment 2 at 1-2 (emphasis in original). The Petitioner respectfully submits that this Court should review this central holding because it is clearly contrary to this Court's holdings in Austin and in Odom.

¹ This explanation does not address Judge Benjamin's grant of the State's motion to dismiss on the basis of laches inasmuch as Rule 243(c), SCACR, does not require such an explanation. However, the Petitioner believes that Judge Benjamin erred in dismissing the PCR on this basis due to her failure to hold an evidentiary hearing on the issue pursuant to Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002), and because her ruling essentially holds that the Petitioner is equitably foreclosed from seeking appellate review of his first PCR due to his PCR attorney's failure to file an appeal. See Attachment 4 at 2-3.

Judge Benjamin concluded that this Court's decision in Odom, and, by extension, this Court's decision in Austin, are inapplicable where a PCR applicant, whose first PCR was granted in part, seeks belated appellate review of the denial of his remaining claims. In other words, Judge Benjamin categorically found that if a PCR is granted in part, then the PCR applicant loses the right to have an appeal from any unfavorable rulings. However, this Court has held repeatedly that this Court's rules and the Uniform Post-Conviction Procedure Act "contemplate an adjudication on the merits of the original petition, one bite at the apple as it were." Gamble v. State, 298 S.C. 176, 178, 379 S.E.2d 118, 119 (1989). This "bite at the apple" includes the ability to "seek[] ... review of the denial of [a] PCR application." Aice v. State, 305 S.C. 448, 452, 409 S.E.2d 392, 395 (1991); see also Odom, 337 S.C. at 261, 523 S.E.2d at 755 ("This 'bite' includes an applicant's right to appeal the denial of a PCR application").

This Court has always focused on the PCR applicant's right to have this Court review the denial of relief because it is the denial of relief which triggers the requirement that PCR applicants receive their "bite at the apple." This Court has never found that this right is categorically lost when relief is partially granted. Since the Petitioner never received an appeal from the denial of his PCR, he never received his full "bite at the apple." Consequently, Judge Benjamin erred by finding that Austin and Odom never apply to claims requesting a belated cross-appeal, and by determining that the Petitioner lost his right to an appeal when relief was partially granted.

Additionally, Judge Benjamin's ruling is short-sighted and could have far-reaching implications. Under Judge Benjamin's reasoning, any PCR applicant who receives any partial grant of relief, no matter how minimal, loses their right to an appeal. Therefore, for example, a juvenile defendant who was improperly sentenced to life without parole, but who also raises

challenges to the underlying conviction, loses his right to appeal the denial of relief on the underlying conviction if he is granted a new sentencing proceeding pursuant to Graham v. Florida, 130 S.Ct. 2011 (2010). Similarly, a defendant who was not told about a favorable plea agreement, but who also raises challenges to the underlying conviction, loses his right to appeal the denial of relief on the underlying conviction if he is granted relief pursuant to Lafler v. Cooper, 132 S.Ct. 1376 (2012). Finally, a defendant who challenges his conviction on the grounds that his attorney was ineffective for failing to move for a directed verdict and for failing to present a witness' testimony at trial loses his right to appeal the directed verdict issue if the PCR court grants relief on the witness issue. In each of these cases, the PCR applicant would likely prefer that each of the denied issues be reviewed by this Court. Under Judge Benjamin's reasoning, their right to have this Court review those issues is lost. Such a conclusion should be foreclosed by Austin and Odom.

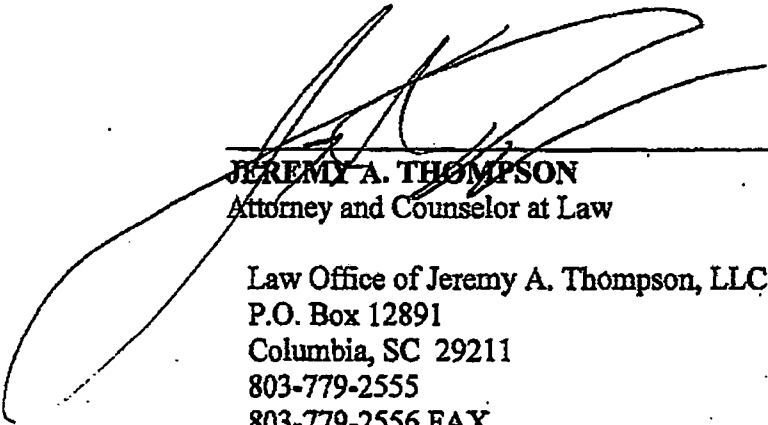
Judge Benjamin's conclusions are contrary to the letter and spirit of Austin² and Odom, and carry dangerous implications if followed by this Court or by other circuit court judges. Accordingly, the Petitioner respectfully submits that this Court should accept this appeal to review Judge Benjamin's findings.

² Judge Benjamin's ruling that the PCR should be dismissed as successive is egregiously incorrect as a matter of law, as the Petitioner could never have raised his claim that PCR counsel was ineffective for failing to file an appeal in his first PCR. See, e.g., Graham v. State, 378 S.C. 1, 3, 661 S.E.2d 337, 338 (2008) ("In order to be entitled to a successive PCR application, the applicant must establish that the grounds raised in the subsequent application could not have been raised in the previous application").

CONCLUSION

Inasmuch as the Petitioner never received his full "bite at the apple," his second PCR was not successive, see Austin, and was not barred by the statute of limitations, see Odom. Accordingly, Judge Benjamin erred in failing to hold a hearing and in denying relief in this matter. The Petitioner respectfully submits that this appeal should be permitted to proceed. See Rule 243(c), SCACR.

Respectfully submitted,



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