

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Mark Hayes, II, Circuit Court Judge

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S.C. Supreme Court

JOEY SHAWN WEIR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001695

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS
2011-GS-42-6946 et al.

THE STATE of SOUTH CAROLINA

-vs-

JOEY SHAWN WEIR,

Defendant.

TRANSCRIPT OF RECORD

January 6, 2012
Spartanburg, South Carolina

Ordered: May 5, 2012
Delivered: July 9, 2012

B E F O R E:

THE HONORABLE R. LAWSON MCINTOSH, Presiding Judge.

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

MR. ROBERT MEBANE, Esquire
Assistant Solicitor Appearing for the State -
Mr. Anthony Gilbert

MR. WES BOYD, Esquire
Assistant Solicitor Appearing for the State -
Mr. Joey Shawn Weir

MR. JAMES CHEEK, Esquire
Attorney Appearing for both Defendants

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

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State's Exhibits:	Marked:	Received:
(None)		

Defendant's Exhibits:	Marked:	Received:
(None)		

Court's Exhibits:	Marked:	Received:
(None)		

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9:46 A.M.

(Off-the-Record Comments)

(The Defendants stepped forward with their attorneys

) MR. MEBANE: May it please the Court, Your Honor?

THE COURT: Yes, sir.

MR. MEBANE: Standing before you is Anthony
Gilbert on indictment number 2011-GS-42-60 -- 6423
through 6430, breaking into motor vehicles.

Indictment 2011-GS-42-5641, burglary 2nd, non-
violent. And he's pleading to burglary 3rd. And 2011-GS-
42-5642, petit larceny.

The recommendation is concurrent sentencing, no
contact with the victim. He owes restitution. And he's
represented by Mr. James Cheek.

(Brief Pause)

THE COURT: So, there's eight (8) breaking into
motor vehicles?

MR. MEBANE: Yes, Your Honor, all true billed
indictments.

THE COURT: Thank you, sir.

(Brief Pause)

THE COURT: All right. Go to the next one.

MR. BOYD: If it please the Court, Your Honor. The
second individual standing before you is Joey Shawn Weir
here pleading -- there are nine (9) indictments.

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

1 The first two are true billed. The other seven he
2 has waived presentment on.

3 The first indictment is 11-4253. That's an
4 indictment for malicious injury to property to obtain
5 metals.

6 The second indictment is 2011-4254. That is a true
7 billed indictment for petit larceny.

8 The third indictment is 2011-6870. That is a
9 indictment for receiving stolen goods, valued between two
10 (\$2,000) and ten thousand dollars (\$10,000).

11 The third indictment is 2011-6941. That is an
12 indictment for malicious injury to real property to
13 obtain metals, valued between two (\$2,000) and ten
14 thousand dollars (\$10,000).

15 The next indictment is 11-6942. That is an
16 indictment for the same offense, malicious injury to
17 obtain metals, valued between two (\$2,000) and ten
18 thousand dollars (\$10,000).

19 The next indictment is 2011-6943, for the same
20 offense, malicious injury to obtain metals. And this
21 time it's a value -- damage of ten thousand dollars
22 (\$10,000) or more.

23 The next indictment is 2011-6944. That is an
24 indictment for malicious injury to obtain metal, valued
25 being between two -- two (\$2,000) and ten thousand

1 dollars (\$10,000).

2 The next indictment is 11-6945 for the same offense,
3 malicious injury to obtain metals two (\$2,000) to ten
4 thousand dollars (\$10,000).

5 The last indictment is 2011-6946, for the same
6 offense, malicious injury to obtain metals, valued
7 between two -- two (\$2,000) and ten thousand dollars
8 (\$10,000).

9 Your Honor, I'm also passing up three different
10 restitution orders for the victims in this case. There
11 are three, so, there are three separate orders from July
12 the 7th (phonetic).

13 Two of the orders have different co-defendants, so,
14 they'll remain joint and several. We put them on three
15 separate orders, Your Honor.

16 THE COURT: Okay.

17 MR. BOYD: I'm also passing up to the Court a plea
18 sheet. The Defense has received a copy of the same to
19 aid in the plea, Your Honor.

20 THE COURT: Thank you, sir.

21 (Brief Pause)

22 THE COURT: If you can, go ahead and swear them.

23 MADAM CLERK: Raise your right hands, please.

24 (Whereupon,

25 ANTHONY GILBERT & JOEY WEIR

1 being first duly sworn, testified as follows:)

2 THE COURT: Does Mr. Weir have a recommendation?

3 MR. BOYD: There's no recommendation, Your Honor.

4 (Brief Pause)

5 THE COURT: So, there are seven (7) injury to real
6 property to obtain metals?

7 MR. BOYD: Yes, Your Honor.

8 (Brief Pause)

9 THE COURT: All right. You're Anthony Levi Gilbert
10 (phonetic)?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: How old are you, Mr. Gilbert?

13 THE DEFENDANT: Twenty (20).

14 THE COURT: Twenty (20)?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: I finished the tenth (10th).

18 THE COURT: You finished the tenth (10th)?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have a GED?

21 THE DEFENDANT: Working on it, sir.

22 THE COURT: Before you went to jail, were you
23 employed?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Where did you work?

1 THE DEFENDANT: Roofing, Greer Construction
2 (phonetic).

3 THE COURT: I need you to speak up, please.

4 THE DEFENDANT: Greer Construction in roofing.

5 THE COURT: How long did you work there?

6 THE DEFENDANT: About three (3) months.

7 THE COURT: What did you do before that?

8 THE DEFENDANT: A couple of other jobs; Waffle
9 House and helped my mom clean houses.

10 THE COURT: Are you married?

11 THE DEFENDANT: No, sir, soon to be.

12 THE COURT: Do you have any children?

13 THE DEFENDANT: Yes, sir, one.

14 THE COURT: Where does your child reside?

15 THE DEFENDANT: Sir?

16 THE COURT: Where does your child live?

17 THE DEFENDANT: She lives with me and her mother.

18 THE COURT: You all live in your own household?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Mr. Gilbert, are you under the
21 influence of any medications, drugs, or alcohol today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Mr. Cheek, are you satisfied that Mr.
24 Gilbert is competent to plead guilty today?

25 MR. CHEEK: I am, Your Honor.

1 THE COURT: Thank you, sir. Mr. Gilbert, you're
2 pleading guilty to numerous offenses. The first being
3 burglary 3rd?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You understand first that, although
6 there may be a recommendation of a concurrent sentence,
7 I'm not bound by that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And I can sentence you to the full
10 amount provided by law; do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: In this case, under burglary 3rd, I can
13 give you up to five (5) years; do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And the petit larceny is thirty (30)
16 days. Breaking and entering motor vehicle times eight
17 (8) is 40 -- 45 years and thirty (30) days if my math is
18 correct; is that correct?

19 MR. MEBANE: Yes, sir.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Knowing that, and knowing I'm not bound
24 by any recommendation, do you want to go forward with
25 your plea today?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Thank you, sir.

3 (Brief Pause)

4 THE COURT: Mr. Joey Shawn Weir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I need for you to speak, so, I can hear
7 you.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And give me verbal responses, okay?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How old are you?

12 THE DEFENDANT: Thirty-three (33).

13 THE COURT: How far did you go in school?

14 THE DEFENDANT: Tenth (10th) grade.

15 THE COURT: And do you have a GED?

16 THE DEFENDANT: No, sir.

17 THE COURT: Before you were incarcerated, did you
18 have a job?

19 THE DEFENDANT: I cut grass for myself.

20 THE COURT: You cut grass for yourself?

21 THE DEFENDANT: I have about twenty-five (25)
22 different jobs I did.

23 THE COURT: How long have you been doing that?

24 THE DEFENDANT: About a year.

25 THE COURT: About a year?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did you ever file any tax returns on
3 that? Or was that all under the table?

4 THE DEFENDANT: No, it was under the table.

5 THE COURT: Are you married?

6 THE DEFENDANT: No, sir.

7 THE COURT: Do you have any children?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you under the influence of any
10 medications, drugs, or alcohol today?

11 THE DEFENDANT: No, sir.

12 THE COURT: Mr. Cheek, are you satisfied that Mr.
13 Weir is competent to plead guilty?

14 MR. CHEEK: I am, Your Honor.

15 THE COURT: Thank you, sir. All right. Mr. Weir,
16 you're pleading guilty to numerous charges as well, the
17 first being petit larceny; is that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: That carries thirty (30) days or up to
20 thirty (30) days;

21 Receiving stolen goods, which carries up to five (5)
22 years.

23 (Brief Pause)

24 THE COURT: And seven counts of injury to real
25 property to obtain non-ferrous metals, which carries five

1 (5) years.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Up to five (5) years. So, that's
4 thirty-five (35) -- forty (40) years and thirty -- and
5 thirty (30) days if my math is correct; is that correct?

6 MR. BOYD: Your Honor, one of the offenses is
7 valued over ten thousand dollars (\$10,000)..

8 THE COURT: What does that carry?

9 MR. BOYD: It would be another five (5) years.

10 THE COURT: Another five (5) years, so, forty-five
11 (45) years and thirty (30) days if you go forward with
12 your plea.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that I can sentence
15 you at -- to that amount today if you go forward?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Knowing that, do you want to go forward
18 with your plea?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right, Gentlemen, what I'm going to
21 do -- there's a waiver on Mr. Weir; is that correct?

22 MR. BOYD: For seven (7) of the offenses, Your
23 Honor.

24 THE COURT: Sir?

25 MR. BOYD: For seven (7) of them.

1 THE COURT: All right. Mr. Weir, seven (7) of your
2 indictments -- are they the injury to real property
3 charges?

4 MR. BOYD: The indictments 4253 and 54 have been
5 true billed. One is a metal and the other is petit
6 larceny.

7 THE COURT: Okay. Let me just double check.

8 (Brief pause while the Court examines documents.)

9 THE COURT: All right. Mr. Weir, the following
10 indictments have not been presented to the Spartanburg
11 County grand jury:

12 And those indictments are 2011-6870, receiving
13 stolen goods; 2011-6946, injury to real property to
14 obtain non-ferrous metals valued between two thousand
15 (\$2,000) and ten thousand (\$10,000);

16 Indictment 2011-6945, injury to real property to
17 obtain nonferrous metals between two (\$2,000) and ten
18 thousand dollars (\$10,000);

19 Indictment 2011-6943, injury to real property to
20 obtain nonferrous metal damage more than ten thousand
21 (\$10,000) or more;

22 Injury to real property under indictment 2011-6942
23 to obtain nonferrous metals between two (\$2,000) and ten
24 thousand dollars (\$10,000);

25 Indictment 2011-6941, injury to real property to

1 obtain nonferrous metals between two (\$2,000) and ten
2 thousand dollars (\$10,000);

3 And indictment 2011-6944, injury to real property to
4 obtain nonferrous metals between two (\$2,000) and ten
5 thousand dollars (\$10,000).

6 Mr. Weir, you have a right to have these indictments
7 I've just gone over with you presented to the Spartanburg
8 County grand jury.

9 In which event, at least twelve (12) out of eighteen
10 (18) grand jurors would have to vote to find that there
11 was probable cause or reasonable suspicion that a crime
12 has occurred to go forward or to true bill those
13 indictments.

14 Now, if you go forward with your plea today, you
15 will waive or lose the opportunity to have the grand jury
16 to consider those indictments I've just gone over with
17 you. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is that what you want to do?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you fully and voluntarily waive
22 presentment of the indictments I've just listed for you
23 in favor of pleading guilty this morning?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Thank you, sir. All right. I'm going

1 to start with Mr. Gilbert and, then, go to Mr. Weir.
2 Listen to my questions, stay in order if you would, and
3 give me the appropriate verbal response loud enough, so,
4 I can hear you and this lady right here (indicating) can
5 you hear you, okay?

6 THE DEFENDANT: (Mr. Gilbert) Yes, sir.

7 THE DEFENDANT: (Mr. Weir) Yes, sir.

8 THE COURT: Do you understand that each of you have
9 a right to a jury trial or trials on the charges
10 presently pend -- pending against you? Do you
11 understand?

12 THE DEFENDANT: Yes, sir.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: During that trial or trials, you would
15 be presumed innocent and the State would have to prove
16 each and every element of the charges pending against you
17 beyond a reasonable doubt before you could be found
18 guilty. Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, if you go forward with your plea
22 today, you will waive or lose your opportunity to have a
23 jury decide whether you're guilty or innocent; do you
24 understand that?

25 THE DEFENDANT: Yes, sir.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Is that what you want to do?

3 THE DEFENDANT: Yes, sir.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you each of you fully and
6 voluntarily waive your right to a jury trial in favor of
7 pleading guilty today?

8 THE DEFENDANT: Yes, sir.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Each of you have the following
11 Constitutional Rights: You have the right to confront
12 and cross examine any witness that the State presents to
13 testify against you;

14 You have the right to present evidence in your own
15 defense. You have a right to compel the attendance of
16 witnesses to court to testify on your behalf. And you
17 have the right to remain silent.

18 Have these rights been explained to you?

19 THE DEFENDANT: Yes, sir.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I'll tell you that, if either one of
22 you went to trial on any of these charges and you chose
23 not to testify, the judge would instruct the jury that
24 they couldn't consider your failure to testify whatsoever
25 because that's -- that's a protection by the Fifth

1 Amendment of the United States Constitution; do you
2 understand that?

3 THE DEFENDANT: Yes, sir.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Also, though, if you go forward with
6 your plea today, you can and you will be required, as a
7 condition of this plea, to admit your guilt; do you
8 understand?

9 THE DEFENDANT: Yes, sir.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Also, if you go forward with your plea
12 today, you will waive or give up the other Constitutional
13 protections I've just outlined for you; do you
14 understand?

15 THE DEFENDANT: Yes, sir.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Is that what you want to do?

18 THE DEFENDANT: Yes, sir.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do each of you freely and voluntarily
21 waive your Constitutional Rights in favor of pleading
22 guilty this morning?

23 THE DEFENDANT: Yes, sir.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Also, if either of you feel like you

1 have a defense or defenses, to any of these charges, you
2 will lose the opportunity to assert those defenses once
3 you plead guilty and I accept it; do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Also, if you contend that there has
7 been a violation of your Constitutional Rights up to this
8 point, you will lose the right to assert that alleged
9 violation if you go forward with your plea and I accept
10 it; do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you understood all the questions
14 I've gone over with you thus far?

15 THE DEFENDANT: Yes, sir.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions of me?

18 THE DEFENDANT: No, sir.

19 THE DEFENDANT: No, sir.

20 THE COURT: Do you have any questions of Mr. Cheek?

21 THE DEFENDANT: No, sir.

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you want to go forward with your
24 plea?

25 THE DEFENDANT: Yes, sir.

1 THE DEFENDANT: Yes, sir.

2 (Brief Pause)

3 (The individual questioning by the Court of Mr.
4 Gilbert was not transcribed.)

5 (Brief Pause)

6 THE COURT: Mr. Weir, under indictment 2011-4254,
7 are you guilty of petit larceny?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Under indictment 2011-68253, are you
10 guilty of injury to real property to obtain nonferrous
11 metals between two (\$2,000) and ten thousand dollars
12 (\$10,000)?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Under indictment 2011-6870, are you
15 guilty of receiving stolen goods valued between two
16 (\$2,000) and ten thousand dollars (\$10,000)?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Under indictment 2011-6946, are you
19 guilty of injury to real property to obtain nonferrous
20 metals valued between two (\$2,000) and ten thousand
21 dollars (\$10,000)?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Under indictment 2011-6945, are you
24 guilty of injury to real property to obtain nonferrous
25 metals valued between two (\$2,000) and ten thousand

1 dollars (\$10,000)?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Under indictment 2011-6943, are you
4 guilty of injury to real property to obtain nonferrous
5 metals valued at ten thousand (\$10,000) or more?

6 THE DEFENDANT: Yes, sir.

7 (Brief Pause)

8 THE COURT: Under indictment 2011-6942, are you
9 guilty of injury to real property to obtain nonferrous
10 metals valued between two (\$2,000) and ten thousand
11 dollars (\$10,000)?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Under indictment 2011-6941, are you
14 guilty of injury to real property to obtain nonferrous
15 metals to obtain -- valued at two -- between two (\$2,000)
16 and ten thousand dollars (\$10,000)?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Excuse me. Under indictment 2011-6944,
19 are you guilty of injury to real property to obtain
20 nonferrous metals valued between two (\$2,000) and ten
21 thousand dollars (\$10,000)?

22 THE DEFENDANT: Yes, sir.

23 (Pause)

24 THE COURT: All right. Mr. Weir, there's three
25 parties requesting restitution. If my math is correct,

1 they total up to fifty-eight thousand, eight hundred and
2 sixty dollars (\$58,860.00).

3 THE DEFENDANT: Yes, sir.

4 THE COURT: As I explained to Mr. Gilbert, you have
5 a right to a restitution hearing, in which event,
6 testimony would be taken to determine the proper amount
7 of restitution to be awarded if any.

8 On the other hand, you can waive or give up the
9 right to a restitution hearing and stipulate that the
10 amount being requested is the appropriate amount. Which
11 way do you want to go?

12 THE DEFENDANT: I'll waive it.

13 THE COURT: You want to stipulate it's the proper
14 amount?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: The amount in this case is fifty-eight
17 thousand, eight hundred and sixty dollars (\$58,860) if my
18 math is correct. Do you stipulate that is the
19 appropriate amount?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Or whatever the math should be?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you fully and voluntarily waive your
24 right to a restitution hearing?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay.

2 (Brief Pause)

3 THE COURT: Are you satisfied with the services of
4 your attorney?

5 THE DEFENDANT: (Mr. Gilbert) Yes, sir.

6 THE DEFENDANT: (Mr. Weir) Yes, sir.

7 THE COURT: Has he reasonably done all that you've
8 asked him to do?

9 THE DEFENDANT: Yes, sir.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: As we stand here in court today, is
12 there anything you contend that your attorney hasn't
13 done, on any of these cases, that he should have done
14 prior to coming to court today?

15 THE DEFENDANT: No, sir.

16 THE DEFENDANT: No, sir.

17 THE COURT: Are you totally and completely
18 satisfied with his services?

19 THE DEFENDANT: Yes, sir.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Cheek, have you met with each one
22 of these gentlemen to go over the elements of all charges
23 that they're pleading guilty to, to explain to them the
24 time they could get on all of these charges and explore
25 whether either one of these gentlemen have any defenses

1 to these charges, as well as explain to them their
2 Constitutional Rights?

3 MR. CHEEK: I have, Your Honor.

4 THE COURT: And do you feel like there is a
5 substantial factual basis for each of these gentleman's
6 decision to plead guilty to all charges?

7 MR. CHEEK: I do for both Mr. Gilbert and Mr. Weir,
8 Your Honor.

9 THE COURT: And do you agree with their decision to
10 plead guilty to all charges?

11 MR. CHEEK: Yes, sir, for both Defendants.

12 THE COURT: Very good. Solicitor, tell me about
13 Mr. Gilbert, please.

14 (The recitation of facts by the solicitor in Mr.
15 Gilbert's cases, his prior record, Mr. Cheek's statements
16 on his behalf, and Mr. Gilbert's sentencing were not
17 transcribed.)

18 THE COURT: All right. Tell me about Mr. Weir,
19 please.

20 MR. BOYD: If it please the Court, Your Honor.
21 I've provided a -- a plea chart for both the Court and
22 the Defense ---

23 THE COURT: Thank you. That's very helpful.

24 MR. BOYD: --- the court reporter and the clerk of
25 court can follow along -- along with that.

1 The very first indictment, which is 2011-4254, which
2 is the petit larceny of metals, Your Honor.

3 That occurred on January 11th of two thousand, eleven
4 (2011) at the Reiter Corporation (phonetic) building
5 located at 735 Landers Road (phonetic) here in
6 Spartanburg County.

7 The Defendant, with another individual, Mr. Terrell
8 Bishop (phonetic), dismantled air conditioning units on
9 the building. They took the coils and hid them in the
10 woods to collect later.

11 There was snow on the ground at this time of the
12 year, so, they left -- also left clear tracks from the
13 building to the coils.

14 The sheriff's office found the coils but left them
15 and installed deer (phonetic) cameras in the woods, Your
16 Honor. The cameras show the Defendants coming back later
17 to retrieve the coils.

18 Investigators, then, went to Omnisource, which is a
19 scrap metal yard here in the County, and found where the
20 Defendant had scrapped the stolen coils seventeen (17)
21 minutes after retrieving them from the woods.

22 The damage done by the Defendant totaled forty-six
23 thousand dollars (\$46,000), Your Honor.

24 Regarding indictment 6870, receiving stolen goods,
25 that occurred on July 4th of last year; two thousand,

1 eleven (2011).

2 The sheriff's office responded to a burglary at
3 Laser Services on McGuire Road here in Spartanburg
4 County. Items reported stolen included computer
5 monitors, keyboards, and a hard drive.

6 Later that day, the sheriff's office responded to a
7 disturbance call at the Motel 6 located at 105 Jones
8 Road, also in Spartanburg County.

9 The officers went to check on Room 259, which was
10 registered to the Defendant, Mr. Weir. Mr. Bishop from
11 the last indictment opened the door and spoke with
12 officers.

13 Also in the room were Bethany Harvey and Nicholas
14 Blackwood (phonetic). Officers obtained consent to
15 search the room and found the stolen items belonging to
16 Laser Services from the burglary earlier that day, Your
17 Honor.

18 Regarding indictment 2011-6944, the Defendant and a
19 co-defendant, Mr. Patrick McDowell, went to the property
20 of DDR, Incorporated, located at 2601 East Main Street
21 here in Spartanburg County.

22 They did damage to the victim's air conditioning
23 unit trying to take copper from that, Your Honor.

24 Regarding indictment 6945, that occurred on --
25 excuse me. The -- the last indictment I believe occurred

1 on July the 19th of this year [sic].

2 The next indictment, which is 6945, occurred on July
3 the 13th, three (3) days earlier, at Converse Deli at 551
4 East Main Street here in Spartanburg County.

5 They did the same thing where he tried to damage the
6 air conditioner unit to obtain copper from that unit,
7 Your Honor.

8 The damage in that incident occurred -- actually
9 totaled about six thousand dollars (\$6,000).

10 The next indictment, 6946, that occurred on July
11 19th, two thousand, eleven (2011), at the Children's
12 Advocacy Center located at 100 Washington Place here in
13 Spartanburg County.

14 He and the same Patrick, Patrick McDowell, went
15 there and destroyed the air conditioning unit to obtain
16 copper from the unit, Your Honor.

17 Regarding indictment 6941, that occurred on July the
18 12th of last year. On that incident, they -- the
19 Defendant went to the property of Pulliam Investments
20 located at 812 East Main Street in Spartanburg County and
21 did the same thing, where he took apart the air
22 conditioning unit to obtain the copper inside the unit,
23 Your Honor.

24 Regarding indictments -- indictment 6943, that
25 incident occurred on July the 12th as well, two thousand,

1 eleven (2011). The Defendant went to the property of CW
2 Financial located at 791 East Main Street in Spartanburg
3 County and damaged the air conditioning unit trying to
4 take copper from inside of it.

5 The last indictment, 6942, occurred on the same
6 date, July 12th, two thousand, eleven (2011). The
7 Defendant went to Century 21 located at 800 East Main
8 Street in Spartanburg County and damaged the air
9 conditioning unit of the victim trying to take copper
10 from inside the unit, Your Honor.

11 The -- the indictments, the last three, all of those
12 occurred on East Main Street here in Spartanburg County.
13 Those are on the same strip of land, so, we think --
14 Spartanburg Police think he went down the road doing one
15 after the other, Your Honor.

16 The restitution orders that you have, that's for the
17 amount of damage to the units. It would have been
18 sizeably more; however, several of the victims had
19 insurance policies that pay out less the deductibles.
20 The units were covered by insurance, Your Honor.

21 **THE COURT:** Thank you, sir. Mr. Weir, did you hear
22 the -- the facts recited on the record by the solicitor's
23 office?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Do you admit committing those acts?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What is Mr. Weir's prior record?

3 MR. BOYD: Yes, Your Honor, 1996, he had a simple
4 possession of marijuana, possession of drug
5 paraphernalia;

6 1997, he has a possession of controlled substance,
7 Schedule I to V. It's a first offense, Your Honor, and a
8 manufacturing offense, second -- excuse me -- second
9 offense of manufacturing, 1998.

10 Also in '98, he has another manufacturing second
11 offense and a possession first offense, a disorderly
12 conduct and underage possession of alcohol by a minor.

13 In 1999, he has a simple possession of marijuana,
14 two -- not simple possession, possession of -- he had
15 twenty-eight (28) grams or less of marijuana, which
16 wouldn't be simple, and a possession -- or a public
17 disorderly conduct;

18 1999, there is another possession of marijuana. Two
19 thousand, one (2001), possession of a controlled
20 substance, Schedule I to V. And, Your Honor, that's a
21 first offense.

22 Two thousand, one (2001), he has a public disorderly
23 conduct; two thousand, two (2002), he has a driving under
24 suspension, first offense;

25 Two thousand, three (2003), failure to stop for a

1 blue light, an open container; two thousand, six (2006);
2 a petit larceny;

3 Two thousand, seven (2007), burglary 3rd degree and a
4 grand larceny one (\$1,000) to five thousand dollars
5 (\$5,000).

6 And of June of last year, he received a shoplifting
7 offense, Your Honor.

8 (Brief Pause)

9 THE COURT: Do you have any victims here?

10 MR. BOYD: No, sir, Your Honor. I did speak with
11 each victim at length. They are aware of the amount of
12 restitution owed is significant.

13 They're aware of what they believe is a less than
14 good chance of recovering the restitution. They would
15 like to see their money, but they're -- came to the
16 reality of the situation, Your Honor.

17 (Brief Pause)

18 THE COURT: All right. Mr. Cheek?

19 MR. CHEEK: May it please the Court, Your Honor?
20 Your Honor, I've explained to my client that ordinarily I
21 would, in addition to trying to engage in plea bargaining
22 as far as the charges are concern, I also try to
23 encourage the State towards a recommendation at least of
24 concurrent sentencing.

25 However, in this case, Your Honor, I explained to my

1 client I did not do that because, after exploring the
2 concerns of the victims in this case and the nature of
3 these charges and the number of them, that it would be in
4 my client's best interest I would come before the Court
5 with a different request, Your Honor, as far as
6 sentencing was concerned.

7 And he agrees with that by my understanding, Your
8 Honor. He agrees with what I would ask the Court to do.
9 Your Honor, naturally, Your Honor, he would ask the Court
10 to consider a probationary sentence.

11 I've explained to him the likelihood of that,
12 however, today would be minimal because of his criminal
13 history and the length of his criminal history he could
14 expect that the Court would give him an active sentence.

15 In light of that, Your Honor -- and him facing the
16 reality of the situation, we're asking the Court to
17 consider some type of bifurcated sentencing or some type
18 of consecutive sentencing, a portion of it to be
19 suspended to give him, at some point, a realistic
20 opportunity to make payments on these offenses, Your
21 Honor, given the restitution amounts and given the number
22 of charges;

23 That he could not expect to be successful on
24 probation or parole in the future were that to come and
25 be granted him and have to pay all of these amounts on

1 one case of restitution under one indictment.

2 Your Honor, we ask the Court to consider that he is
3 expecting to receive some active sentence. He's prepared
4 for that; he prepared himself.

5 His family was made aware of the situation and they
6 are all prayerful for him and in support of him to the
7 extent that they can given the enormous amount of
8 restitution owed in the case.

9 The family is not prepared to pay the restitution
10 today. And my client appreciates that already. They
11 have explored what their minimal resources were to do
12 that.

13 Your Honor, my client did not really know these
14 people he was involved with for any extensive period of
15 time, less than a week.

16 He got himself into a situation where his desire for
17 drugs to fuel and satisfy his addiction brought him into
18 a community of people that were more experienced than he
19 in what they were engaging in, with a greater history of
20 being involved in this kind of activity.

21 But he found himself in the wrong place at the right
22 time to get into a lot of trouble.

23 Your Honor, he was staying at a Traveler's Inn and
24 rooming with one of his friends, who got the room at the
25 Traveler's Inn.

1 And, Your Honor, Your Honor being from a different
2 jurisdiction, I will tell you that there are four or five
3 downtown motels that we have here, all within oh, a block
4 and a half, a block of each other, that seems to draw a
5 number of people in -- in criminal activity.

6 And it was there unsuspecting that you are about to
7 some dangers you've never seen before. And it's
8 surprising because, Your Honor, right across the street
9 is First Presbyterian Church, Converse College, and
10 upscale law firms, but they are right there and have been
11 there for a number of years in the community.

12 We just ask the Court to consider he found himself
13 at the wrong place at the right time to get into a lot of
14 trouble. And he wants to try to work to pay back the
15 restitution.

16 He's asking for mercy and leniency in the
17 sentencing, Your Honor, in the sense that he understands
18 that he's got to go to prison.

19 We would just ask the Court to be merciful and
20 mindful that he, in the future, has the ability to make
21 the correct decision and choice to work to pay back these
22 monies.

23 As I explained to him this morning he's fortunate to
24 be in court today because, when you're operating on
25 these kinds of units, you can get yourself electrocuted

1 and killed. And we've had that experiences also, Your
2 Honor.

3 So, that seemed to have gotten his attention. I
4 hope that he's able to keep his attention focused as far
5 as parole and sentencing in the future, Your Honor.

6 We just ask the Court for mercy.

7 **THE COURT:** How many days has he been in jail, Mr.
8 Cheek?

9 **MR. CHEEK:** Your Honor, Mr. Weir has served one
10 hundred, sixty-seven (167) days towards sentencing in
11 these matters.

12 **(Brief Pause)**

13 **THE COURT:** Mr. Weir, do you have anything you want
14 to say?

15 **THE DEFENDANT:** I've been working in the kitchen
16 voluntarily since August, eight (8) hours a day, seven
17 (7) days a week.

18 And I'm just trying to keep myself prepared, if I
19 get the opportunity, to get out there and get me a job
20 and do the best I can to pay that restitution back.

21 And I'm sorry for the crimes I committed.

22 **THE COURT:** Thank you, sir. Anything else?

23 **THE DEFENDANT:** No, sir.

24 **(Pause while the Court fills out paperwork.)**

25 **(Off-the-Record Comments)**

1 (Off-the-Record Comments)

2 SENTENCING

3 THE COURT: All right. I find that the decision to
4 plead guilty was knowingly and intelligently and
5 voluntarily made with the advice of competent counsel
6 with whom he is well satisfied and find that there is a
7 substantial factual basis to all of the indictments in
8 this matter and his plea thereon. In fact, Mr. Weir
9 admitted to committing the acts in this matter.

10 Under indictment 2011-4254, petit larceny, the
11 sentence is thirty (30) days with credit for thirty (30)
12 days time served.

13 Under indictment 2011-6870, receiving stolen goods,
14 the sentence is five (5) years, probation for five (5)
15 years.

16 Indictments 2011-6870, 2011-4253, 2011-6946, 2011-
17 6945, 2011-6941, 2011-6944 will be concurrent and under
18 indictment 2011-4253, injury to real property to obtain
19 nonferrous metals, the sentence is five (5) years
20 suspended -- and probation for five (5) years.

21 Under indictment 2011-6946, injury to real property
22 to obtain nonferrous metals, the sentence is five (5)
23 years and probation for five (5) years.

24 I've given him a hundred and sixty-seven (167) days
25 credit on all of the indictments.

1 Under indictment 2011-6945, the sentence is five (5)
2 years, suspended on five years. And that charge is
3 injury to real property to obtain nonferrous metals.

4 Under indictment 2011-6941, injury to real property
5 to obtain nonferrous metals, the sentence is five (5)
6 years and probation for five (5) years; under indictment
7 2011-6944, the sentence is five (5) years and probation
8 for five (5) years.

9 (Brief Pause)

10 THE COURT: I'm going to amend my prior ruling.
11 Under indictment 2011-GS-42-6942, the sentence is five
12 (5) years and probation for five (5) years.

13 I'm going to amend my prior ruling. Under
14 indictment 2011-GS-42-6942, that shall also be
15 concurrent. Under that indictment, which is for injury
16 to real property to obtain nonferrous metals, the
17 sentence is five (5) years and probation for five (5)
18 years.

19 Under indictment 2011-6943, which is injury to real
20 property to obtain nonferrous metals ten thousand
21 (\$10,000) or more, the sentence is ten (10) years,
22 probation for five (5) years.

23 That sentence shall be consecutive to the other
24 sentences, so, that all of the indictments with the
25 exception of petit larceny shall be concurrent.

1 Then, he'll have another ten (10) year sentence on
2 top of that, which will be the injury to real property
3 ten thousand (\$10,000) or more.

4 I've signed the restitution order in the amount of
5 fifty-eight thousand, eight, sixty (\$58,860) or whatever
6 the appropriate amount is. Good luck to you.

7 MR. BOYD: Thank you, Your Honor.

8 MR. CHEEK: Thank you, Your Honor.

9 (Whereupon, the proceeding concluded at 10:49 a.m.)

10 (The Court went back on the record in Mr. Weir's
11 sentencing after a bench conference at 1:02 p.m.)

12 THE COURT: I spoke with the Solicitor's office in
13 the case of *State v. Joey Shawn Weir*, which is multiple
14 indictments which is 2011-6943, and the other indictments
15 previously announced.

16 Previously I sentenced Mr. Weir to -- under
17 indictment 6943 to ten (10) years. I made that
18 consecutive to concurrent five (5) year sentences I gave
19 on the other one, two, three, four, five, six, seven
20 indictments which carried five (5) years.

21 My intention was that he receive five (5) years,
22 and, then, another ten (10) years. So, he had a ten-year
23 sentence.

24 I also put probation, although I -- on each of those
25 even though I gave him the maximum amount of time.

1 I am going to amend my sentence. It's still my
2 intention that Mr. Weir receive a consecutive fifteen
3 (15) year sentence; however, under indictment 2011-6870,
4 which is receiving stolen goods, valued between two
5 (\$2,000) and ten (\$10,000) I am going to remain -- keep
6 that sentence, but that it will be five (5) years,
7 suspended on five (5) years probation.

8 However, I am providing that, that probation period
9 be tolled until he is released from prison.

10 In other words, once you come out, I'm putting you
11 on probation, so, you'll have time to pay your
12 restitution.

13 Also, on the other indictments that I gave him max
14 time, I am going to delete any probation requirement.

15 Mr. Cheek, do you have any questions about what I've
16 done?

17 MR. CHEEK: No, questions, Your Honor.

18 THE COURT: Do you -- Mr. Weir, do you speak with
19 Mr. Cheek about what I've done?

20 THE DEFENDANT: (Nods affirmatively.)

21 THE COURT: Okay. Go right ahead.

22 (Off-the-Record Discussion)

23 THE COURT: And let me, again, advise you, Mr.
24 Weir, you have ten (10) days to appeal this sentence.

25 THE DEFENDANT: Yes, sir.

1 (Off-the-Record Discussion)

2 MR. CHEEK: Your Honor, I -- I do need
3 clarification.

4 THE COURT: Yes, sir?

5 MR. CHEEK: Is it the Court's intention that Mr.
6 Weir do a total sentence of fifteen (15) years before he
7 goes on probation?

8 THE COURT: Well, I mean, I entered -- the
9 calculations, obviously, would be down to the Department
10 of Corrections.

11 My idea was he has five (5) years. He serves --
12 before he starts getting credit for the two year sentence
13 or vice versa, but that, once he gets through with those
14 times, the total of which will be fifteen (15) years,
15 then, he will begin a five-year period of probation under
16 one of the indictments that I am tolling the period of
17 probation on until he is released from prison.

18 MR. CHEEK: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Brief Pause)

21 (Off-the-Record Comments)

22 THE COURT: I've got one more I've got to correct.
23 I'm sorry.

24 (Whereupon, a bench conference was had with the
25 attorneys and the probation agent.)

CERTIFICATION

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1

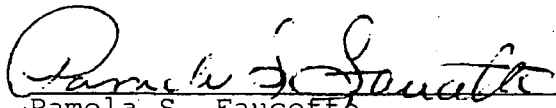
(Whereupon, the proceeding concluded.)

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 37, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

July 8, 2012



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

2012-CP-42-1292

FORM 5

STATE OF SOUTH CAROLINA

County of SPARTANBURGJORY SHAWN WEIR, #283049

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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 the answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear in 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 RIDGELAND CORRECTIONAL INSTITUTION OF THE
S.C. DEPT OF CORR., P.O. BOX NO.: 2039, RIDGELAND S.C. 29936
2. Name and location of Court which imposed sentence SPARTANBURG COUNTY
COURTHOUSE, P.O. BOX NO.: 3483, SPARTANBURG, S.C. 29304-3483
3. Name(s) of co-defendant(s) (if any) TERRILL BISHOP
PATRICK MCDOWELL
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011-GS-42-6942
(b) 2011-GS-42-6941

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- (c) 2011-GS-42-6942; 6945; 6946; 6944
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 6943... 10 YEARS CONSECUTIVE; 6942... 5 YEARS CONCURRENT
- (b) 6945... 5 YEARS CONCURRENT; 6946... 5 YEARS CONCURRENT;
- (c) 6944... 5 YEARS CONCURRENT
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:

i. NONE

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

- (c) the date of each such result:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) NONE

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2012-CP-42-1202

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE AMEND BRIEF AT PAGE TWO (2)
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE AMENDED BRIEF AT PAGE FIVE (5)-FOURTEEN (14)
- (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? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-conviction 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? _____
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. NONE
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. NONE

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(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?

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. _____

NONE

2012-CP-42- 1292

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) NONE
(b) _____
(c) _____

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

(a) your arraignment and plea? _____
(b) your trial, if any? _____
(c) your sentencing? _____
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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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. _____
ii. _____
iii. _____

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

i. _____
ii. _____
iii. _____

NONE

2012-CP-42-1292

19 State clearly the relief you seek in filing this application;
SEE AMENDED BRIEF AT PAGE FOURTEEN (14)

20 Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA,

County of SPARTANBURG

VERIFICATION

I, JOEY SHAWN WEIR, # 283049, 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.

JOEY SHAWN WEIR, # 283049

SWORN to and subscribed before me this 15th day of March, 2012.

Daniel K. Han (Notary Public) (I.S.)

My Commission Expires: 2/5/2017

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2012-CP-42-1292

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

I, TONY SHAWN WETZ, # 283040 [Signature] hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

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

[Signature]
Applicant

SWORN or affirmed to and subscribed before me this

15th day of March, 2012.

[Signature]
Notary Public

My Commission Expires: 2/15/2017

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2012-CP-42-1292

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
JOEY SHAWN WEIR, # 283049
APPLICANT,
VS.
THE STATE OF SOUTH CAROLINA
RESPONDENT(S)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO. 1

POST CONVICTION RELIEF
APPLICATION/AMENDMENTS
SUPPLEMENTAL BRIEF

JURISDICTION

THE ABOVE NAMED APPLICANT, JOEY SHAWN WEIR, # 283049, DO HEREBY MOVE UPON THIS HONORABLE COURT BY WAY OF SOUTH CAROLINA CODE OF LAW, SECTION, §§. 17-27-10 THROUGH 17-27-300, IN FILING THIS INSTANT POST CONVICTION RELIEF APPLICATION/AMENDMENT. THE APPLICANT FURTHER BRINGS THIS CAUSE OF ACTION UNDER VIOLATIONS OF HIS SIXTH AND FOURTEENTH AMENDMENT RIGHT GUARANTEED BY THE UNITED STATES AND SOUTH CAROLINA CONSTITUTION. THE APPLICANT ALSO BRINGS THIS ACTION UNDER VIOLATIONS OF ARTICLE 5-17 AND 5-21 OF THE SOUTH CAROLINA CONSTITUTION AND ARTICLE 5-21 OF THE UNITED STATES CONSTITUTION.

PROCEDURAL HISTORY

APPLICANT, JOEY SHAWN WEIR, # 283049, IS CURRENTLY CONFINED AT THE RIDGELAND CORRECTIONAL INSTITUTION OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS PURSUANT TO ORDERS OF COMMITMENT OF THE CLERK OF COURT FOR SPARTANBURG COUNTY. APPLICANT WAS INDICTED AT THE AUGUST, 2011, TERM OF THE COURT OF GENERAL SESSION FOR SPARTANBURG COUNTY FOR SIX COUNTS OF OBTAINING NONFERROUS METALS UNLAWFULLY. JAMES CHEEKS, ESQUIRE OF SPARTANBURG COUNTY BAR REPRESENTED APPLICANT ON ALL CHARGES. ON JANUARY 6TH, 2012, APPLICANT APPEARED BEFORE THE HONORABLE (NAME UNKNOWN AT THIS TIME) AND ENTERED A INVOLUNTARY GUILTY PLEA PURSUANT TO COURT APPOINTED COUNSEL'S ADVICE ON ALL ACCOUNTS. THE HONORABLE (NAME UNKNOWN AT THIS TIME) THEN SENTENCED APPLICANT TO TEN (10) YEARS CONSECUTIVE ON INDICTMENT NUMBER.: 11-GS-42-6943; FIVE (5) YEARS CONCURRENT TO INDICTMENT NUMBER.: 11-GS-42-6941; FIVE (5) YEARS CONCURRENT TO INDICTMENT NUMBER.: 11-GS-42-6944; FIVE (5) YEARS CONCURRENT TO INDICTMENT NUMBER.: 11-GS-42-6945; FIVE (5) YEARS CONCURRENT TO INDICTMENT NUMBER.: 11-GS-42-6946; FIVE (5) YEARS CONCURRENT TO INDICTMENT NUMBER.: 11-GS-42-6946; AND FIVE (5) YEARS CONCURRENT TO INDICTMENT NUMBER.: 11-GS-42-6942. COURT APPOINTED COUNSEL DID NOT FILE A DIRECT APPEAL. APPLICANT NOW FILES THIS POST CONVICTION RELIEF APPLICATION FOR RELIEF.

1.

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2012-CP-42-1292

CLAIM FOR RELIEF

WHETHER COURT APPOINTED COUNSEL DEPRIVED THE APPLICANT OF A SIXTH AND FOURTEENTH AMENDMENT RIGHT GUARANTEED BY THE SOUTH CAROLINA AND THE UNITED STATES CONSTITUTION WHEN COURT APPOINTED COUNSEL :

(1) FAILED TO OBJECT/WITHDRAW APPLICANT'S GUILTY PLEA WHEN TRIAL BENCH SENTENCED APPLICANT TO A CONSECUTIVE TEN (10) YEAR SENTENCE ON INDICTMENT NUMBER.: 2011-GS-42-6943, UNDER SOUTH CAROLINA CODE OF LAW, SECTION.§. 16-11-0523(B)(C)(2) ?

(2) FAILED TO REQUEST THE TRIAL BENCH FOR A CONCURRENT SENTENCING ON INDICTMENT NUMBER.: 2011-GS-42-6943 ?

(3) FAILED TO CONDUCT A FULL AND PROPER INVESTIGATION INTO THE MATTERS ?

(4) WHETHER TRIAL BENCH ABUSED ITS' DISCRETION IN SENTENCING APPLICANT TO A CONSECUTIVE TEN (10) YEARS UNDER SOUTH CAROLINA CODE OF LAW, SECTION.§. 16-11-0523(B)(C)(2) ?

(5) WHETHER TRIAL BENCH ABUSED ITS' DISCRETION AND FAILING TO RUN INDICTMENT NUMBER.: 2011-GS-42-6943, CONCURRENT WITH ALL OTHER INDICTMENTS, PURSUANT TO SOUTH CAROLINA CODE OF LAW, SECTION.§§. 17-25-50 AND 24-21-640 ?

(6) WHETHER APPLICANT'S PLEA OF GUILT TO INDICTMENT NUMBER.: 2011-GS-42-6943 VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY MADE ?

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SOUTH CAROLINA CODE OF LAW

SOUTH CAROLINA CODE OF LAW, SECTION 6. 16-11-0523, READS AS IN THE FOLLOWING MANNER :

(B) IT IS UNLAWFUL FOR A PERSON TO WILFULLY AND MALICIOUSLY CUT, MUTILATE, DEFACE, OR OTHERWISE INJURY ANY PERSON OR REAL PROPERTY, INCLUDING AND FIXTURE OR IMPROVEMENTS FOR THE PURPOSE OF OBTAINING NONFERROUS METALS IN ANY AMOUNT.

(C) A PERSON WHO VIOLATES THE PROVISION OF THIS SECTION IS GUILTY OF :

(1) MISDEMEANOR AND UPON CONVICTION, MUST BE FINED NOT MORE THAN FIVE HUNDRED DOLLARS OR IMPRISONED NOT MORE THAN THIRTY DAYS, OR BOTH, IF THE DIRECT INJURY TO THE PROPERTY, THE AMOUNT OF LOSS IN VALUE TO THE PROPERTY, THE AMOUNT OF REPAIRS NECESSARY TO RETURN THE PROPERTY TO ITS CONDITION BEFORE THE ACT, OR THE PROPERTY LOSS, INCLUDING FIXTURES OR IMPROVEMENT, IS ONE THOUSAND DOLLARS OR LESS;

(2) FELONY AND UPON CONVICTION MUST BE FINED IN THE DISCRETION OF THE COURT OR IMPRISONED NOT MORE THAN FIVE YEARS, OR BOTH, FOR THE DIRECT INJURY TO THE PROPERTY, THE AMOUNT OF LOSS IN VALUE TO THE PROPERTY TO ITS CONDITION BEFORE THE ACT, OR THE PROPERTY LOSS, INCLUDE FIXTURES OR IMPROVEMENT IS ONE THOUSAND DOLLARS, BUT LESS THAN FIVE THOUSAND DOLLARS; OR

(3) FELONY AND UPON CONVICTION MUST BE FINED IN THE DISCRETION OF THE COURT OR IMPRISONED NOT MORE THAN TEN YEARS, OR BOTH, IF THE DIRECT INJURY TO THE PROPERTY, THE AMOUNT OF LOSS IN VALUE TO THE PROPERTY, THE AMOUNT OF REPAIRS NECESSARY TO RETURN THE PROPERTY TO ITS CONDITION BEFORE THE ACT, OR THE PROPERTY LOSS INCLUDING FIXTURES OR IMPROVEMENT IS FIVE THOUSAND DOLLARS OR MORE.

3.

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CITATIONS OF LEGAL AUTHORITIES

THE RIGHT OF THIS APPLICANT TO COUNSEL IS BEYOND A FUNDAMENTAL RIGHT. GIDEON, 372 U.S. AT 344, 83 S.Ct. AT 796 (THE RIGHT OF ONE CHARGED WITH CRIME TO COUNSEL, MAY NOT BE DEEMED FUNDAMENTAL AND ESSENTIAL TO FAIR TRIALS IN SOME COUNTRIES, BUT IT IS IN OURS). WITHOUT COUNSEL THE RIGHT TO A FAIR TRIAL ITSELF WOULD BE OF LITTLE CONSEQUENCES. CRONIC, SUPRA, 466 U.S. AT 653, 104 S.Ct. AT 2043; UNITED STATES VS ASH, 413 U.S. 300, 307-308, 93 S.Ct. 2568, 2572-2573, 37 L.Ed.2d 619 (1973); ARGERSINGER VS.HAMLIN, 407 U.S. 25, 31-32, 92 S.Ct. 2006, 2009-2010, 32 L.Ed.2d 530 (1972); GIDEON, SUPRA, 372 U.S. AT 343-345, 83 S.Ct. AT 796-797; JOHNSON VS.ZERBST, 304 U.S. 458, 462-463, 58 S.Ct. 1019, 1022-1023, 92 L.Ed.2d 1461 (1938) AND POWELL VS.ALABAMA, 287 U.S. 45, 68-69, 53 S.Ct. 55, 63-64, 77 L.Ed.2d 158 (1932), FOR IT IS THROUGH COUNSEL THAT THE APPLICANT SECURE ALL HIS OTHER RIGHTS. MAINE VS.MOULTON, 474 U.S. 159, 168-170, 160 S.Ct. 477, 483-484, 88 L.Ed.2d 481 (1965)' CRONIC, SUPRA, 466 U.S. AT 653, 104 S.Ct. AT 2043;SEE ALSO SCHAEFER, FEDERALISM AND STATE CRIMINAL PROCEDURES, 70 HARV. L. REV 1,8 (1956) (OF ALL THE RIGHTS THAT THE APPLICANT HAS, THE RIGHT TO BE REPRESENTED BY COUNSEL IS BAR FAR THE MOST PERVASIVE, FOR IT AFFECTS HIS ABILITY TO ASSERT ANY OTHER RIGHT HE MAY HAVE. THE CONSTITUTION GUARANTEE OF COUNSEL; HOWEVER, CANNOT BE SATISFIED BY MERE FORMAL APPOINTMENT. AVERY VS ALABAMA, 308 U.S. 444, 446, 60 S.Ct. 321, 322, 84 L.Ed.2d 377 (1940). THE APPLICANT IS ENTITLED TO BE ASSISTED BY AN ATTORNEY, WHETHER RETAINED OR APPOINTED, WHO PLAYS THE ROLE NECESSARY TO ENSURE THAT THE TRIAL IS FAIR. STRICKLAND VS.WASHINGTON, SUPRA, 466 U.S. AT 686, 104 S.Ct. AT 2063. IN OTHER WORDS, THE RIGHT TO COUNSEL IS THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. EVITTS VS.LUVEY, 469 U.S. 387, 395-396, 105 S.Ct. 830, 835-836, 83 L.Ed.2d 821 (1985); STRICKLAND VS.WASHINGTON, SUPRA; CRONIC VS.U.S., SUPRA; CUYLER VS.SULLIVAN, 446 U.S. 335, 344, 100 S.Ct. 1708, 1716. 64 L.Ed.2d 333 (1980); AND MCMANN VS.RICHARDSON, 397 U.S. 759, 771, n. 14 90 S.Ct. 1441, 1449, n. 14, 25 L.Ed.2d 763 (1970)

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ARGUMENT ONE

COURT APPOINTED COUNSEL DEPRIVED APPLICANT OF A SIXTH AND FOURTEENTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, GUARANTEED BY THE SOUTH CAROLINA AND UNITED STATES CONSTITUTION WHEN COUNSEL FAILED TO OBJECT/WITHDRAW APPLICANT'S GUILTY PLEA, WHEN TRIAL BENCH SENTENCED APPLICANT TO A CONSECUTIVE TEN (10) YEAR SENTENCE ON INDICTMENT NUMBER.: 2011-GS-42-6943, UNDER SOUTH CAROLINA CODE OF LAW, SECTION.5. 16-11-0523(B)(C)(2).

APPLICANT ARGUES AND THE RECORDS BEFORE THIS COURT WOULD SHOW THAT APPLICANT WAS INDICTED FOR VIOLATING SOUTH CAROLINA CODE OF LAW, SECTION.5. 16-11-0523(B).SEE ATTACHED EXHIBIT (A). THE RECORDS BEFORE THE COURT WOULD FURTHER SHOW THAT APPLICANT WAS CONVICTED FOR VIOLATING SOUTH CAROLINA CODE OF LAW, SECTION.5. 16-11-0523(B), UNDER INDICTMENT NUMBER.: 2011-GS-42-6943,SEE ATTACHED EXHIBIT (A) THE RECORDS BEFORE THIS COURT ALSO SHOWS THAT APPLICANT WAS SENTENCED TO A CONSECUTIVE TEN (10) YEAR SENTENCE, PURSUANT TO SOUTH CAROLINA CODE OF LAW, SECTION.5. 16-11-0523(B)(C)(3), DUE TO THE PROPERTY DAMAGE WAS FIVE THOUSAND DOLLARS OR MORE.SEE ATTACHED EXHIBIT (A). AFTER A FULL AND PROPER INVESTIGATION INTO THE OFFENSE, COURT RECORDS REVEALED THAT THE DAMAGE ESTIMATED IN INDICTMENT NUMBER.: 2011-GS-42-6943, FOR C.W. FINICIAL WAS ONE THOUSAND DOLLARS.

PURSUANT TO SOUTH CAROLINA CODE OF LAW, SECTION.5. 16-11-0523(B)(C)(2), THIS PORTION OF THE STATUTE READS AS IN THE FOLLOWING MANNER :

(B) IT IS UNLAWFUL FOR A PERSON O WILFULLY AND MALICIOUSLY CUT, MUTILATE, DEFACE, OR OTHERWISE INJURY ANY PERSON OR REAL PROPERTY, INCLUDING AND FIXTURE OR IMPROVEMENT FOR THE PURPOSE OF OBTAINING NONFERROUS METALS IN ANY AMOUNT.

(C) A PERSON WHO VIOLATES THE PROVISION OF THIS SECTION IS GUILTY OF :

(2) FELONY AND UPON CONVICTION MUST BE FINED IN THE DISCRETION OF THE COURT OR IMPRISONED NOT MORE THAN FIVE YEARS, OR BOTH, FOR THE THE DIRECT INJURY TO THE PROPERTY, THE AMOUNT OF LOSS IN VALUE TO THE PROPERTY TO ITS CONDITION

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BEFORE THE ACT, OR THE PROPERTY LOSS, INCLUDING PICTURE OR IMPROVEMENT IF ONE THOUSAND DOLLARS, BUT LESS THAN FIVE THOUSAND DOLLARS;

PURSUANT TO THE RECORDS BEFORE THIS HONORABLE COURT, THE APPLICANT WAS SENTENCED OUTSIDE THE SENTENCING GUIDELINES OF SOUTH CAROLINA CODE OF LAW, SECTION. §. 16-11-0523(B)(C)(2), BECAUSE HE SHOULD HAVE NOT RECEIVED NO MORE THAN FIVE (5) YEARS IMPRISONMENT FOR INDICTMENT NUMBER.: 2011-CF-42-6943, DUE TO A FULL AND PROPER INVESTIGATION CONDUCTED BY THE COURTS, WHICH IS SHOWN IN THE RECORDS BEFORE THIS COURT. HOWEVER, TRIAL BENCH SENTENCE APPLICANT TO TEN (10) YEARS UNDER SOUTH CAROLINA CODE OF LAW, SECTION. §. 16-11-0523(B)(C)(3). SECTION. §. 16-11-0523(B)(C)(3) READS AS IN THE FOLLOWING MANNER :

(B) IT IS UNLAWFUL FOR A PERSON TO WILFULLY AND MALICIOUSLY CUT, MUTILATE, DEFACE, OR OTHERWISE INJURY ANY PERSON OR REAL PROPERTY, INCLUDING AND FIXTURE OR IMPROVEMENT FOR THE PURPOSE OF OBTAINING NONFERROUS METALS IN ANY AMOUNT.

(C) A PERSON WHO VIOLATES THE PROVISIONS OF THIS SECTION IS GUILTY OF :

(3) FELONY AND UPON CONVICTION MUST BE FINED IN THE DISCRETION OF THE COURT OR IMPRISONED NOT MORE THAN TEN YEARS, OR BOTH IF THE DIRECT INJURY TO THE PROPERTY, THE AMOUNT OF LOSS IN VALUE TO THE PROPERTY, THE AMOUNT OF REPAIRS NECESSARY TO RETURN THE PROPERTY TO ITS CONDITION BEFORE THE ACT, OR THE PROPERTY LOSS INCLUDING FIXTURE OR IMPROVEMENT IS FIVE THOUSAND DOLLARS OR MORE.

THE RECORDS BEFORE THIS HONORABLE COURT IS CLEAR. PURSUANT TO THIS COURTS FULL AND PROPER INVESTIGATION INTO THE MATTER CONCERNING THE COST AMOUNT OF THE DAMAGES DONE TO C.W. FINICIAL WAS IN FACT ONE THOUSAND DOLLARS. SEE ATTACHED EXHIBIT (B) THEREFORE, PURSUANT TO SOUTH CAROLINA CODE OF LAW, SECTION. §. 16-11-0523(B)(C)(2), THE MOST APPLICANT COULD BE SENTENCED TO IS FIVE (5) YEARS. THEREFORE THE TRIAL BENCH ABUSED ITS DISCRETION IN SENTENCING APPLICANT UNDER SOUTH CAROLINA CODE OF LAW, SECTION. §. 16-11-0523(B)(C) TEN (10) YEARS.

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A TWO PRONG TEST FOR DETERMINING EFFECTIVE ASSISTANCE OF COUNSEL HAS BEEN SET FORTH BY THE UNITED STATES SUPREME COURT IN STRICKLAND VS. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). FIRST A DEFENDANT MUST SHOW THAT COUNSEL'S PERFORMANCE WAS DEFICIENT UNDER THIS PRONG, [T]HE PROPER MEASURE OF ATTORNEY PERFORMANCE REMAINS SIMPLY REASONABLENESS UNDER PREVAILING PROFESSIONAL NORMS. 466 U.S. AT 668, 104 S.Ct. AT 2065. THE SECOND PRONG OF THE STRICKLAND TEST REQUIRES A SHOWING THAT THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENDANT TO THE EXTENT THAT " THERE IS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, THE RESULTS OF THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT. SEE CHERRY VS. STATE, 386 U.S.2d 624 (S.C. 1969); PITTMAN VS. STATE, 524 S.E.2d 625 (S.C. 1999) ALSO, A DEFENDANT WHO PLEAD GUILTY ON THE ADVICE OF COUNSEL MAY COLLATERALLY ATTACK THE PLEA ONLY BY SHOWING THAT (1) COUNSEL WAS INEFFECTIVE AND (2) THERE IS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S ERROR, THE DEFENDANT WOULD NOT HAVE PLEAD GUILTY. JOHNSON VS. CATOR, (S.C. 1999) 336 S.C. 354, 520 S.E.2d 617, SEE ALSO THOMPSON VS. STATE, (S.C. 2000) 340 S.C. 112, 531 S.E.2d 294 AND TURNER VS. STATE, (S.C.1999) 335 S.C. 382, 517 S.E.2d 442.

THE APPLICANT ARGUES AND THE RECORDS BEFORE THIS COURT WOULD SHOW THAT TRIAL COUNSEL FIRST MADE AN ERROR BY FAILING TO OBJECT TO THE TRIAL BENCH ABUSE OF DISCRETION IN SENTENCING APPLICANT TO A CONSECUTIVE TEN (10) YEARS, SEE ATTACHED EXHIBIT (A), UNDER SOUTH CAROLINA CODE OF LAW, SECTION 16-11-0523(B)(C)(3), WHEREBY THE PROPERTY AMOUNT DAMAGE TO C.W. FINICIAL UNDER INDICTMENT NUMBER.: 2011-CS-42-6943, ONLY AMOUNTED TO ONE THOUSAND DOLLARS, PURSUANT TO THIS COURT'S INVESTIGATIVE DOCUMENTS. SEE ATTACHED EXHIBIT (B) THE SECOND ERROR COUNSEL MADE WAS FAILING TO WITHDRAW APPLICANT'S PLEA OF GUILT WHEN TRIAL BENCH ABUSED ITS DISCRETION IN SENTENCING APPLICANT TO A CONSECUTIVE TEN (10) YEARS, KNOWING THAT APPLICANT WAS BEING SENTENCE UNDER THE WRONG STATUTE.

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APPLICANT SUBMITTER AND THE COURT RECORDS WOULD ALSO SHOW THAT TRAIL COUNSEL'S ERROR(S) DISPLAYS A REASONABLE PROBABILITY THAT OUT FOR COUNSEL, FAILING TO OBJECT AND/OR WITHDRAW THE PLEA OF GUILT, DURING AND AFTER THE JUDGE ABUSED ITS DISCRETION IN SENTENCING APPLICANT TO A CONSECUTIVE TEN (10) YEARS, PREJUDICED APPLICANT'S CAUSE, BECAUSE THE SENTENCING WAS OUTSIDE THE SENTENCING GUIDELINES OF SOUTH CAROLINA CODE OF LAW, SECTION.§. 16-11-0523(B)(C)(2). HAD APPLICANT KNEW THAT HE WOULD BE SENTENCED OUTSIDE THE GUIDELINES OF SOUTH CAROLINA CODE OF LAW, SECTION.§. 16-11-0523(B)(C)(2), HE WOULD HAVE INSISTED ON PROCEEDING TO TRIAL, WHEREBY HE WOULD HAVE ONLY RECEIVED FIVE (5) YEARS FOR THE VIOLATION OF SOUTH CAROLINA CODE OF LAW, SECTION.§. 16-11-0523(B)(C)(2), CLEARLY SHOWING THAT APPLICANT WOULD HAVE NOT PLEADED GUILTY TO A CONSECUTIVE TEN (10) YEARS, WHICH NOW HAS CAUSED APPLICANT TO BE SERVING A FIFTEEN (15) YEAR SENTENCE.

IN SLACK VS. STATE, (S.C. 1993) 311 S.C. 415, 429 S.E.2d 801, THE SOUTH CAROLINA SUPREME COURT HELD THAT " THE CIRCUIT COURT LACKED JURISDICTION TO ACCEPT THE DEFENDANT'S PLEA OF GUILT TO GRAND LARCENY WHERE THE INDICTMENT ALLEGED THAT THE PROPERTY STOLEN HAD A VALUE OF MORE THAN FIFTY (50) DOLLARS, BUT THE GRAND LARCENY STOLEN IN EFFECT AT THE TIME, THE OFFENSE WAS COMMITTED REQUIRED THE VALUE OF THE PROPERTY ALLEGEDLY STOLEN TO EXCEED TWO HUNDRED DOLLARS.

APPLICANT SUBMITTER THAT HIS CASE IS EQUALLY ACCEPTABLE TO SLACK VS.STATE. IN SLACK VS.STATE THE IMPORTANT FACTOR IN THE CASE IS THE WORD VALUE. HAD THE PROPERTY IN SLACK VS.STATE VALUE AMOUNTED TO TWO HUNDRED DOLLARS, THEN THE STATE WOULD HAVE HAD JURISDICTION IN ACCEPTING THE DEFENDANT'S PLEA OF GUILT. HOWEVER, THE VALUE OF THE PROPERTY ONLY AMOUNTED IN FIFTY (50) DOLLARS, WHICH REDUCES THE OFFENSE TO PETTY LARCENY. IN THIS INSTANT CASE WHICH IS SIMILAR, APPLICANT WAS SENTENCED TO A CONSECUTIVE TEN (10) YEARS UNDER SOUTH CAROLINA CODE OF LAW, SECTION.§. 16-11-0523(B)(C)(3), WHICH STATES THAT THE VALUE AMOUNT TO SUPPORT SUCH SENTENCING FOR SAID CODE HAD TO BE FIVE (5) THOUSAND DOLLARS OR MORE. PURSUANT TO THE INVESTIGATION CONDUCTED BY THIS COURT, THE RECORDS INDICATES THAT THE VALUE OF THE PROPERTY DAMAGE AMOUNTED TO ONE THOUSAND DOLLARS. SEE ATTACHED EXHIBIT (B), IN WHICH SOUTH CAROLINA CODE OF

B.

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LAW, SECTION. 4.16-11-0523(B)(C)(2), CLEARLY STATES THAT IF PROPERTY DAMAGE VALUE AMOUNTED TO ONE THOUSAND DOLLARS, BUT LESS THAN FIVE (5) THOUSAND DOLLARS, APPLICANT COULD ONLY RECEIVE FIVE (5) YEARS.

THEREFORE, PURSUANT TO ALL THE ABOVE, COUNSEL PROVIDED INEFFECTIVE ASSISTANT OF COUNSEL BY ERROR IN FAILING TO OBJECT/WITHDRAW APPLICANT'S PLEA OF GUILT, DUE TO TRIAL JUDGE'S ABUSE OF DISCRETION IN SENTENCING APPLICANT OUTSIDE THE GUIDELINES OF SOUTH CAROLINA CODE OF LAW, SECTION. 4.16-11-0523(B)(C)(2), AND APPLICANT'S CAUSE WAS PREJUDICED BECAUSE HE WAS SENTENCED TO MORE TIME IN PRISON, THEN WHAT IS SUPPORTED BY LAW.

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A R G U M E N T T W O

COURT APPOINTED COUNSEL DEPRIVED APPLICANT OF A SIXTH AND FOURTEENTH AMENDMENT RIGHT GUARANTEED BY THE SOUTH CAROLINA AND UNITED STATES CONSTITUTION WHEN COUNSEL FAILED TO REQUEST THE TRIAL JUDGE FOR A CONCURRENT SENTENCING ON INDICTMENT NUMBER.: 2011-CS-42-6943.

PURSUANT TO THE RECORDS BEFORE THIS HONORABLE COURT, THE INDICTMENTS APPLICANT PLED GUILTY TO AND WAS CONVICTED AND SENTENCE ON OCCURRED ON THE FOLLOWING DATES :

(1) INDICTMENT NUMBER.: 2011-CP-42-6943...DATE OF OFFENSE
:07/12/11...CONSECUTIVE SENTENCE

(2) INDICTMENT NUMBER.: 2011-CS-42-4941...DATE OF OFFENSE
:07/12/11...CONCURRENT SENTENCE

(3) INDICTMENT NUMBER.: 2011-CS-42-6942....DATE OF OFFENSE
:07/12/11...CONCURRENT SENTENCE

(4) INDICTMENT NUMBER.: 2011-CS-42-6945...DATE OF OFFENSE
:07/13/11...CONCURRENT SENTENCE

(5) INDICTMENT NUMBER.: 2011-CS-42-6946...DATE OF OFFENSE
:07/19/11...CONCURRENT SENTENCE

(6) INDICTMENT NUMBER.: 2011-CS-42-6944...DATE OF OFFENSE
:07/19/11...CONCURRENT SENTENCE

PURSUANT TO SOUTH CAROLINA CODE OF LAW, SECTION. §. 17-25-50, THIS STATUTE OF
LAW, READS AS IN THE FOLLOWING MANNER :

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"IN DETERMINING THE NUMBER OF OFFENSES FOR THE PURPOSE OF IMPOSITION OF SENTENCE, THE COURT SHALL TREAT AS ONE OFFENSE ANY NUMBER OF OFFENSES WHICH HAVE BEEN COMMITTED AT TIMES SO CLOSELY CONNECTED IN POINT OF TIME THAT THEY MAY BE CONSIDERED AS ONE OFFENSE, NOTWITHSTANDING UNDER THE LAW THEY CONSTITUTE SEPARATE AND DISTINCT OFFENSES."

FURTHER, PURSUANT TO SOUTH CAROLINA CODE OF LAW, SECTION 17-25-50 AND 24-21-640, A PORTION OF THIS STATUTORY LAW READS AS IN THE FOLLOWING MANNER :

" PROVIDED THAT WHERE MORE THAN ONE INCLUDED OFFENSE SHALL BE COMMITTED WITHIN A ONE-DAY PERIOD OR PURSUANT TO ONE CONTINUOUS COURSE OF CONDUCT, SUCH MULTIPLE OFFENSES SHALL BE TREATED FOR PURPOSES OF THIS SECTION AS ONE OFFENSE."

A CONVICTED DEFENDANT'S CLAIM THAT COUNSEL'S ASSISTANCE WAS SO DEFECTIVE AS TO REQUIRE REVERSAL OF THE CONVICTION REQUIRES THAT THE DEFENDANT SHOW FIRST, THAT COUNSEL'S PERFORMANCE WAS DEFICIENT AND; SECOND, THAT THE DEFICIENT PERFORMANCE PREJUDICED THE DEFENSE SO AS TO DEPRIVE THE DEFENDANT OF A FAIR TRIAL. STRICKLAND VS. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052 (1984), SEE ALSO BUTLER VS. STATE, 286 S.C. 441, 334 S.E.2d 813 (1985)

APPLICANT ARGUES AND THE RECORDS BEFORE THIS HONORABLE COURT WOULD SHOW THAT IN ACCORDANCE WITH STRICKLAND VS. WASHINGTON, SUPRA, THE FIRST PRONG, COUNSEL DID MAKE AN ERROR, PURSUANT TO SOUTH CAROLINA CODES OF LAWS, SECTION 17-25-50 AND 24-21-640, BY FAILING TO REQUEST THE TRIAL BENCH FOR INDICTMENT NUMBER.: 2011-GS-42-6943, TO BE RAN CONCURRENT WITH INDICTMENT NUMBER(S): 2011-GS-42-6941; 6942; 6945; 6946; AND 6944.

HERE IN THIS CASE IT IS CLEARLY SHOWN ON COURT RECORDS THAT INDICTMENT NUMBER(S): 2011-GS-42-6943; 6941; 6942; AND 6945, WERE ALL COMMITTED WITHIN TWENTY-FOUR (24) HOURS DUE TO A CONTINUOUS COURSE OF CONDUCT CONTROLLING BY DRUGS. APPLICANT SUBMITS THAT HE HAD BEEN UP FOR SEVEN (7) DAYS DRUGS, COMMITTING THE OFFENSES HE WAS CONVICTED OF. SEE ATTACHED EXHIBIT (C)

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THEREFORE, INDICTMENT NUMBER(S) : 2011-CS-42-6946 AND 6944, IS ALSO TO BE CONSIDERED AS A CONTINUOUS COURSE OF CONDUCT. ALSO, PURSUANT TO SECTION §. 17-25-50, THIS CONSTITUTES ONE OFFENSE BECAUSE THE OFFENSES WERE SO CLOSELY CONNECTED.

IN LEGARA VS. STATE, 506 S.E.2d 472 (S.C. 1998), THE SOUTH CAROLINA SUPREME COURT HELD THAT "LEGARA FAILED TO SHOW PREJUDICE BY COUNSEL'S FAILURE TO REQUEST CONCURRENT SENTENCING."

IN THIS INSTANT CASE, APPLICANT SUBMITS AND THE RECORDS BEFORE THIS COURT WOULD SHOW THAT THE STRICKLAND VS. WASHINGTON, FIRST PRONG IS SATISFIED PURSUANT TO LEGARA VS. STATE. ONCE AGAIN THE SUPREME COURT ESTABLISHED IN LEGARA VS. STATE THAT COUNSEL DID MAKE AN ERROR IN FAILING TO REQUEST CONCURRENT SENTENCING, WHICH REPRESENTS INEFFECTIVE ASSISTANCE OF COUNSEL, BUT LEGARA FAILED TO SHOW PREJUDICE. IN THIS CASE, STRICKLAND VS. WASHINGTON SECOND PRONG HAS BEEN SATISFIED, BECAUSE COUNSEL, NOT ONLY FAILED TO REQUEST FOR INDICTMENT NUMBER.: 2011-CS-42-6943, HE RAN CONCURRENT WITH OTHER INDICTMENT HE PLEAD GUILTY TO BECAUSE :

(A) IT NOT ONLY VIOLATED SOUTH CAROLINA CODE OF LAW, SECTION §§. 17-25-50 AND 24-21-640, BUT ALSO ENCOURAGE/FORCED TRIAL JUDGE'S ABUSE OF DISCRETION IN SENTENCING APPLICANT OUTSIDE THE GUIDELINES OF SOUTH CAROLINA CODE OF LAW, SECTION §. 16-11-0523(A)(C)(2) ;AND

(B) ALLOWED APPLICANT TO SERVE TWO DIFFERENT SENTENCES ON OFFENSES COMMITTED WITHIN A TWENTY-FOUR (24) HOUR PERIOD WHICH REPRESENT NOT ONLY A CONTINUOUS COURSE OF CONDUCT BUT ALSO, ONE OFFENSE BEING ALL OFFENSE WAS SO CLOSELY CONNECTED AS ONE SINGLE COURSE. (CRIME SPREE)

THEREFORE TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO REQUEST THAT INDICTMENT NUMBER.: 2011-CS-42-6943, HE RAN CONCURRENT WITH ANY AND ALL OTHER INDICTMENT NUMBERS THAT APPLICANT PLEAD GUILTY TO. FURTHER, APPLICANT CASE WAS PREJUDICED BY COUNSEL'S ERROR, BECAUSE IT ALLOWED HIM TO BE SENTENCED OUTSIDE THE GUIDELINES, AS WELL AS SERVE MORE TIME FOR THE OFFENSE THAN HE NORMALLY WOULD HAVE TO SERVE.

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CONCLUSION

WHEREFORE HAVING STATED ALL THE ABOVE, APPLICANT RESPECTFULLY REQUEST THIS HONORABLE COURT TO ORDER THE FOLLOWING :

(A) SENTENCE APPLICANT WITHIN THE GUIDELINES OF SOUTH CAROLINA CODE OF LAW SECTION. §. 16-11-0523(B)(C)(2) ; (INDICTMENT NO.: 2011-GS-42-6943)

(B) SENTENCE APPLICANT WITHINSIDE THE GUIDELINES OF SOUTH CAROLINA CODE OF LAW, SECTION. §§. 17-25-50 AND 24-21-640; AND/OR (RUN SENTENCE CONCURRENT)

(C) OVERTURN CONVICTION AND LIFT SENTENCE IMPOSED.

RESPECTFULLY SUBMITTED

Joey Shawn Weir

JOEY SHAWN WEIR, # 283049
RIDGELAND CORRECTIONAL INSTITUTION
POST OFFICE BOX NUMBER.: 2039
RIDGELAND, SOUTH CAROLINA 29936

3-15-12, 2012
RIDGELAND, SOUTH CAROLINA 29936

13.

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CERTIFICATE/AFFIDAVIT OF SERVICE BY MAIL :

PERSONALLY APPEARED BEFORE ME, JOEY SHAWN WEIR, # 283049, WHO FIRST BEING DULY SWORN, DEPOSES AND STATES THE FOLLOWING :

THAT I HAVE THIS 3 DAY OF 15, 2012, SERVED UPON THE HONORABLE HOPE BLACKLEY, CLERK OF COURT FOR SPARTANBURG COUNTY A POST CONVICTION RELIEF APPLICATION WITH ATTACHED AMENDED SUPPLEMENTAL BRIEF IN SUPPORT OR; ATTACHED EXHIBIT (A), (B), AND (C), AND CERTIFICATE/AFFIDAVIT OF SERVICE BY MAIL, BY DEPOSITING THE SAME WITHIN THE RIDGELAND CORRECTIONAL INSTITUTIONAL MAIL ROOM SYSTEM AT POST OFFICE BOX NUMBER.: 2039, RIDGETLAND, SOUTH CAROLINA 29936, WITH PROPER POSTAGE STAMPS AFFIXED AS TO THE FOLLOWING :

THE HONORABLE HOPE BLACKLEY
CLERK OF COURT, SPARTANBURG COUNTY
POST OFFICE BOX NUMBER.: 3483
SPARTANBURG, SOUTH CAROLINA 29304-3483

SWORN AND DEPOSED BEFORE ME THIS
15th DAY OF March, 2012

Darrelle H. Hays
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRE. 2/5/2017

Joey Shawn Weir
JOEY SHAWN WEIR, # 283049

14.

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THE HONORABLE HOPE BLACKLEY
CLERK OF COURT, SPARTANBURG COUNTY
POST OFFICE BOX NUMBER.: 3483
SPARTANBURG, SOUTH CAROLINA 29304-3483

DATE: 3-15-12

RE: INMATE JOEY SHAWN WEIR, # 283049 VS. STATE OF SOUTH CAROLINA... POST
CONVICTION RELIEF APPLICATION/AMENDED SUPPLEMENTAL BRIEF

DEAR HONORABLE BLACKLEY :

ENCLOSED PLEASE FIND FOR FILING WITH THIS HONORABLE COURT, INMATE JOEY SHAWN
WEIR, # 283049, POST CONVICTION RELIEF APPLICATION WITH AMENDED SUPPLEMENTAL
BRIEF; ATTACHED EXHIBIT (A)(B) AND (C); AND CERTIFICATE/AFFIDAVIT OF SERVICE
BY MAIL. PLEASE KNOW THAT A COPY OF THE SAME IS ALSO ENCLOSED WITH A STAMP
ADDRESS ENVELOPES. PLEASE CLOCK STAMP THE COPY AND SEND IT BACK TO APPLICANT
FOR HIS PERSONAL FILES.

THANK YOU VERY MUCH FOR YOUR TIME, CONSIDERATION, UNDERSTANDING, EFFORT, AND
KIND SERVICE IN ADVANCE.

SINCERLY,

Joey Weir
MR. JOEY SHAWN WEIR, # 283049
RIDGELAND CORRECTIONAL INSTITUTION
POST OFFICE BOX NUMBER.: 2039
RIDGELAND, SOUTH CAROLINA 29936

JSW/
ENCLOSURE
CC: PERSONAL FILES

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 MAR 20 PM 4:29
M. HOPE BLACKLEY

2012-CP-42-1011

ATTACHED EXHIBIT (A)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

INDICTMENT CASE# 2011GS426943

AKA Joey Shawn Weir

AW# M127855

Race WHITE Sex M Age

Date of Offense 12-2011

DOB SS#

SC Code 16-11-0523(B)

Address

CDR Code 334

City, State, Zip Spartanburg, SC 29301

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazard Yes No

CONVICTED OF 14 NPLEADS

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

10 Metals Injury to real property, fixtures or improvements to obtain nonferrous metals, damage of \$10,000 or more (10-12 yrs for fine)

in violation of 16-11-0523(B) of the S.C. Code of Laws, bearing CDR Code # 344

X NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS/CSC 17-517-25-35

The charge is As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury (Defendant's initials)

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

ATTEST: [Signature] 78424 [Signature] [Signature] 1209

BOYD, WIFE SC Bar# Defendant Attorney for Defendant SC Bar#

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

for a determinate term of 10 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 10 months years and subject to South Carolina Department of Probation, Parole and Pardon Service, standard conditions of

probation, which are incorporated by reference. This indictment shall be consolidated with all other indictments

* CONCURRENT or CONSECUTIVE to sentence on

The Defendant is to be given credit for time served pursuant to S.C. Code 24-13-10 to be calculated and applied

by the State Department of Corrections (167 Days) All other indictments shall be consolidated

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code 517-25-35

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

Domestic Violence

SPECIAL CONDITIONS:

RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP

Total: \$ 1000.00 plus 20% fee. \$

Payment Terms

Set by SCDPPPS

Recipient:

* Fine:

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

11-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

11-1-211(A)(2) (DUI Surcharge) \$100 \$

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

36-1-286 (DUI Breath Test) \$25 \$

Proviso 47-9 (Public Def. Prob) \$500 \$

11-1-212 (Law Enforce. Bonding) \$25 \$ 25.00

11-1-213 (Drug Court Surcharge) \$150 \$

50-21-114(B)(1) (Breath Test Fee) \$50 \$

56-5-2912(D) (Vehicle Assessment) \$10 ea \$

Proviso 90-5 (SUI TA Surcharge) \$5 \$ 5.00

% to County (if paid in installments) \$ 360

TOTAL \$ 153.90

Clerk of Court Deputy Clerk [Signature]

Court Reporter [Signature]

SC CA-217 (01-2011)

Presiding Judge

Judge Code

Signature Date 12-8-12

2012-CP-42-1292

State v. Joey Weir

Page 2 of 2

11.6945	Metals, 3 rd	7.13.11	Converse Deli	Defendant along with Patrick McDowell, went to the property of Converse Deli, located at 551 East Main Street, in Spartanburg County, and did intentionally damage the victim's air conditioning unit in an attempt to take copper from the unit.	\$8,000 SPARTANBURG COUNTY 2012 MAR 20 PM 4:30 M. HOPE BLACKLEY
11.6946	Metals, 3 rd	7.19.11	Children's Advocacy Center	Defendant and a codefendant, Patrick McDowell, went to the property of Children's Advocacy Center located at 100 Washington Place in Spartanburg County, and did intentionally damage the victim's air conditioning unit in an attempt to take copper from the unit.	\$1,800
11.6941	Metals, 3 rd	7.12.11	Pulliam Investments	Defendant went to the property of Pulliam Investments, located at 812 East Main Street, in Spartanburg County, and did intentionally damage the victim's air conditioning unit in an attempt to take copper from the unit.	\$1,000
11.6943	Metals, 3 rd	7.12.11	CW Financial	Defendant went to the property of CW Financial, located at 791 East Main Street, in Spartanburg County, and did intentionally damage the victim's air conditioning unit in an attempt to take copper from the unit.	\$1,000
11.6942	Metals, 3 rd	7.12.11	Century 21	Defendant went to the property of Century 21, located at 800 East Main Street, in Spartanburg County, and did intentionally damage the victim's air conditioning unit in an attempt to take copper from the unit.	\$2,500

ATTACHED EXHIBIT (B)

ATTACHED EXHIBIT (C)

2012-CP-42-1292 *ps*

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

JOPY SHAWN WEIR, # 283049
APPLICANT,

VS.

THE STATE OF SOUTH CAROLINA
RESPONDENT(S)

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.:

PERSONAL AFFIDAVIT OF
JOEY SHAWN WEIR, 283049

PERSONALLY APPEARED BEFORE ME, JOEY SHAWN WRIR, # 283049, WHO FIRST BEING
DULY, SWORN DEPOSES AND STATES THE FOLLOWING :

(1) THAT MY NAME IS JOEY SHAWN WEIR, # 283049, AND I AM A INDIGENT INMATE AT RIDGELAND CORRECTIONAL INSTITUTION IN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS;

(2) THAT BETWEEN JULY 12TH, 2011 AND JULY 19TH, 2011, I WAS USING ALL TYPES OF DRUGS:

(3) THAT BECAUSE I WAS USING DRUGS, I DID STAY UP WITHOUT SLEEP FOR SEVEN DAYS STRAIGHT:

(4) THAT BECAUSE I WAS USING DRUGS I ALSO COMMITTED SEVERAL VIOLATION OF SOUTH CAROLINA CODE OF LAW, SECTION. §. 16-11-0523(B)(C)(2), TO SUPPORT MY DRUG HABIT;

(5) THAT I WOULD HAVE NOT COMMITTED THOSE CRIMES IF IT WAS NOT FOR THE USE OF DRUGS AND MY CODEFENDANT;

(6) THAT I APOLOGIZE FOR FOR COMMITTING THOSE CRIMES;

(7) THAT I AM ALSO WILLING TO PAY FOR ANY DAMAGE DONE IN THE PROCESS OF COMMITTING THOSE CRIMES;

(8) THAT ALL THE ABOVE IS TRUE AND CORRECT AND I HAVE NOT BEEN THREATEN OR OFFERED ANY TYPE OF REWARD FOR WRITTEN THIS AFFIDAVIT:

(9) THAT IF ANYTHING IN THIS AFFIDAVIT IS KNOWINGLY FALSE AND UNTRUE, I TAKE FULL RESPONSIBILITY UNDER PENALTY OF PERJURY.

SWORN AND DEPOSED BEFORE ME THIS
1st DAY OF March, 2012.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 4/5/2017

RESPECTFULLY SUBMITTED

JOEY SHAWN WEIR # 283049

CLERK OF COURT
SPARTANBURG COUNTY
2017 MAR 20 PM 4:30
RE HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Joey Shawn Weir, #283049,	)	2012-CP-42-1292
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 20, 2012, 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 Spartanburg County Clerk of Court. The Applicant was indicted at the November 2011 term of the Spartanburg County Grand Jury for one count of petit larceny (11-GS-42-4253), and one count of malicious injury to real property, fixtures or improvements to obtain non-ferrous metals (11-GS-42-4254). The Applicant waived presentation to the Grand Jury on the following offenses: receiving stolen goods valued between \$2000 and \$10,000 (11-GS-42-6870); malicious injury to real property, fixtures or improvements to obtain non-ferrous metals, damages more than \$2000 and less than \$10,000 (11-GS-42-6941, -42, -44, -45, -46); and injury to real property, fixtures or improvements to obtain nonferrous metals, damage of more than \$10,000 (11-GS-42-6943). He was represented by James Cheek, Esquire. On January 6, 2012, the Applicant pled guilty to all charges as indicted. He was sentenced by the Honorable R. Lawson McIntosh to time served for petit larceny (11-GS-42-4254), a concurrent period of five (5) years,

suspended to (5) years probation for receiving stolen goods (11-GS-42-6870), a concurrent period of five (5) years for all counts of injury to real property to obtain nonferrous metals, damage of \$2,000–\$10,000 (11-GS-42-6941, -42, -44, -45, -46), (11-GS-42-4253), and a consecutive period of ten (10) years for injury to real property to obtain nonferrous metals damages of \$10,000 or more (11-GS-42-6943). The Applicant did not appeal his guilty plea or sentence.

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

II.

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

1. Ineffective assistance of counsel, in that counsel:
 - a. "failed to object/withdraw applicant's guilty plea when trial bench sentenced applicant to a consecutive ten (10) year sentence on indictment 11-GS-42-6943"
 - b. "failed to request the trial bench for a concurrent sentencing"
 - c. "failed to conduct a full and proper investigation into the matters"
 - d. "allowed applicant to serve two difference sentences on offenses committed within a twenty-four hour period which represent not only a continuous course of conduct, but also, one offense being all offense was so closely connected as one single course. [sic] (crime spree)"
2. Involuntary guilty plea, in that;
 - a. "whether applicant's plea of guilt to indictment number 11-GS-42-6943 voluntarily, knowingly, and intelligently made [sic]"
3. Trial court abused its discretion, in that;

- a. "sentencing applicant to a consecutive ten (10) years under South Carolina Code of Law, section. §. 16-11-0523 (B) (C) (2) [sic]"
- b. "failing to run indictment number 2011-GS-42-6943, concurrent with all other indictments, pursuant to South Carolina Code of Law, section. §§. 17-25-50 and 24-21-640 [sic]"

III.

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

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

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

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

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.

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

Respondent submits that the record fully supports the knowing and voluntary nature of the

Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Applicant contends that the trial court abused its discretion in sentencing Applicant to consecutive terms. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VI.

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

VII.

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

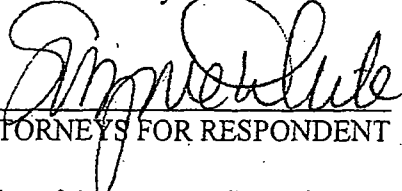
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

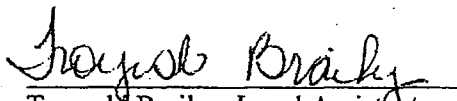
January 30, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-1292
	)	
Joey Shawn Weir, # 283049	)	
	)	
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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Thomas A. Belenchia, Esquire
Post Office Box 3421
Spartanburg, SC 29304

DATED this 30th day of January, 2013


 Troyeshi Brailey, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
 3
 4 Joey Shawn Weir,)
 5 Applicant,) TRANSCRIPT OF RECORD
 6 -vs-) 2012-CP-42-1292
 7 State of SC,)
 8 Respondent.) April 2, 2013
 9 Spartanburg, South Carolina
 10

11 B E F O R E:

12 HONORABLE J. MARK HAYES, II, JUDGE
 13
 14

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

16 THOMAS A. BELENCHIA, ESQUIRE
 17 Attorney for the Applicant

18 SUZANNE H. WHITE, ESQUIRE
 19 Attorney for the Respondent
 20
 21
 22

23 Margaret A. Woods
 24 Circuit Court Reporter
 25

ORIGINAL

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WITNESSES

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JAMES CHEEK

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Certificate of reporter 34

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	Restitution sheet	7	

1 MS. WHITE: Your Honor, this is the case of Joey Shawn
2 Weir vs. the State, it's Case Number 2012-CP-42-1292. He's
3 represented today by Thomas Belenchia, he was represented by
4 Mr. James Cheek at a guilty plea January 6th 2012. He filed
5 this application March 20th 2012. He, uh, was indicted for
6 petty larceny and, uh, the malicious injury to real property,
7 uh, I think relating to a copper theft in November 2011 and
8 waived presentment to charges for receiving stolen goods
9 between 2 and 10,000, five additional charges of malicious
10 injury to real property and malicious injury to real proper --
11 property with damage over 10,000. He pled guilty to those
12 charges, received a sentence of 10 years for the over 10,000
13 malicious injury charge, 5 years on each of the five malicious
14 injuries, uh, 5 years suspended to 5 years probation receiving
15 stolen goods and then time served for the petty larceny;
16 however, Judge McIntosh did run the 10-year sentence
17 consecutive to the 5-year sentences he had received so it
18 ended up in an aggregate of 15, um, he was also ordered to pay
19 restitution the amount of \$58,860. He's alleged ineffective
20 assistance of counsel, involuntary guilty plea and abuse of
21 discretion claiming that counsel failed to object or withdraw
22 the plea when he received a consecutive sentence, failed to
23 request concurrent sentencing on all and failed to investigate
24 and additionally allowed the defendant to serve two sentences
25 on cases that involved a continuous course of conduct and then

JOEY SHAWN WEIR - DIRECT EXAMINATION BY MR. BELENCHIA

1 the abuse of discretion in that the Court ran the sentence
2 consecutive and at this time I will turn it over to
3 Mr. Belenchia.

4 MR. BELENCHIA: Your Honor, thank you for indulgence, uh,
5 at this time basically a PCR as you're aware, Your Honor. At
6 this time I'd like to see about calling my, uh, client
7 Mr. Joey Weir.

8 THE COURT: Okay. Mr. Weir, just come right up here and,
9 uh, if you would place your left hand on the Bible, raise your
10 right hand as best you can, let me swear you in.

11 THE APPLICANT: Yes, sir.

12 (Whereupon, the applicant came forward.)

13 JOEY SHAWN WEIR, having been first
14 duly sworn, testified as follows:

15 THE COURT: Alright, sir, just have a seat in the red
16 chair and slide the red chair up to the microphone if you
17 would.

18 DIRECT EXAMINATION BY MR. BELENCHIA:

19 Q. Mr. Weir, for the record would you, uh, tell the Court
20 your full name.

21 A. Joey Shawn Weir.

22 Q. And, Mr. Weir, could you tell us a little bit about your
23 educational background.

24 A. I had a a reading disability in school and, uh, I did not
25 graduate high school.

JOEY SHAWN WEIR - DIRECT EXAMINATION BY MR. BELENCHIA

1 Q. Okay. When you talk about "a reading disability", uh,
2 and do you have an idea what, uh, grade level you read at?

3 A. I I think a s -- eighth, maybe a seventh grade. I I had
4 a very hard time, I've made it to the 10th grade but I did not
5 gradu, uh, pass the tenth grade. - Uh, I was in, uh, LD
6 classes, learning disabili -- bility classes.

7 Q. Okay, and where'd you go to school?

8 A. Uh, at Dorman High School.

9 Q. Alright. Today you brought this, uh, uh, PCR before the
10 Court, uh, could you tell us, uh, specifically when we're
11 looking at Indictment Number 6943, just use the last three
12 numbers, Your Honor, that be okay with the Court, ---

13 THE COURT: Yes.

14 Q. --- may be easier, uh, 6943, ---

15 A. Yes, sir.

16 Q. --- uh, I wanna show you a document at this time, ask you
17 if you recognize this (indicating) document. Your Honor, if I
18 could.

19 THE COURT: Um.

20 (Whereupon, counsel approached the witness.)

21 Q. You recognize this document I presented you?

22 A. Yes, sir.

23 Q. Could you tell me what that is.

24 A. It's a restitution sheet showing the amount of damage
25 done to property.

JOEY SHAWN WEIR - DIRECT EXAMINATION BY MR. BELENCHIA

1 Q. Okay. Do you recognize the dollar amount, uh, right here
2 (indicating) that's that's noted as 1169.43?

3 A. One thousand dollars.

4 Q. Okay, is that the damage amount?

5 A. That's what my understanding was.

6 MR. BELENCHIA: Okay. Your Honor, I'd like to introduce
7 this document as, uh, Petitioner's Exhibit No. 1.

8 MS. WHITE: Your Honor, I think, uh, just some
9 clarification, is this part a the document that was introduced
10 at the plea or do we know who prepared the document?

11 MR. BELENCHIA: This was turned over us -- to us as part
12 of the documents that were given to, given to us.

13 MS. WHITE: Okay. Um, I don't think I have any
14 objection, Your Honor. I just, I'm not aware, this the first
15 time I've seen it so I I assume it's one the documents what
16 was put into evidence but, um, I, if I can check the files
17 maybe too while we're talkin' and I'll clarify if I --

18 THE COURT: Okay, we'll mark it as, uh, Petitioner's 1.

19 (Restitution sheet marked Petitioner's Exhibit No. 1 for
20 identification.)

21 BY MR. BELENCHIA:

22 Q. When you reviewed this exhibit and, uh, the dollar amount
23 was a a thousand dollars for the damages, uh, uh, did that
24 coincide with the, uh, punishment you were given, uh, with,
25 uh, in accordance with 6943?

JOEY SHAWN WEIR - DIRECT EXAMINATION BY MR. BELENCHIA

1 A. My understanding was it carried 5 years.

2 Q. Okay, and when you're referrin' to that, you you're
3 referring to, uh, the sentencing under Section 16-11-523?

4 A. Yes, sir.

5 Q. Okay, and in that, uh, uh, sentencing, uh, statute if
6 it's te -- you were sentenced under 6943 for how many years?

7 A. Ten years.

8 Q. Okay, and in the statute if it's a thousand dollars or
9 less, how many years is it supposed to be?

10 A. Five years charge.

11 Q. Okay. When, uh, you were sentenced under the statute,
12 okay, uh, do you know or do you understand whether the
13 Indictment Number 6943 was run consecutively or concurrent?

14 A. It was run consecutively to, uh, 69 for -- 6941 and 6942
15 happened within a 24-hour time period. From my understanding
16 it shoulda been considered as one crime spree but I received,
17 uh, consecutive sentencing.

18 Q. Okay, when you're talking about that one ci -- crime
19 spree, okay, uh, I was gonna get to that in just a second, uh,
20 did, uh, anybody -- well who were you represented, uh, by?

21 A. James Cheeks.

22 Q. Okay, was he --- is he a public defender?

23 A. Yes, sir.

24 Q. Okay. Uh, prior to being represented by Mr. Cheeks at
25 the hearing, uh, had you received an order in December of 2011

JOEY SHAWN WEIR - DIRECT EXAMINATION BY MR. BELENCHIA

1 by Judge Cole granting you a a granting Mr. Cheeks relief of
2 counsel?

3 A. Yes, sir.

4 Q. Okay, and why did you receive that, uh, uh, grant for
5 relief a counsel from Mr. Cheeks?

6 A. I was not satisfied with his investigation.

7 Q. And Judge Cole issued an order for that, is ---

8 A. Yes, sir.

9 Q. --- that correct?

10 A. Yes, sir.

11 Q. Okay. Now Mr. Cheeks did represent you at the pleading
12 hearing, ---

13 A. Yes.

14 Q. --- is that correct?

15 A. Yes, sir.

16 Q. Now did Mr. Cheeks bring up the fact that the, uh,
17 Exhibit B shows that, uh, the dollar amount of the damage is a
18 thousand dollars, not \$10,000 at the hearing?

19 A. No, sir, he did not.

20 Q. Did, uh, Mr. Cheeks argue against, uh, Indictment Number
21 6943 being run consecutively and not concurrently in
22 fronta ---

23 A. No, sir. No, sir, he did not.

24 Q. Did he request that the judge run the, uh, 6943
25 concurrently for you?

JOEY SHAWN WEIR - DIRECT EXAMINATION BY MR. BELENCHIA

1 A. No, sir.

2 Q. Uh, we talked about before, uh, that you were relieved of
3 counsel by Mr. Cheeks, uh, Mr. Cheeks you said it was because
4 of failed to conduct a full and proper investigation, is that
5 correct?

6 A. Yes, sir.

7 Q. Could you tell us a little bit about the full and proper
8 investigation he failed to do.

9 A. I asked for a motion a discovery numerous times and I,
10 only thing I received right before I went to court was the two
11 restitution sheets that you have showing the amount of damage
12 done, that's the only two things I received before court and I
13 tried my best to get him to give me my motion a discovery but
14 I never received it and before court he did not -- I had to
15 raise my hand to let him know who I was, he did not even know
16 who I was, he didn't know nothing about my case until I told
17 him that day.

18 Q. Okay. Now let me just, uh, uh, bring up Indictments
19 Number 6941, you're familiar with that, 6942 and 6943 which
20 is, 43 is the one ---

21 A. Yes, sir.

22 Q. --- that was a 10-year sentencing and it was run -- it
23 ran it consecutively ---

24 A. Yes, sir.

25 Q. --- not concurrent. Your other indictments were, uh,

JOEY SHAWN WEIR - DIRECT EXAMINATION BY MR. BELENCHIA

1 running concurrent, correct?

2 A. Yes, sir, all except maybe the probation. I think
3 probation was run consecutive also.

4 Q. Okay, and then but Indictments Number 6941, 42 and 43
5 were, uh, could you tell us a little bit about those three
6 indictments.

7 A. It happened on July the 12th, uh, all within a 24-hour
8 time period in the same night.

9 Q. And were they all East Main Street?

10 A. Yes, sir.

11 Q. And were they all commercial buildings that were
12 geographically within a quarter of a mile with each other?

13 A. Yes, it was all within a quarter a mile, maybe ---

14 Q. Did you ---

15 A. --- an eighth of a mile.

16 Q. --- basically go from one building to the next
17 building?

18 A. Yes, sir.

19 Q. Okay, and in accordance with 17-25-50, did, uh, is our
20 understanding that this was, uh, one crime spree and should
21 have been, uh, one offense and not three separate offenses, is
22 that correct?

23 A. Yes, sir.

24 Q. Going back to, uh, Indictment Number 6943, uh, the day
25 that, uh, you pled guilty for that violation, did did you

JOEY SHAWN WEIR - DIRECT EXAMINATION BY MR. BELENCHIA

1 knowingly understand, uh, that those three offenses could have
2 been one offense instead of three separate ones?

3 A. At the time I did not know that.

4 Q. Okay. Did, uh, if you had known that at that time, would
5 you have knowingly pled guilty to all three offenses as
6 opposed to wanting it be consolidated as one offense?

7 A. I would've, uh, argued the fact of be consolidated as
8 one.

9 Q. At the hearing, uh, was it, uh, another defendant there
10 present with you at that time?

11 A. Yes, sir, they had, they had, uh, he, James Cheeks
12 represented me and another fella, uh, at -- in conjunction in
13 fronta the judge at the same time, uh, took our pleas at the
14 same time together, one after the other.

15 Q. So there's two defendants in front of the judge at one
16 time?

17 A. Yes, sir.

18 Q. And he was taking the two defendants' pleas
19 simultaneously?

20 A. He would read a little bit to me and then he would read a
21 little bit to him.

22 Q. Okay. Did you get, ever get confused in the simultaneous
23 simultaneous plea agreement?

24 A. Yes, sir, I was really nervous the whole time and I was
25 just agreein' tryin' not to aggravate anybody.

JOEY SHAWN WEIR - CROSS-EXAMINATION BY MS. WHITE

1 Q. Okay, and do you feel like this violated your due process
2 right to a hearing?

3 A. Uh, yes, sir. From my understanding you're supposed to
4 be a partial address to the court to understand certain risk
5 and consequences of your plea.

6 Q. Okay. Did you understand the consequences and
7 specifically of you pleading for on this 6943 what that was,
8 uh, gonna mean to you?

9 A. No, sir.

10 Q. Okay.

11 MR. BELENCHIA: Your Honor, at this time we have no
12 further questions.

13 MS. WHITE: Thank Your Honor.

14 CROSS-EXAMINATION BY MS. WHITE:

15 Q. Mr. Weir, first question is you state that there's an
16 order that relieved James Cheek from being your counsel; ---

17 A. Yes, sir -- yes, ma'am.

18 Q. --- but you don't have a copy of that order.

19 A. No, I put in for it but have not received it yet.

20 Q. And you proceeded with a guilty plea represented by
21 Mr. Cheek.

22 A. Um, yeah, he he I told me I would not be in court for
23 three to four months and influenced me to write "trial" on a
24 piece a paper and so I did and a month later he called me back
25 in and told me that this is a good judge, a understanding

1 judge and that I should go on with my plea, I did not wanna
2 plea at the time but he influenced me to plead guilty because
3 he thought it was in the beneficial of my doubt, uh, best
4 interest in my case ---

5 Q. So you wanted to go to trial on the nine indictments.

6 A. Yes, that, uh, either that or, um, I I didn't wanna go
7 that day, I did not wanna plead that day for sure.

8 Q. Okay. Now when the Court went over with you all the
9 things and read you the charges of in your indictment, you
10 were aware of what you were pleading guilty to though that
11 day, were you not?

12 A. Could you repeat the question.

13 Q. The Court went over with you all the indictments and you
14 were aware that day of what you were pleading guilty to, is
15 that not right?

16 A. Yes. He read that the solicitor read the charges but
17 like I said before I was very nervous and I -- he coulda told
18 me anything and I would -- that's, uh, why we have counsel to
19 help us get through this is what I understanding.

20 Q. And this isn't your first time goin' to court about
21 charges like this, wasn't -- weren't most of these or all of
22 these a third or subsequent charge?

23 A. No, I've been, uh, trouble for copper once before.

24 Q. Okay, and you recall them reading ---

25 A. I had ---

JOEY SHAWN WEIR - CROSS-EXAMINATION BY MS. WHITE

1 Q. --- your record into, reading ---

2 A. Yeah.

3 Q. --- your prior record into the record?

4 A. Yeah, I had a burglary third.

5 Q. You had simple possession marijuana, possession of
6 controlled substance, manufacturing, manufacturing,
7 possession, disorderly conduct, simple possession ---

8 A. This all happened when I was a teenager too mostly.

9 Q. --- possession, possession, public disorderly, failure to
10 stop, open container, petty larceny, burglary third, grand
11 larceny and shoplifting?

12 A. That's happened. Uh, three of them charges that you --
13 the property crimes have been -- I went to court at the same
14 time on them.

15 Q. But my question is so you've been in the court
16 before and ---

17 A. Yes, ma'am.

18 Q. --- know the process when it comes to either pleading
19 guilty or proceeding to trial.

20 A. I don't fully understand what you're askin' me.

21 Q. Have you been in court on prior charges?

22 A. Yes, ma'am.

23 Q. Have you either pled guilty or proceeded to trial on the
24 charges?

25 A. Yes, ma'am.

1 Q. So you were aware of the procedures and what happened in
2 the Court when you plead guilty or go to trial.

3 A. Yes.

4 Q. Okay. So you were aware that the Court was gonna be
5 askin' you questions about whether or not you were pleading
6 freely and voluntarily?

7 A. Uh, I -- yes.

8 Q. Okay, because the Court did ask you that and you said
9 that you were not under the influence of anything and you even
10 said you were actually satisfied with counsel in your ---

11 A. I was, ---

12 Q. --- transcript, did you not?

13 A. --- I was not tryin' to aggravate the judge or my counsel
14 in any way so I was agreeing with everything I was asked.

15 Q. So when the Court asked you if you were satisfied if
16 Mr. Cheek had done everything you'd asked him to do, there
17 wasn't anything else you wanted him to do, was that not the
18 truth?

19 A. No. I mean, I wanted my motion of discovery and I wanted
20 him to read my case better but like I said before he thought
21 this was a good judge and I should go forth with my plea and
22 that's what I did.

23 Q. Okay, and did you not agree with the facts when the Court
24 read 'em to you about what happened and you acknowledge that
25 you were guilty of all these charges?

JOEY SHAWN WEIR - CROSS-EXAMINATION BY MS. WHITE

1 A. I I agreed with him, I said yes, sir.

2 Q. Okay, and these were third or subsequent charges, were
3 they not?

4 A. Not to my knowledge, I didn't never hear anything about
5 that.

6 Q. Okay, so you weren't aware that you had had at least two
7 prior property ---

8 A. Well I ---

9 Q. --- crimes?

10 A. --- I went to court, uh, together with them charges.

11 Q. But you were charged separately for two at least prior
12 crimes, is that not right?

13 A. I I -- it -- that happened the same charge. I got
14 diff -- the different charges happened the same incident.

15 Q. Okay.

16 MS. WHITE: Uh, Your Honor, I think that's all the
17 questions I have for this witness.

18 THE COURT: Any redirect limited to what she went into?

19 MR. BELENCHIA: No redirect, Your Honor.

20 THE COURT: Thank you, sir, you may step down for...

21 (Whereupon, the applicant left the stand.)

22 THE COURT: Applicant, uh, ready to call their next
23 witness?

24 MR. BELENCHIA: Mr. James Cheeks, Your Honor, I guess.

25 THE COURT: Alright. Sir, if you will just come right up

JAMES CHEEK - DIRECT EXAMINATION BY MR. BELENCHIA

1 here (indicating) and place your left hand on the Bible, raise
2 your right hand.

3 JAMES CHEEK, having been first
4 duly sworn, testified as follows:

5 THE COURT: Thank you, sir. Please have a seat in the
6 red chair and pull the red chair up to the microphone.

7 DIRECT EXAMINATION BY MR. BELENCHIA:

8 Q. Mr. Cheeks, I have just a few questions for ya this
9 mornin'.

10 A. Yes, sir.

11 Q. Uh, first thing I'd like to know is, uh, is it true that,
12 uh, two defendants were at this ---

13 A. May I have just a moment, please. My name is James
14 Cheek, I'm assistant public defender for the Spartanburg
15 County Public Defender's office through the Seventh Circuit
16 Solicitor or the Seventh Circuit, uh, Public Defender's
17 Office. Uh, I have been working with that agency for about
18 five years, been practicin' law a little over 30 years. Uh,
19 my duties with the public defender's office is to not have an
20 assigned caseload but to assist the other public defenders
21 with their assigned caseloads, uh, primarily for persons who
22 are incarcerated at the Spartanburg County, uh, Detention
23 Facility as well as the South Carolina Department of
24 Corrections. In line with that, I believe
25 Ms. Beverly Jones was the assigned trial attorney for

JAMES CHEEK - DIRECT EXAMINATION BY MR. BELENCHIA

1 Mr. Weir, um, and also in line with that I made several
2 contacts with Mr. Weir, uh, in order to assist Ms. Jones in
3 moving this case towards either a trial or a plea.

4 Q. Thank you very much, I appreciate ya steppin' in for me.
5 Thank you. Alright, lets, see, okay, are you, uh, do you
6 remember the hearing for, uh, Mr. Weir?

7 A. I've had an opportunity, um, to review the transcript of
8 Mr. Weir's, uh, hearing and therefore it it has refreshed my
9 recollection of that particular, uh, plea.

10 Q. Were there -- okay, were there two defendants at this
11 hearing?

12 A. There were two, um, the judge elected to take, um, two
13 pleas at the same time, two separate, uh, defendants involving
14 two separate cases altogether.

15 Q. Okay, so it is true that two defendants were, uh, were
16 pleading at the same time at the same hearing, correct?

17 A. Correct.

18 Q. Uh, during this pleading were they interacting with the
19 judge separately or did the judge take, uh, one of 'ems
20 pleading and then the next one or was it simultaneous?

21 A. The judge, uh, inquired, uh, of the defendants as to
22 their understanding their constitutional rights, he went down,
23 um, a a litany of their, uh, background as well as their
24 understanding and as well as the understanding of their, uh,
25 constitutional rights and then he, uh, went down, uh, had the

JAMES CHEEK - DIRECT EXAMINATION BY MR. BELENCHIA

1 solicitors to present the cases individually and then again he
2 allowed the defendants to respond to their understanding what
3 they were being charged with with the, um, as well as their
4 understanding what the, uh, satisfaction of their counsel and
5 the opportunity to review the elements and issue of of the
6 crimes.

7 Q. Okay. Uh, you heard, uh, my client testify a few minutes
8 ago concerning an order from Judge Cole, do you have any
9 recollection of the order from Judge Cole?

10 A. I don't know why Judge Cole would have issued such an
11 order, uh, I was never appointed as counsel for Mr. Weir.
12 That's a lie.

13 Q. Okay, so, uh, you're saying, testified today that, uh,
14 who was that again? Who was the, uh, counsel for Mr. Weir at
15 that time?

16 A. Beverly Jones I believe woulda been, uh, assigned counsel
17 Mr. Weir.

18 Q. Do you think it's possible that, uh, uh, the counsel was
19 a Robert Hall?

20 A. I'm not confident who it was, my recollection was Beverly
21 Jones. I just heard your client say it may have been Robert
22 Hall, wouldn't have mattered. Uh, the the public defender's
23 office is assigned to represent him so I don't understand what
24 the, uh, question is or what the relevance is. Uh, he says he
25 has a cop of an order, he hasn't presented such a order today.

JAMES CHEEK - DIRECT EXAMINATION BY MR. BELENCHIA

1 I think it's all his imagination.

2 Q. Okay. Uh, so the order from Judge Cole does not exist, I
3 just wanted to clarify that, that, uh, he stated that there
4 was an order dismissing you as the, uh, counsel and you're
5 saying that order does not exist, correct?

6 A. I'm not sayin' the order does not exist, I'm sayin' I've
7 never seen it, I don't know why it would ever exist and I
8 don't know when I woulda been appointed counsel for
9 Mr. Weir for the judge to have issued such an order is what
10 I'm testifying today. Now if your client has such an order,
11 he's taken the stand, he's welcome to, uh, ask for a recess,
12 go to the clerk's office get a copy and come back with a copy
13 a the order. I don't want to, uh, say what doesn't exist but
14 the clerk keeps a very good record of what exists as far as
15 issues of orders by our, uh, judges.

16 Q. Is it normal, uh, practice to take the pleadings of two
17 separate defendants at one hearing in front of a judge?

18 A. We have taken as up to thirty pleadings at one time in
19 front of a judge, what's normal I can't say. I would say that
20 it has been the practice, uh, from some judge to take up to
21 thirty pleas at one time, one time.

22 Q. Do you think that the defendants understand what's goin'
23 on when you have multiple defendants in there takin' pleadings
24 at the same time?

25 MR. WHITE: Your Honor, I would just object to

JAMES CHEEK - DIRECT EXAMINATION BY MR. BELENCHIA

1 speculation. He doesn't know what they understand.

2 THE COURT: I'll sustain the objection.

3 Q. Is it possible that it's confusing to the defendants to
4 understand what's goin' on in the court: a new environment,
5 uh, when there multiple defendants in there takin' pleadings?

6 A. I would think that every precaution is made to be certain
7 that the defendants understand. The judge repeatedly asked
8 Mr. Weir in this case if he understood what was going on and
9 he never indicated to either me or to the judge or to the
10 solicitor he did not understand any of the proceedings and his
11 responses were always clear and direct and appear to have
12 been, uh, responsive to the questions, uh, at each level of
13 the entering of the plea.

14 Q. Were you aware of the dollar value in the, uh, Indictment
15 Number 6943?

16 A. Um, I was aware of the dollar value, I'll go ahead and
17 address that. Uh, Mr. Weir, uh, has a an extensive criminal
18 history which includes, uh, the, uh, conviction for at least
19 two or more property crimes. In the State of South Carolina
20 we have enhancement, that's a term that's used, uh, relative
21 to, uh, the State havin' the option of increasing the, uh,
22 level a penalty, uh, for a person who is convicted of a third
23 or subsequent property crime or at least bein' prosecuted for
24 a third or subsequent property crime. As one of our judges
25 tells our, uh, uh, persons when they appear as defendants that

JAMES CHEEK - DIRECT EXAMINATION BY MR. BELENCHIA

1 in the future if you steal as much as a piece of bubble gum
2 worth 3 cents you could be prosecuted up to 10 years in prison
3 because you have a prior criminal history for stealin' and
4 that is where Mr. Weir found himself unfortunately.

5 Q. Okay, on on Indictment Number 6943, I -- okay, were you
6 aware of the dollar value being a thousand dollars, not
7 \$10,000?

8 A. Uh, sir, can you show me what you're talkin' about,
9 please.

10 MR. BELENCHIA: Uh, if I could approach the witness, Your
11 Honor.

12 Q. I'd like for you to look at what's been marked as, uh,
13 Petitioner's Exhibit Number 1. You see on the left-hand side
14 it's uh, it's marked 11-6943?

15 A. 11-6943 metals CW Financial, um, the amount a restitution
16 being one thousand dollars.

17 Q. Okay. Were you aware of the value or, uh, being one
18 thousand dollars not \$10,000 in this case Number, Indictment
19 Number 6943?

20 A. Do you have a copy of the indictment, please.

21 MR. BELENCHIA: Your Honor.

22 THE COURT: Yes, sir.

23 (Whereupon, counsel hands the document to the witness.)

24 A. This woulda been relative I believe to the, uh, problem
25 on CW Financial. I believe a air-condition unit was

JAMES CHEEK - DIRECT EXAMINATION BY MR. BELENCHIA

1 dismantled, a commercial air conditioner was dismantled
2 and the value of the building as well as the property was
3 worth really \$10,000. The damage could be one \$1,000, the
4 property damaged and the extent of it woulda been covered by
5 insurance. Mr. Weir, his co-defendants caused more than
6 \$10,000 for damage, \$1,000 was the amount a restitution that's
7 being claimed by the victim.

8 Q. Okay. Was that brought to the attention of the Court at
9 that time?

10 A. I don't know why it woulda been. Very simply this, I'm
11 gonna say it one more time: Mr. Weir and his co-defendants
12 damaged property in excess of \$10,000. The restitution claim
13 was \$1,000. The indictment is read and drafted properly for
14 the crime that Mr. Weir and his co-defendants committed
15 according to Mr. Weir's own admission.

16 Q. Did you ---

17 A. You cannot buy, you cannot buy a commercial air condition
18 for a thousand dollars, you can't, you can't buy a residential
19 air condition for a thousand dollars. They caused more than
20 \$10,000 worth a damage.

21 Q. Okay. Did you, uh, argue or point out to the Court
22 that, uh, or request the Court to run the Indictment Number
23 6943, uh, concurrently with the other indictments?

24 A. No, I did not.

25 Q. Uh, can you tell me how much time you spent on the

JAMES CHEEK - DIRECT EXAMINATION BY MR. BELENCHIA

1 investigation of this ---

2 A. I would ---

3 Q. --- case.

4 A. --- think approximately 'bout five hours in preparation.

5 Uh, Mr. Weir's already informed the Court that I talked with
6 him several times before, including one time he requested that
7 he not go forward with his plea. Uh, I went through the
8 entire -- entire case with him, went over the facts a the case
9 with him, uh, and told him what the damages were, instructed
10 him that I thought the best thing he could do was come to
11 court and ask the Court to string along his pleas, uh, in
12 hopes that maybe he might get probation, I advised I'm not
13 thinkin' he'd get probation but he would -- we would ask the
14 Court for probation. The wisest thing given the amount of
15 restitution owed in these cases as well as his prior work
16 history and his ability to earn a wage that if he were to get
17 probation, he would need to be able to be successful in that
18 probation, be able to pay back the restitution owed on a
19 timely and regular basis and in order for what he was asking
20 the Court to do he would not want to have one sentence and
21 that some be placed on probation for him to fail 'cuz he would
22 not make it out two months on probation if he could not pay
23 those monies.

24 Q. Are you familiar with, uh, Section 17-25-50, uh, ---

25 A. May I have a copy of it, please.

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1 Q. It, uh, it's labeled, "Considering closely connected
2 offenses as one offense," let's, uh, hand that to ya.

3 (Whereupon, counsel handed the document to the witness.)

4 (Whereupon, the witness examined the document.)

5 Q. Are you familiar with that statute?

6 A. I am.

7 Q. Okay, uh, to summarize it, uh, could you summarize the
8 statute for me, for us now. Would it be a correct
9 summarization if I said that the statute gives us, uh, uh,
10 gives you the, uh, the Court the right to take multiple
11 offenses and if it was done at a similar time, all three -- all
12 of the cases were done or all the offenses were done in a very
13 close time period to then have it as one indictment, not as
14 three offenses, instead combine the indictments ---

15 A. Asking the judge ---

16 Q. --- as one?

17 A. --- to combine the indictments for for purpose of
18 sentencing you're saying that ---

19 Q. Yes.

20 A. --- ask the Court to consider concurrent sentencing?

21 Q. Well not concurrent, okay, but having it, uh, combining
22 these these offenses into one indictment instead of having
23 three separate indictments. Right now we're we're dealing
24 with Indictments Number ni -- 6941, 6942, 6943, all three, you
25 heard the testimony, were in the same geographical area in the

JAMES CHEEK - DIRECT EXAMINATION BY MR. BELENCHIA

1 same time period.

2 A. We're talkin' about three separate buildings, three
3 separate and distinct crimes and you're saying that we shoulda
4 moved forward to have these three crimes combined into one
5 offense as a spree?

6 Q. Correct?

7 A. I did not do that. I didn't think that was
8 appropriate.

9 Q. Didn't think it was appropriate ---

10 A. No, ---

11 Q. --- at that time?

12 A. --- and still don't.

13 Q. Okay. Uh, so didn't ask the Court to do that.

14 A. No.

15 Q. Okay. Uh, did you, uh, during the pleadings did you
16 request the judge, uh, to run Indictment Number 6943, uh,
17 consecutively as opposed to concurrently?

18 A. May I see the transcript, please.

19 MS. WHITE: Your Honor, ---

20 (Whereupon, a discussion was held off the record.)

21 MS. WHITE: Okay.

22 (Whereupon, counsel handed the transcript to the
23 witness.)

24 A. And your question is?

25 Q. Did you request the judge to run Indictment Number 6943

JAMES CHEEK - DIRECT EXAMINATION BY MR. BELENCHIA

1 consecutively as opposed to concurrently?

2 A. Could you direct me to a a specific line, I I don't
3 understand your question.

4 Q. Uh, okay, I don't have a specific line. I'm asking you a
5 question whether you, uh, requested the Court to run it
6 consecutively versus concurrently 'cuz I I don't think that
7 line's in there is the reason I'm askin' you.

8 A. Could you rephrase the question.

9 Q. Okay. Uh, during the hearing, uh, uh, did you request
10 the sentencing judge to run Indictment Number 6943
11 consecutively as opposed to concurrently or when the judge
12 ruled that he was gonna, uh, run 6943 concurrent, okay, did
13 you object to it? Did you, uh, say anything to the judge
14 about, uh, feel like it be a better sentencing guideline to
15 run it, uh, consecutively not concurrently?

16 A. I don't recall having done that, I don't see it reflected
17 in the transcript.

18 Q. Okay. One moment, Your Honor, if I could.

19 (Attorney/client discussion held off the record.)

20 Q. In these indictments were there any, uh, uh, aggravating
21 circumstances, uh, involving this? Was anybody harmed or
22 any -- anything like that in any of the indictments that
23 you're aware of?

24 A. Are you ask was there any physical harm to a an
25 individual?

JAMES CHEEK - CROSS-EXAMINATION BY MS. WHITE

1 Q. An individual or a threat or use of a weapon or anything
2 that would be an aggravation -- aggravating circumstances for
3 any of these indictments.

4 A. Um, if could show me the indictments, I'll be glad to
5 review all the indictments.

6 Q. Alright.

7 A. I don't recall any where anybody was, uh, physically
8 harmed or and there was an extensive amount of, uh, property
9 damage, these are property crimes.

10 Q. So these were property crimes, uh, but, uh, you're not
11 aware of any aggravating circumstances in any of these
12 indictments, correct?

13 A. Could you -- when you said "aggravating circumstances", I
14 don't understand the question.

15 Q. Use of a weapon, threat, bodily harm of any type.

16 A. None I'm aware of any.

17 (Attorney/client discussion held off the record.)

18 MR. BELENCHIA: No further questions, Your Honor.

19 MS. WHITE: Thank Your Honor.

20 CROSS-EXAMINATION BY MS. WHITE:

21 Q. Mr. Cheek, um, at the time that you represented Mr. Weir
22 at the plea, you kind of mentioned that you don't have a
23 caseload that you get involved in the cases because someone
24 asked to plea, was that the situation to your knowledge in
25 Mr. Weir's case?

JAMES CHEEK - CROSS-EXAMINATION BY MS. WHITE

1 A. Yes, ma'am.

2 Q. And the Indictment 4 -- 6943 can you read for me the
3 language of the indictment, the body of the indictment.

4 A. Um, the title is, "Metals and/or injury to real property,
5 fixtures or improvements to obtain non-ferrous metals, damage
6 of more than \$10,000, that Joey Shawn Weir did in Spartanburg
7 County on or about July the 12th 2011 wilfully, unlawfully and
8 maliciously injure, damage or destroy the real property
9 belonging to CW Financial while attempting to obtain
10 non-ferrous metals from the victim's property causing damage
11 to the property more than \$10,000 all in violation of Section
12 16-11-523(b) 16-157 Code of Laws of South Carolina 1976 as
13 amended."

14 Q. And to your knowledge with the, uh, criminal changes or
15 the changes in a criminal code that that were effected in June
16 2010, is it not correct that damage, malicious injury to, uh,
17 property over \$10,000 is a zero to ten offense?

18 A. Zero to ten offense.

19 Q. And additionally any of the third or subsequent could
20 have been sentenced up to ten years, is that correct?

21 A. Correct, zero to ten years.

22 Q. Um, in regard to the rec -- the enhancement or the the
23 three charges that they're saying actually qualified as a
24 spree, that was three of nine indictments he was pleading to
25 on that day, is that correct?

JAMES CHEEK - CROSS-EXAMINATION BY MS. WHITE

1 A. That's correct.

2 Q. And one of those would have been including the damage of
3 \$10,000 dollars or more.

4 A. Correct.

5 Q. And according to your knowledge, and and you may or may
6 not know this, but is the recidi -- the recidivist statute
7 that he's mentioned does that not normally apply to cases that
8 are dealing with a Three-Strikes Law with a serious and most
9 serious offenses?

10 A. That is correct.

11 Q. In regards to, uh, restitution if you could turn to page
12 20 in the transcript for me.

13 (Whereupon, the witness complied.)

14 Q. And does it not appear on that page that the applicant
15 waived the right to a restitution hearing and in fact agreed
16 to the restitution amount of \$58,860?

17 A. Yes, on line, um, 4 the Court begins, uh, is it not line
18 4? Uh, that on line 4 the Court, uh, addresses Mr. Weir and
19 indicates, "As I explained to Mr. Gilbert you have a right to
20 a restitution hearing in which event testimony would be taken
21 to determine the proper amount a restitution to be awarded if
22 any; on the other hand, you can waive or give up that right to
23 a restitution hearing and stipulate that the amount being
24 requested is the appropriate amount. Which way do you want to
25 go?"

JAMES CHEEK - CROSS-EXAMINATION BY MS. WHITE

1 Mr. Weir as a defendant responds, "I'll waive it."

2 THE COURT: "You want to stipulate it's the proper
3 amount?"

4 And again Mr. Weir responds, "Yes, sir."

5 The Court then makes the inquiry, "The amount in this
6 case is \$58,860 if my math is correct, do you still think that
7 is the appropriate amount," to which response Mr. Weir offers,
8 "Yes, sir."

9 Q. Okay. In your conversations or meetings with him, did
10 you ever, uh, did he ever tell you that he did not wanna
11 pro -- proceed with the plea, that he wanted to proceed with a
12 trial?

13 A. He never indicated he wanted to enter a, uh, a trial, he
14 indicated he wanted to, he mentioned that he might might wanna
15 wait for a trial, uh, in the sense he wanted to wait for
16 another judge, he does not feel confident 0:48:48.8 goin'
17 forward in front of the judge that, uh, we originally talked
18 about going at a an earlier term a court.

19 Q. And were -- was -- is -- did that end up in this plea or
20 did ya'll wait until another judge?

21 A. We wait until another judge, uh, as, a a visiting judge
22 came in.

23 Q. Okay, so you were able to put off his plea for a period
24 of time.

25 A. I was.

JAMES CHEEK - CROSS-EXAMINATION BY MS. WHITE

1 Q. Okay. And with your experience and based on your
2 representation of Mr. Weir did you feel that or did you
3 understand that he was pleading freely and voluntarily that
4 day?

5 A. It was my feelin' and my belief that he was pleading
6 freely and voluntarily and knowingly.

7 Q. And with that knowingly knowing the potential sentences
8 that he faced for each of the crimes.

9 A. That is correct.

10 Q. Thank you.

11 MS. WHITE: That's all I have, Your Honor.

12 THE COURT: Any any redirect limited to what she went
13 into?

14 MR. BELENCHIA: No, Your Honor.

15 THE COURT: Thank you, sir, you may step down.

16 (Whereupon, the witness left the stand.)

17 THE COURT: Applicant intend to call any other witnesses?

18 MR. BELENCHIA: No, Your Honor.

19 MS. WHITE: The State has no witnesses, Your Honor.

20 THE COURT: Alright. Okay, I will take a look at it and
21 let you know.

22 MS. WHITE: Thank Your Honor.

23 THE COURT: Thank you.

24 MR. BELENCHIA: Thank Your Honor.

25 THE DEFENDANT: Thank you.

1 CERTIFICATE OF REPORTER
2

3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on April 2, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 3 through 33, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 October 21, 2013
14

15 Margaret A. Woods

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
18
19
20
21
22
23
24
25

ATTACHED EXHIBIT (B)

State v. Joey Weir

Page 2 of 2

11.6945	Metals, 3 rd	7.13.11	Converse Deli	Defendant, along with Patrick McDowell, went to the property of Converse Deli located at 551 East Main Street, in Spartanburg County, and did intentionally damage the victim's air conditioning unit in an attempt to take copper from the unit.	\$6,000	2012 MAR 20 PH 4:30	SPARTANBURG COUNTY
11.6946	Metals, 3 rd	7.19.11	Children's Advocacy Center	Defendant and a codefendant, Patrick McDowell, went to the property of Children's Advocacy Center located at 100 Washington Place in Spartanburg County, and did intentionally damage the victim's air conditioning unit in an attempt to take copper from the unit.	\$1,800	M. HOPE M. RORLEY	
11.6941	Metals, 3 rd	7.12.11	Pulliam Investments	Defendant went to the property of Pulliam Investments, located at 812 East Main Street, in Spartanburg County, and did intentionally damage the victim's air conditioning unit in an attempt to take copper from the unit.	\$1,000		
11.6943	Metals, 3 rd	7.12.11	CW Financial	Defendant went to the property of CW Financial, located at 791 East Main Street, in Spartanburg County, and did intentionally damage the victim's air conditioning unit in an attempt to take copper from the unit.	\$1,000		
11.6942	Metals, 3 rd	7.12.11	Century 21	Defendant went to the property of Century 21, located at 800 East Main Street, in Spartanburg County, and did intentionally damage the victim's air conditioning unit in an attempt to take copper from the unit.	\$2,500		

petitioner's
1
4-2-13

2012-CP-42-1292

RECEIPT FOR EXHIBITS

Case # 2012 GSC 42 - 1292 Judge J. Mark Hayes, II

Plaintiff Joey Shaw, Jr. Weir Ally Thomas A. Belenchia

Defendant State of SC Ally Suzanne H. White

Received from Maggie Woods, Circuit Court Reporter, the following exhibits:

P=Plaintiff, D=Defendant, S =State, C =Court, J= Joint

P-1 chart of charges EV

Received by Kenneth K. Kohn, Clerk of Court

Date 4-27-73

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Joey Shawn Weir, #283049,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-1292

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 20, 2012. The Respondent made its Return on or about January 30, 2013. An evidentiary hearing into the matter was convened on April 2, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Thomas A. Belenchia, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. James A. Cheek, Esquire, testified on behalf of Respondent. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the November 2011 term of the Spartanburg County Grand Jury for one count of petit larceny (11-GS-42-4253), and one count of malicious injury to real property, fixtures or improvements to obtain non-ferrous metals (11-GS-42-4254). The Applicant waived presentation

A handwritten signature, possibly "J. Cheek", is written over a rectangular stamp that contains the word "FILED" in a bold, sans-serif font.

to the Grand Jury on the following offenses: receiving stolen goods valued between \$2000 and \$10,000 (11-GS-42-6870); malicious injury to real property, fixtures or improvements to obtain non-ferrous metals, damages more than \$2000 and less than \$10,000 (11-GS-42-6941, -42, -44, -45, -46); and injury to real property, fixtures or improvements to obtain nonferrous metals, damage of more than \$10,000 (11-GS-42-6943). He was represented by James Cheek, Esquire.

On January 6, 2012, the Applicant pled guilty to all charges as indicted. He was sentenced by the Honorable R. Lawson McIntosh to time served for petit larceny (11-GS-42-4254), a concurrent period of five (5) years, suspended to (5) years of probation for receiving stolen goods (11-GS-42-6870), a concurrent period of five (5) years for all counts of injury to real property to obtain nonferrous metals, damage of \$2,000-\$10,000 (11-GS-42-6941, -42, -44, -45, -46), (11-GS-42-4253), and a consecutive period of ten (10) years for injury to real property to obtain nonferrous metals damages of \$10,000 or more (11-GS-42-6943). The Applicant did not appeal his guilty plea or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that counsel:
 - a. "failed to object/withdraw applicant's guilty plea when trial bench sentenced applicant to a consecutive ten (10) year sentence on indictment 11-GS-42-6943"
 - b. "failed to request the trial bench for a concurrent sentencing"
 - c. "failed to conduct a full and proper investigation into the matters"
 - d. "allowed applicant to serve two difference sentences on offenses committed within a twenty-four hour period which represent not only a continuous course of conduct, but also, one offense being all offense was so closely

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

- connected as one single course. [sic] (crime spree)"
2. Involuntary guilty plea, in that;
 - a. "whether applicant's plea of guilt to indictment number 11-GS-42-6943 voluntarily, knowingly, and intelligently made [sic]"
 3. Trial court abused its discretion, in that;
 - a. "sentencing applicant to a consecutive ten (10) years under South Carolina Code of Law, section. §. 16-11-0523 (B) (C) (2) [sic]"
 - b. "failing to run indictment number 2011-GS-42-6943, concurrent with all other indictments, pursuant to South Carolina Code of Law, section. §§. 17-25-50 and 24-21-640 [sic]"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

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

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."

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

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland). 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, 477 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Applicant testified that Counsel was ineffective for failing to ask the court for concurrent sentencing. Applicant testified that he received a consecutive sentence of ten years on one indictment, but thinks he should have only received five years. Applicant testified that he never received a copy of his discovery materials. Applicant also testified that he believed that three of his charges should have been considered as one offense because of a continuous court of conduct, rather than three separate offenses. Further, Applicant testified that Counsel was ineffective because Counsel also represented another co-defendant.

Counsel testified that he did represent two of the co-defendants who pled guilty at the same time. Counsel testified that because of the Applicant's two prior property charges, he was

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subject to the enhancement of the charges to a third and subsequent, which has a maximum sentence of ten years. Counsel acknowledged that he failed to ask the court for concurrent sentencing. Counsel also acknowledged that he did not ask the State or court to consider the charges as a continuous course of conduct, in particular because those were only three of nine indictments that Applicant was pleading guilty to. Counsel testified that he spoke with the Applicant several times, reviewed the case with him and advised him of his chances of probation and the requirements of restitution. Counsel also testified that the Applicant waived his restitution hearing and agreed to the amount of \$58,860. Counsel testified that the Applicant did not want a trial, but wanted to put off his plea until a visiting judge was in town.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The Applicant appeared to be most concerned about the consecutive sentences he received, which are entirely within the court's discretion. Further, the sentences received by the Applicant are within the parameters established by the legislature. Although the State recommended concurrent sentencing, this Court cannot find that Counsel was deficient for failing to object to a sentence which was well within the trial court's discretion.

This Court finds no deficiency on Counsel's behalf and finds that the Applicant failed to demonstrate any prejudice that may have resulted from Counsel's alleged deficiencies. 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). This Court finds that the Applicant has failed to meet his burden of proof. Accordingly, this allegation is dismissed.

Involuntary Guilty Plea

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C.360, 426 S.E.2d 795 (1993).

Applicant testified that he had a reading disability in school and only finished through the tenth grade, never graduating from high school. He testified that he was in learning disability classes at Dorman and read at a seventh or eighth grade level. Applicant alleged that he did not understand the plea proceedings and was confused.

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SPARTANBURG COUNTY
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HOPE M. ACHLEY

This Court finds that the record is clear that the Applicant appeared to understand fully the plea proceedings. Based upon Counsel's testimony, the Applicant's prior record, and the plea transcript, this Court finds that the Applicant, although unhappy with the sentence received, freely and voluntarily entered a plea of guilty to all of these charges. Therefore, this claim is denied and dismissed.

Abuse of Discretion

Although raised in the application, the Applicant did not pursue this allegation at the hearing. Therefore, this Court finds that the Applicant voluntarily abandoned this claim.

Summary

This Court finds in regards to the allegations of ineffective assistance of counsel, Counsel's testimony is more credible than the Applicant's testimony. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier *supra*. Therefore, this allegation is denied.

CONCLUSION

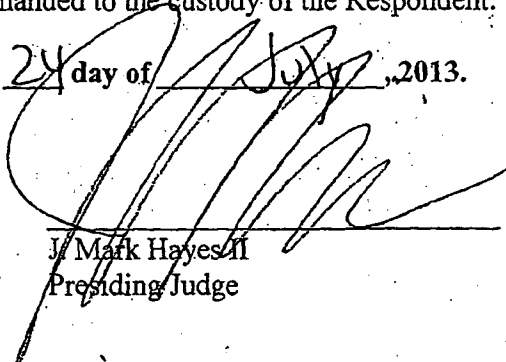
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 24 day of July, 2013.


J. Mark Hayes II
Presiding Judge

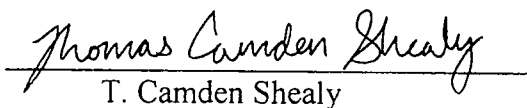
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HOPE BLACKLEY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Appellant's Notice of Appeal was served upon the following addressees by depositing a copy thereof into the U.S. Mail in a postage prepaid envelope:

- a. Suzanne H. White, Assistant Attorney General
Office of the Attorney General for the State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549
- b. Daniel E. Shearouse, Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211
- c. Hope Blackley, Clerk of Court
County Courthouse
2nd Floor, Suite 500
180 Magnolia Street
Spartanburg, SC 29306
- d. Division of Appellate Defense
Attn: Sharon A. Graham
P.O. Box 11433
Columbia, SC 29211-1433
- e. The Honorable J. Mark Hayes, II
180 Magnolia Street
Spartanburg, SC 29306

This the 6th day of August 2013.


T. Camden Shealy

116

WITNESSES

Spartanburg City Police Department

Computer

ARREST WARRANT NUMBER

M127853

Computer

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

11-GS-42-6941

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

June 28 2011

TERM

THE STATE
vs.

Joey Shawn Weir

Indictment for

Metals/ Injury to Real Property, fixtures
or improvements to obtain nonferrous
metals, damage of more than \$2000 but
less than \$10,000

SC Code: 16-11-523 (B), 16-1-57

CDR Code: 2367

CLASS FELF

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

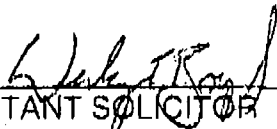
NOV 22 2011

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

METALS/INJURY TO REAL PROPERTY FIXTURES OR IMPROVEMENTS
TO OBTAIN NON-FERROUS METALS, DAMAGE OF MORE THAN \$2000
BUT LESS THAN \$10,000

That Joey Shawn Weir did in Spartanburg County on or about July 12, 2011, willfully, unlawfully and maliciously injure, damage, or destroy the real property belonging to Pulliam Investments, while attempting to obtain non-ferrous metals from the victim's property, causing damage to the property of more than \$2000 but less than \$10,000, all in violation of § 16-11-523 (B), 16-1-57, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

SOUTH CAROLINA

SPARTANBURG

VS.

Joey Shawn Weir

Race: WHITE Sex: M Age: 33

DOB: SSN: 2-11-91-3

Address:

City, State, Zip: Spartanburg, SC 29301

DL#: SID#: 3

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage of more than \$2,000 and less than \$10,000

in violation of § 16-110523(B) of the S.C. Code of Laws, bearing CDR Code # 3440

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lowd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. JSW (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BOYD, WISSE

SC Bar# 78424

Defendant

Attorney for Defendant

SC Bar# 1207

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

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

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 10-340 4/6/14

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference. All charges concurrent except indictment 2011-65-4

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 6943 which is consecutive to other indictments☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$300	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/cv	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 123.90

Clerk of Court/ Deputy Clerk

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-65-426941

A/W#: M127853

Date of Offense: 7/12/2011

S.C. Code § 16-110523(B)

CDR Code #: 3440

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSPresiding Judge
Julius Code:

M-127853

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

07031611

Joey Shawn Weir

against

Address:

SPARTANBURG, SC 29301

Phone:

Sex: M

Race: W

Height: 6

SSN: 1

Weight: 195

DL State:

SC

DL #:

DOB:

Agency ORI #: SC0420100

Prosecuting Agency:

Spartanburg Public Safety Department

Prosecuting Officer:

Jason E Tapp - 1117

Offense: Metals / Injury to real property, fixtures or

improvements to obtain nonferrous metals, damage

Offense Code:

3440

Code/Ordinance Sec:

16-11-0523(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 the law.

(L.S.)

Signature of Judge:

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant JOEY WEIRon 8-16-11B. J. Tapp
Spartanburg Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

180 Magnolia Street

P O Box 3483

Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Spartanburg

Personally appeared before me the affiant Jason E Tappbeing duly sworn deposes and says that defendant Joey Shawn Weirdid within this county and state on or about 07/12/2011

violate the criminal laws of

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

Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE

Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage of mo.
than \$2,000 and less than \$10,000I 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 JULY 12, 2011 IN THE CITY OF SPARTANBURG ONE JOEY WEIR DID MALICIOUSLY CUT, MUTILATE,
DEFACE OR OTHERWISE INJURE THE PERSONAL PROPERTY OF PULLIAM INVESTMENT LOCATED AT 812 EAST
MAIN STREET, SPARTANBURG, SC BY TAKING COPPER ALUMINUM RADATOR COILS FROM THE VICTIMS AIR
CONDITIONING UNITS, DAMAGE BEING MORE THAN \$2000 AND LESS THAN \$10,000.THIS IS THE THIRD AND SUBSEQUENT OFFENSE AND SECTION 16-1-57 APPLIES BECAUSE THE DEFENDANT HAS
TWO OR MORE PROPERTY CRIME CONVICTIONS BASED ON VALUE

WARRANT BASED ON POLICE INVESTIGATION TCM

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Affiant's Address

145 West Broad Street
Spartanburg, SC 29306

Affiant's Telephone

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 it

on or about 7/12/2011defendant Joey Shawn Weirdid violate the criminal laws of the State of South Carolina (or ordinance of Spartanburg) as set forth below:☒ County/☐ Municipality ofDESCRIPTION OF OFFENSE: Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage of
more than \$2,000 and less than \$10,000Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him
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 a
soon thereafter as is practicable
Sworn to and subscribed before meon 08/11/2011

Judge's Address

180 Magnolia Street
Spartanburg, SC 29306

Signature of Issuing Judge

Judge's Telephone

William Robby Chunley

Issuing Court:

Judge Code: 7165

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

WITNESSES

Spartanburg City Police Department

Computer

CHARGE

1. **Computer**

2. **Computer**

ARREST WARRANT

M127854

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

11-GS-42
The State of South Carolina

6942

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 28 2011

TERM

THE STATE
VS.

Joey Shawn Weir

Indictment for

Metals/ Injury to Real Property, fixtures
or improvements to obtain nonferrous
metals, damage of more than \$2000 but
less than \$10,000
SC Code: 16-11-523 (B), 16-1-57
CDR Code: 2367
Class FEL/F

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

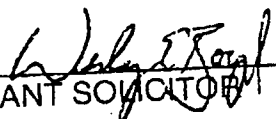
NOV 22 2011

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

METALS/INJURY TO REAL PROPERTY FIXTURES OR IMPROVEMENTS
TO OBTAIN NON-FERROUS METALS, DAMAGE OF MORE THAN \$2000
BUT LESS THAN \$10,000

That Joey Shawn Weir did in Spartanburg County on or about July 12, 2011, willfully, unlawfully and maliciously injure, damage, or destroy the real property belonging to 21 Century, while attempting to obtain non-ferrous metals from the victim's property, causing damage to the property of more than \$2000 but less than \$10,000, all in violation of § 16-11-523 (B), 16-1-57, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Joey Shawn Weir

AKA:

Race: WHITE Sex: M Age: 33

DOB: SS#: 240-1111

Address:

City, State, Zip: Spartanburg, SC 29301

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage of more than \$2,000 and less than \$10,000

in violation of § 16-110523(B) of the S.C. Code of Laws, bearing CDR Code # 3440

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Boyd, Weir 7824 Boyd, Weir 1203
BOYD, WEIR SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 180 daysmonth/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011-65-42-6943 which is consecutive to other
indictments. The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (167 Days)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

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

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

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

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

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

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

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

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011 6542 6942A/W#: M127854Date of Offense: 7/12/2011S.C. Code § : 16-110523(B)CDR Code #: 3440

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

(10-15 yrs for fine)

w/minor 1st or Lewd Act)

Recommendation by the State.

SC Bar#

County Detention Center,

years

days/months/years and/or payment

probation for

standard conditions of

indictment

which is consecutive to other

indictments

to be calculated and applied

S.C. Code §17-25-135.

(Criminal

ammunition.

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge P. J. [Signature]Judge Code: 2155Sentence Date: 12-8-12Clerk of Court/ Deputy Clerk [Signature]Court Reporter: P. Facette

SCCA/217 (03/2011)

M-127854

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

DATE

07031611

Joey Shawn Weir

Address:

SPARTANBURG, SC 29301

Phone:

SSN:

Sex: M

Race: W

Height: 6

Weight: 195

DL State:

SC

DL #:

DOB:

Agency ORI #: SC0420100

Prosecuting Agency:

Spartanburg Public Safety Department

Prosecuting Officer:

Jason E Tapp - 1117

Offense: Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage

Offense Code:

3440

Code/Ordinance Sec:

16-11-0523(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 the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Joey Weiron 8-11-11

B. J. K.

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

180 Magnolia Street

P O Box 3483

Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Spartanburg

Personally appeared before me the affiant Jason E Tapp

being duly sworn deposes and says that defendant Joey Shawn Weir

did within this county and state on or about 07/12/2011

State of South Carolina (or ordinance of ☒ County/

in the following particulars:

DESCRIPTION OF OFFENSE

Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage of mor

than \$2,000 and less than \$10,000

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 JULY 12, 2011 IN THE CITY OF SPARTANBURG ONE JOEY WEIR DID MALICIOUSLY CUT, MUTILATE,

DEFACE OR OTHERWISE INJURE THE PERSONAL PROPERTY OF 21 CENTURY LOCATED AT 800 EAST MAIN

STREET, SPARTANBURG, SC BY TAKING COPPER ALUMINUM RADATOR COILS FROM THE VICTIMS AIR

CONDITIONING UNITS, DAMAGE BEING MORE THAN \$2000 AND LESS THAN \$10,000.

THIS IS THE THIRD AND SUBSEQUENT OFFENSE AND SECTION 16-1-57 APPLIES BECAUSE THE DEFENDANT HAS

TWO OR MORE PROPERTY CRIME CONVICTIONS BASED ON VALUE

WARRANT BASED ON POLICE INVESTIGATION, TOM

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Affiant's Address

145 West Broad Street

Spartanburg, SC 29306-

Affiant's Telephone

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 the

on or about 7/12/2011

☒ County/☐ Municipality of

Spartanburg

defendant Joey Shawn Weir

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

DESCRIPTION OF OFFENSE: Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage of

more than \$2,000 and less than \$10,000

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

her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as

soon thereafter as is practicable

Sworn to and subscribed before me

on 08/11/2011

Signature of Issuing Judge

William Robby Chunley

Judge Code: 7165

ORIGINAL

Spartanburg

180 Magnolia Street

Spartanburg, SC 29306-

(864)596-2564

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

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SPARTANBURG PUBLIC SAFETY
DEPARTMENT
SC0420100

INCIDENT REPORT

INFORMATION
ONLY

CASE NUMBER
07031711

NC
INQ.

INCIDENT TYPE										COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE															
1. 16-13-0030(A) Larceny/Petit or Simple Larceny 23H ALL OTHER LARCENY										☒ YES ☐ NO	☐ YES ☒ NO	COMMERCIAL/OFFICE BUILDING		☐ Indiv ☐ Busi ☐ Fin ☐ Govt ☐ Reliq ☐ Soc./ ☐ Other ☐ Unkn ☐ Police															
2.										☐ YES ☐ NO	☐ YES ☐ NO																		
3.										☐ YES ☐ NO	☐ YES ☐ NO																		
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 800 E MAIN ST, Spartanburg, SC										ZIP CODE 29307-		WEAPON TYPE																	
INCIDENT DATE 07/05/2011		24 HR. CLOCK 18:00		TO DATE 07/12/2011		24 HR. CLOCK 08:00		DISP. DATE 07/12/2011		DISPATCH DATE/TIME 24 HR. CLOCK DISP. TIME 08:08		TIME ARRIVED 08:15		DEPART. TIME 08:30		LOCATION 2													
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) BLACKWELL, COY, ALLEN										RELATIONSHIP TO SUBJECT #1 #2 #3		RESIDENT S	RACE W	SEX M	AGE 73	ETH N	DAYTIME PHONE 864-590-7113	EVENING P B											
ADDRESS 100 MUIRFIELD DR										CITY SPARTANBURG		STATE SC		ZIP CODE 29306-		LOCATION 2													
VICTIM'S NAME (LAST, FIRST, MIDDLE) CENTURY 21 BLACKWELL REALTY										RELATIONSHIP TO SUBJECT #1 #2 #3		RESIDENT	RACE	SEX	AGE	ETH	DAYTIME PHONE 864-573-7300	EVENING P B											
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																									
ADDRESS 800 E MAIN ST										CITY SPARTANBURG		STATE SC		ZIP CODE 29302-		LOCATION 2													
VIOLENCE (MCT.1) ☐ YES ☐ NO ☐ EXPLAIN:										COMPLAINANT OF ANY NON-VIOLENCE ☐ YES ☐ NO																			
VICTIM NO. 1 USING ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ TYPE:										COMPLAINANT OF ANY NON-VIOLENCE ☐ YES ☐ NO																			
TWO-MAN VEH. ONE-MAN VEH. DETECTIVE PLASMT. OTHER ALONE ASSISTED										J-This Jurisdiction. S-State. O-Out of State. U-Unknown.																			
☒ SUSPECT NAME (LAST, FIRST, MIDDLE) WEIR, JOEY, SHAWN										RACE W	SEX M	AGE 32	ETH N	DATE OF BIRTH	HEIGHT 604	WEIGHT 185	HAIR BROW	EYE B											
☐ RUNAWAY										FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.																			
☐ WANTED										ADDRESS																			
☐ WARRANT										DAYTIME PHONE 864-573-5888																			
☐ ARREST										CITY SPARTANBURG																			
☐ JAIL										STATE SC																			
☐ SUMMONS										ZIP CODE 29303-																			
SUBJECT NO. 1 USING ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ TYPE:										ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐ TOTAL # ARRESTED																			
DATE/TIME OF OFFENSE 7/5/2011 6:00:00 PM										DATE/TIME OF ARREST																			
DAY OF THE WEEK S M T W T F S UNK										HOW REPORTED																			
A= OFFICER DISPATCHED ON CALL B= REPORT TAKEN BY PHONE C= COMPLAINANT WALKED IN										D= COMPLAINT WRITTEN IN E= OFFICER INITIATED F= OTHER																			
DIFF. FACTOR										A= RESISTANCE/HOSTILITY B= WEAPONS C= UNFOUNDED CALLS D= MENTAL SUBJECT																			
E= COMPLAINANT FRE- QUENTLY INTOXICATED F= DOMESTIC N= NORMAL																													
ORIGINAL - SPIVEY, T.																													
ON 07-12-11 AT 0808 HOURS I OFFICER SPIVEY RESPONDED TO 800 E MAIN STREET IN REFERENCE TO A LARCENY OF COPPER. UPON ARRIVING ON SCENE AT 0815 HOURS I SPOKE TO THE COMPLAINANT COY BLACKWELL. MR BLACKWELL STATED WHEN HE LEFT HIS BUSINESS ON 07-05-11 THE BUSINESS WAS LOCKED, SECURED AND EVERYTHING IN PLACE. MR BLACKWELL STATED WHEN HE RETURNED ON 07-12-11 AT 0800 HOURS HE NOTICED AN UNKNOWN SUSPECT HAD REMOVED ALL THE COPPER PIPING FROM TWO AIR UNITS LOCATED ON THE RIGHT SIDE OF THE BUILDING. MR BLACKWELL STATED HE DIDN'T HAVE VIDEO SURVEILLANCE DUE TO HIM CURRENTLY MOVING LOCATIONS. PHOTOGRAPHS WERE TAKEN AND SAVE TO THE PICTURE FILE IN EVIDENCE. THE SCENE WAS PROCESSED FOR PRINTS AND NONE WERE FOUND.																													
REVIEWED BY SGT SMITH 07/12/11																													
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY SC0420100										JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY																			
TYPE (GROUP)		Metals, Non-Precious		STOLEN		1		DAMAGED		0		BURNED		0		RECOVERED		0		SEIZED		0		TOTAL VALUE		1			
SUBJECT IDENTIFIED		☐ YES ☒ NO		SUBJECT LOCATED		☐ YES ☒ NO		S. F.		☐ ACTIVE ☐ ADM. CLOSED		☐ UNFOUNDED		ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18		ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OV									
REASON FOR EXCEPTIONAL CLEARANCE 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE NO CUSTODY																													
REPORTING OFFICER(S) SPIVEY, TRAVIS										DATE 7/12/2011 8:08:00 AM										UNIT NUMBER 0240									
APPROVING OFFICER										DATE										UNIT NUMBER									
FOLLOWUP OFFICER																													

ADMINISTRATIVE PROPERTY

INCIDENT

VICTIM NO.

SUSPECT NO.

EVENT

AGENCY: SPARTANBURG PUBLIC SAFETY
 ORI #:
 Report Date / Time: 07/05/2011 18:00
 Incident #: 07031711

ADDITIONAL PROPERTY

STATUS: STOLEN	RELATED TO: VICTIM 1, CENTURY 21 BLACKWELL REALTY		CLASS: Metals, Non-Precious
DESCRIPTION: COPPER		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE: 23H	QUANTITY: 2	VALUE: 1	
DATE RECOVERED:	JURISDICTION STOLEN: SC0420100	JURISDICTION RECOVERED:	
STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	
STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	
STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	
STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	
STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	
STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	

WITNESSES

Spartanburg City Police Department

REPORT MADE

REPORT MADE

CARD FILED

INDEXED

SEARCHED

CHECKED SIGNATURE

ARREST WARRANT NUMBER

FILED CARD MADE

M127855- VICTIM/OTHER NAME

Computer

Computer

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

11-65-12

6943

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

NOV 28 2011

TERM

THE STATE

VS.

Joey Shawn Weir

Indictment for

Metals/Injury to Real Property, fixtures
or improvements to obtain nonferrous
metals, damage of more than \$10,000

SC Code: 16-11-523 (B), 16-1-57

CDR Code: 2367

Class FEL/F

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

NOV 22 2011

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

**METALS/INJURY TO REAL PROPERTY FIXTURES OR IMPROVEMENTS
TO OBTAIN NON-FERROUS METALS, DAMAGE OF MORE THAN \$10,000**

That Joey Shawn Weir did in Spartanburg County on or about July 12, 2011,
willfully, unlawfully and maliciously injure, damage, or destroy the real property
belonging to C.W. Financial while attempting to obtain non-ferrous metals from the
victim's property, causing damage to the property of more than \$10,000, all in violation
of § 16-11-523 (B), 16-1-57, Code of Laws of South Carolina, (1976, as amended).

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
 STATE VS.
Joey Shawn Weir

AKA:

Race: WHITE Sex: M Age: 33DOB: SS#:

Address:

City, State, Zip: Spartanburg, SC 29301DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage of \$10,000 or more (10-10 yrs 40 fine)in violation of § 16-11-0523(B) of the S.C. Code of Laws, bearing CDR Code # 3441☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Boyd, Weir78424DefendantAttorney for DefendantSC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 10 yearsand/or to pay a fine of \$ 2500; provided that upon the service of 2500 days/months/years and/or paymentof \$ 2500; plus costs and assessments as applicable*; the balance is suspended with probation for 2500

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (167 Days)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 2500 plus 20% fee: \$ 500

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>390</u>
TOTAL	\$	\$ <u>183.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS426943A/W#: M127855Date of Offense: 7/12/2011S.C. Code §: 16-11-0523(B)CDR Code #: 3441

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

w/minor 1st or Lewd Act)

(defendant's initials)

Recommendation by the State.

Attorney for Defendant

SC Bar#

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 10 yearsand/or to pay a fine of \$ 2500; provided that upon the service of 2500 days/months/years and/or paymentof \$ 2500; plus costs and assessments as applicable*; the balance is suspended with probation for 2500

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (167 Days)☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 2500 plus 20% fee: \$ 500

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>390</u>
TOTAL	\$	\$ <u>183.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code:

Sentence Date:

M-127855

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE against

Joey Shawn Weir

Address:

SPARTANBURG, SC 29301

Phone: SSN

Sex: M Race: W Height: 6 1 Weight: 195

DL State: SC DL #: Agency ORI #: SC0420100

DOB: Prosecuting Agency: Spartanburg Public Safety Department

Prosecuting Officer: Jason E Tapp - 1117

Offense: Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage

Offense Code: 3441

Code/Ordinance Sec: 16-11-0523(B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

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

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 8-11-11

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Spartanburg

Personally appeared before me the affiant Jason E Tapp

being duly sworn deposes and says that defendant Joey Shawn Weir

did within this county and state on or about 07/12/2011

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

in the following particulars:

DESCRIPTION OF OFFENSE Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage of \$10,000 or more

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 JULY 12, 2011 IN THE CITY OF SPARTANBURG ONE JOEY WEIR DID MALICIOUSLY CUT, MUTILATE, DEFACE OR OTHERWISE INJURE THE PERSONAL PROPERTY OF C W FINANCIAL LOCATED AT 791 EAST MAIN STREET, SPARTANBURG, SC BY TAKING COPPER ALUMINUM RADATOR COILS FROM THE VICTIM'S AIR CONDITIONING UNITS, DAMAGE BEING MORE THAN \$10,000.

THIS IS THE THIRD AND SUBSEQUENT OFFENSE AND SECTION 16-1-57 APPLIES BECAUSE THE DEFENDANT HAS TWO OR MORE PROPERTY CRIME CONVICTIONS BASED ON VALUE

WARRANT BASED ON POLICE INVESTIGATION, JEM

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 145 West Broad Street
Spartanburg, SC 29306-

Affiant's Telephone

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 the

on or about 7/12/2011

defendant Joey Shawn Weir

did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Metals / Injury to real property, fixtures or improvements to obtain nonferrous metals, damage of \$10,000 or more.

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable Sworn to and subscribed before me on 08/11/2011

on 08/11/2011

Signature of Issuing Judge (L.S.)

William Robby Chunmley

Judge Code: 7165

Judge's Address 180 Magnolia Street
Spartanburg, SC 29306-

Judge's Telephone (864)596-2564

- Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

FOLLOWUP		NUMBER
BASECAMP	OFFICER	

SPARTANBURG PUBLIC
SAFETY DEPARTMENTORI # :
Report Date/Time : 07/11/2011 18:45
Incident # : 07031811INCIDENT REPORT
ADDITIONAL OTHERS

PERSON TYPE SUSPECT	NAME (LAST, FIRST, MIDDLE) MCDOWELL, PATRICK, DURAND					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT J	RACE B	SEX M	AGE 25	D.O.B. 11/18/1985	ETH N
	HEIGHT 601	WEIGHT 285	HAIR BLACK	EYES BROWN	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS 55 WILLIAMS ST					CITY SPARTANBURG	STATE SC	ZIP CODE 29301-	LOCATION NO.	DAYTIME PHONE	EVENING PHONE			
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN-														
USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE:														
COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS					CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE	EVENING PHONE			
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN-														
USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE:														
COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
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COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														

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COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														