

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JAN 15 2014

Appeal from York County

S.C. Supreme Court

John C. Hayes, III, Circuit Court Judge

JOHN EDWARD BURCHFIELD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001331

APPENDIX

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Appellate Defender

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK)

THE STATE)
) TRANSCRIPT OF RECORD
-vs-) 2012-GS-46-01032
) 2012-GS-46-01033
JOHN BURCHFIELD, JR.,) 2012-GS-46-01034
) APRIL 2, 2012
DEFENDANT.) YORK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE LEE S. ALFORD, JUDGE.

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

E.B. SPRINGS, IV, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

CASEY CORNWELL, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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(NO WITNESSES CALLED)

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NO. DESCRIPTION

(NO EXHIBITS MARKED)

ID. EV.

1 (PROCEEDINGS, APRIL 2, 2012)

2 JOHN BURCHFIELD, JR., having been first duly
3 sworn, testified as follows:

4 MR. SPRINGS: May it please the court?

5 THE COURT: Solicitor.

6 MR. SPRINGS: Your Honor, the next matter before
7 this honorable court is the State of South Carolina versus
8 John Edward Burchfield, who stands here dressed in orange,
9 with his attorney Mr. Casey Cornwell.

10 Mr. Burchfield is charged with entering a bank
11 with intent to steal, possession of a hoax destructive
12 device, a bomb, and armed robbery.

13 Mr. Cornwell has negotiated very hard with the
14 State on this. I commend him, and we have come up with a
15 negotiated sentence range of 10 to 15 no-parole years.
16 That's the negotiation.

17 THE COURT: Now, are these separate occurrences?

18 MR. SPRINGS: This is one bank robbery. He walked
19 into the bank, had a fake bomb, said "I'll blow it up if you
20 don't give me your money." He got some money and ran out of
21 the bank with it.

22 THE COURT: I'm just trying to run this through my
23 mind why he would be charged with armed robbery and also
24 entering a bank, a financial institution with intent to
25 steal.

1 MR. SPRINGS: They are completely different
2 elements. The bank robbery is just walking in, intending to
3 steal; and the armed robbery is any kind of threat of a
4 deadly weapon to get money. He completed it and got money.

5 THE COURT: Is completing the step --

6 Approach just a minute.

7 (Whereupon, the lawyers approached the bench for
8 an off-the-record discussion)

9 THE COURT: Counsel, approach just one more time.
10 I want to be sure we are on all fours here.

11 (Whereupon, the lawyers approached the bench for
12 an off-the-record discussion)

13 THE COURT: If it please the court, the State has
14 decided not to proceed on the armed robbery.

15 We are proceeding on the bank robbery, entering a
16 bank with intent to steal, and possession of a hoax
17 destructive device, a fake bomb. We are proceeding on those
18 two charges.

19 The State is going to, at the conclusion of this
20 plea to the bank robbery and the possession of a fake bomb
21 charge, we are going to dismiss with prejudice the armed
22 robbery charge.

23 THE COURT: All right. Sir, you are John Edward
24 Burchfield, Jr., is that right?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: How old are you, Mr. Burchfield?

2 THE DEFENDANT: 49.

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

4 THE DEFENDANT: GED after 12 years.

5 THE COURT: What do you do for job or occupation,
6 sir?

7 THE DEFENDANT: Plumbing.

8 THE COURT: Are you married, sir?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have children, any under 18?

11 THE DEFENDANT: No, sir.

12 THE COURT: How much time have you served in jail
13 on these charges?

14 THE DEFENDANT: On these charges?

15 MR. SPRINGS: 90 days.

16 THE DEFENDANT: 92 days.

17 MR. SPRINGS: His math may be better than mine.

18 The warrant was served on him on January the 3rd of this
19 year.

20 THE COURT: Okay. Now Mr. Burchfield, you are
21 charged with -- today they have agreed -- the solicitor has
22 decided to dismiss -- after your plea today to these other
23 two charges, they plan to dismiss the armed robbery charge
24 against you, but you are also charged today -- but you are
25 charged today with entering a bank with intent to steal,

1 which offense is classified as a felony and it carries a
2 maximum punishment of 30 years. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: It's also classified -- it's a
5 no-parole offense, which means that you would be expected to
6 serve the sentence that you would actually receive on this
7 charge.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: It's also classified as a serious
10 offense. The importance of that classification is should
11 you get three serious offenses on your record, or a
12 combination of three serious and most-serious offenses on
13 your record, upon getting the third such offense you could
14 get a sentence of life without parole, so called
15 Three-Strikes Rule. This offense would classify as one of
16 those three strikes. Do you understand that, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You are also charged today with
19 possession of a hoax destructive device, which offense
20 carries a maximum punishment of one year. Do you understand
21 that charge and the maximum punishment that you could
22 receive?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Understanding that, how do you wish to
25 plead to these two charges today, guilty or not guilty?

1 THE DEFENDANT: Guilty, sir.

2 THE COURT: Do you understand that by pleading
3 guilty you give up your right to remain silent?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that by pleading
6 guilty, you give up your right to a trial by jury?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And if you give up your right to a
9 trial by jury, you also give up your right to assert any
10 legal defenses that you might have in a jury trial?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: I know your attorney has gone over
13 that right with you, and I'm going to do so as well.

14 If you requested a trial by jury, the State would
15 give you a trial.

16 At trial you would have the right to confront and
17 cross-examine all witnesses against you.

18 You would have the right to present any witnesses
19 and/or evidence in your own defense.

20 You would have the right to testify in your own
21 defense, if you wished to do so, but no one could make you
22 testify in your own trial.

23 If you decided to go to trial and not testify, the
24 judge would tell the jury they could not hold your failure
25 to testify against you. In fact, the jury couldn't even

1 consider your failure to testify in their deliberations on
2 your guilt or innocence.

3 You would be presumed innocent throughout your
4 trial.

5 The State would have to prove you guilty beyond a
6 reasonable doubt to a jury of twelve people. All twelve
7 people would have to unanimously agree that you were guilty
8 in order for you to be convicted. Even if you were
9 convicted, you would still have the right to appeal that
10 conviction.

11 Do you understand your rights with regard to a
12 trial by jury?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Understanding that right, do you still
15 want to plead guilty, or do you want me to set your cases
16 for trial?

17 THE DEFENDANT: Guilty, sir.

18 THE COURT: The State is recommending a sentence
19 of 10 to 15 years, in that sentencing range. Is that your
20 understanding of the agreement that you had with the
21 solicitor's office in order to plead guilty to this charge?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Has anybody promised you anything
24 other than that in order to get you to plead guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you satisfied with the manner in
2 which your attorney has advised and represented you in these
3 cases?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you today under the influence of
6 any mind-altering substance, such as alcohol, drugs --

7 Well, let me back up. Have you and your attorney
8 fully discussed these charges against you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Has your attorney told you the
11 witnesses and evidence the State has available to present at
12 trial to prove your guilt?

13 THE DEFENDANT: Off and on, yes, sir.

14 THE COURT: Has your attorney discussed with you
15 any possible legal defenses that might be available to you,
16 if you were to go to trial?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Have you told your attorney the names
19 of any and all witnesses you know of that your attorney
20 could subpoena and bring to trial to assist you in your
21 defense, if you were to go to trial?

22 THE DEFENDANT: There are none, sir.

23 THE COURT: Are you today under the influence of
24 any mind-altering substance, such as alcohol, drugs, or
25 prescription medications, which interfere with your judgment

1 or ability to understand what you are doing in court?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you have any mental, emotional, or
4 nervous condition that interferes with your judgment or
5 ability to understand what you are doing in court?

6 THE DEFENDANT: No, sir.

7 THE COURT: Are you pleading guilty today of your
8 own free will?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Are you, in fact, guilty of these two
11 charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Please give me the facts, solicitor.

14 MR. SPRINGS: Yes, Your Honor.

15 Your Honor, on the morning of January the 3rd,
16 2012, about nine o'clock in the morning, the police were
17 dispatched to the Citizens South Bank on Indian Hook Road on
18 a bank robbery call. Once they got there, the bank
19 employees stepped out and told the police the bank had been
20 robbed. The bank robber they said had fled the scene. They
21 said he robbed the bank with what he said was a bomb and
22 it's still in the bank. And then the police started working
23 on getting the bomb squad out to deal with that, but they
24 didn't know whether it was real or not, so they had to
25 contend with the package left in the bank.

1 They got a description. It was Mr. Burchfield's
2 description. They talked to the people in the bank. The
3 teller said he walked in, he had a box, which sounds like it
4 was about half the size of a shoe box, with a cell phone
5 taped to the top with electrical tape and wires running from
6 the cell phone to the box. He went up to the teller and
7 said "this is a bomb. I have the igniter switch and I'll
8 blow you up if you don't give me the money." The teller did
9 give him some money. Mr. Burchfield then left the bank,
10 walked away from the bank. He was seen by a number of
11 witnesses.

12 The police put out a perimeter where they
13 basically canvass in a large circle around the crime scene.
14 They saw a taxicab cruising along, and one officer stopped
15 the cab and asked if they had gotten a call and they said
16 "yeah, I'm going to pick up somebody right now." And the
17 officer just felt like something wasn't quite right. He
18 kept his eye on the cab. The cab pulled up to a place
19 nearby and a lady came out and got in the cab and then Mr.
20 Burchfield came out and got in the cab. The officer stopped
21 the cab and Mr. Burchfield made a spontaneous utterance
22 referring to the woman that was in the cab "she didn't have
23 anything to do with it."

24 He met the description of the robber. He was
25 mirandized. He fully admitted to robbing the bank and he

1 said the bomb was a fake. The police investigated the bomb
2 and it was, in fact, a fake. He had on him \$1,769 that
3 belonged to the bank, money he had gotten when he went in
4 with the fake bomb, threatened the teller, and was given
5 money belonging to the bank.

6 He has some prior record, Your Honor. In
7 Illinois, four different burglaries over the course of 1991
8 and '90.

9 1987, in the State of -- I can't tell what state
10 it is, but it's a larceny and carrying a weapon conviction.

11 And he had some other arrests, but no convictions.

12 THE COURT: Mr. Burchfield, you have heard the
13 facts recited to the court by the solicitor's office with
14 regard to these two charges. Do you disagree in any way
15 with what they say happened?

16 THE DEFENDANT: Just one thing, Your Honor. I
17 did -- they took me back to the bank in the police car and I
18 talked to the bomb squad, lieutenant, or whatever he is, and
19 I told him before they ever went in there that it was fake,
20 that they didn't have to worry about it, and I gave them
21 every penny of the money back and I cooperated fully.

22 THE COURT: I find the decision of the defendant,
23 John Edward Burchfield, Jr., to plead guilty to this charge
24 being made freely, voluntarily and intelligently.

25 He's had the representation of a competent

1 attorney with whom he says he is satisfied.

2 I find the facts presented to the court by the
3 solicitor's office, and even those concurred in by the
4 defendant, fully support the guilty pleas in this case, and
5 I will accept the pleas as freely and voluntarily made.

6 Mr. Burchfield, if you disagree with the
7 proceeding in which we are currently involved, you have ten
8 days from today's date within which to file a notice of
9 intent to appeal. Do you understand your right to appeal
10 today's proceeding?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Counsel?

13 MR. CORNWELL: If it please the court, Your Honor.

14 You have heard Mr. Burchfield speak. He was born
15 in 1962. He's here today because of his actions and he's
16 here to admit that he was wrong for what he did, Your Honor.

17 In reading the evidence and going through the
18 discovery, I think two things jump out at me. The fact that
19 he basically confessed to this thing pretty quickly and to
20 two different sets of authorities. The FBI even came and
21 talked to him about it and he gave them a full confession
22 and, you know, basically described his reason or why he did
23 this.

24 And, Your Honor, it's -- you know, it's tragic,
25 you know, that this happened. I mean -- well, not tragic,

1 but it's very sad that this happened. And the victim in
2 this case, you know, I know my client feels terrible for
3 what he done to them, because no one knows what their
4 mindset was like when they thought, you know, somebody said
5 blow up the bank, you know, but you can't help but if you
6 read this discovery and it reads, you know, the situation he
7 was in at the time and why he did this is, for lack of a
8 better word, it's kind of pathetic, you know. I don't mean
9 that as an insult, it's literally pathetic. The guy who --
10 you know, who is basically homeless, bounces around from
11 place to place, and, you know, gets married. He meets the
12 lady he loves and gets married and then, you know, gets
13 himself into trouble six months after getting married and
14 he's looking at 10 to 15 years, eighty-five percent, you
15 know, because of a stupid decision he made, and he's putting
16 her through this too, you know. The hurt he's caused her,
17 not just the victims, and he's definitely hurt himself. And
18 I bet you right now he's kicking himself in the butt for
19 what he did, Your Honor.

20 You read -- you heard the facts from Mr. Springs
21 and it's obvious that this is not a professional bank robber
22 here, not somebody who is putting much thought or planning
23 into his activity. It was something that was kind of came
24 at the spur of the moment. It's not something that he
25 normally does. It's definitely not an activity that he

1 seeks to be part of in the future, Your Honor.

2 In weighing the mitigation also, Your Honor, I was
3 talking to Mr. Burchfield. He tells me that he does have
4 some medical conditions which caused him to have seizures
5 from time to time. I think he's been hospitalized since
6 he's actually been incarcerated, if I'm not mistaken, for
7 that condition. He takes medication for that, Your Honor.
8 And he tells me that it is something that, you know, he's
9 very concerned about while he's incarcerated. I told him
10 that they do provide the medication and everything like that
11 in jail, but he did want to make the court aware of that so
12 you will have the full picture before crafting a sentence.

13 Your Honor, as you are probably not surprised, we
14 are going to ask for the low end on that range, the 10 year
15 sentence, Your Honor, given the fact that this was a fake
16 device. And although, even though those people were
17 traumatized by the event, there were no physical injuries.
18 Mr. Burchfield did cooperate with law enforcement fully,
19 giving a statement to the FBI and local authorities, Your
20 Honor. For those reason we would ask you to consider giving
21 him the low end on that, Your Honor, the 10 years, and we
22 will accept it.

23 THE COURT: Thank you.

24 Mr. Burchfield, anything that you want to say to
25 the court?

1 THE DEFENDANT: No, sir. I'm guilty of what I
2 did. I'm sorry for doing it, but I am guilty of it.

3 THE COURT: Well, I'm going to take into
4 consideration the whole circumstances, particularly his
5 cooperativeness about it and the whole facts and
6 circumstances and his cooperativeness and that sort of
7 thing. I'll take all of that into consideration.

8 You are right, it does traumatize the people who
9 were there, the victims, and that's the unfortunate part of
10 it. You know, it puts them into fear that they won't forget
11 probably for most of their lifetime.

12 But, in any event, case number 2112-GS-46-1033,
13 John Edward Burchfield, Jr., having pled guilty to entering
14 a bank with the intent to steal, the sentence of the court
15 is you be committed to the State Department of Corrections
16 for a determinate term of 10 years.

17 He's given credit for 92 days of jail time.

18 In case number 2112-GS-46-1034, John Edward
19 Burchfield, Jr., having pled guilty to possession of a hoax
20 destructive device, the sentence of the court is to be
21 committed to the State Department of Corrections for a
22 determinate term of one year. That sentence is concurrent.

23 He's given credit for time served of 92 days.

24 MR. SPRINGS: Thank you, Your Honor.

25 MR. CORNWELL: Thank you, Your Honor.

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THE DEFENANT: Thank you, Your Honor.

(END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE

1

2 I, the undersigned, Michael R. Watts, Official Court

3 Reporter for the Sixteenth Judicial Circuit of the State of

4 South Carolina, do hereby certify that the foregoing is a

5 true, accurate and complete Transcript of Record of the

6 proceedings had and the evidence introduced in the trial of

7 the captioned case, relative to appeal, in the Court of

8 General Sessions for YORK County, South Carolina, on the 2nd

9 day of April, 2012.

10 I do further certify that I am neither of kin, counsel

11 nor interest to any party hereto.


12

13

14 SEPTEMBER 19, 2012

15

16

17 

18 Michael R. Watts

19 Circuit Court Reporter

20

21

22

23

24

25

FORM 5

STATE OF SOUTH CAROLINA)
County of York)

IN THE COURT OF COMMON PLEAS

2012AC P 4602-705

John Edward Berehfield 350703)
Full name and prison number (if any) of Applicant)

v.)
Court of General Sessions)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

CERTIFIED TRUE COPY
2012 AUG - 6 AM 8: 57
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
FILED - RECEIVED
2012 AUG - 1 AM 9: 57
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Evans Correctional Institution
610 Highway 9 West Bennettsville, S.C. 29312
2. Name and location of Court which imposed sentence York County Circuit
Court York South Carolina
3. Name(s) of co-defendant(s) (if any) X
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) unknown

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 2nd or so about 10 yrs 85% No Parole

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(b) after a plea of not guilty ~~_____~~

(c) after a plea of nolo contendere ~~_____~~

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

NO

8. If you answered Ayes@ to (7), list:

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

i. ~~_____~~

ii. ~~_____~~

iii. ~~_____~~

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

i. ~~_____~~

ii. ~~_____~~

iii. ~~_____~~

(c) the date of each such result:

i. ~~_____~~

ii. ~~_____~~

iii. ~~_____~~

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

i. ~~_____~~

ii. ~~_____~~

iii. ~~_____~~

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) I was sent to Kickland Receiving and Evaluation

- (b) Center and was not allowed to use the law
- (c) library except for copy's

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

- (a) My Public Defender lied and misrepresented
- (b) me. The solicitor did the same in open Court
- (c) Also my Public Defender never came to see me in 75 days

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

- (a) My public Defender told me that the solicitor could
 - (b) charge me with Entering a Bank with Intent to
 - (c) Steal and Armed Robbery at the same time
- more on
charges on
side

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? X
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? X
- (d) any other petitions, motions or applications in this or any other Court? X

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

- (a) the specific nature thereof:
 - i. X
 - ii. X
 - iii. X
 - iv. X
- (b) the name and location of the Court in which each was filed:
 - i. X
 - ii. X
 - iii. X

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) I was unable to use the law library at
- (b) Kickland R&E center. To a court order all
- (c) you could do there was make copies

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Casey Cornwall York County Public Defender's
Office Moss Justice Center York, SC.
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea agreement and sentencing.
 - ii. _____
 - iii. _____

① D. I was to plead to possession of a fake bomb and entering a bank with intent to steal. I was given 1 year for possession of a Fake Bomb. The sentence was 1 year, under CDR code # 2777. My sentencing sheet shows possession of a hoax destructive device under CDR code # 2778. That carries a minimum of two(2) years.

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

to be fairly represented and fairly charged.
My Plea should have been no more than 3 years
at 85% no Parole

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of York)

VERIFICATION

I, John Edward Burdfield, 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.

[Signature]

SWORN to and subscribed before me this 30
day of July, 2012

[Signature]
Notary Public

My Commission Expires: 8-18-18

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

I, John Edward Burt, 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
30 day of July, 2012
[Signature]
Notary Public

My Commission Expires: 8-18-18

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
)
 John Edward Burchfield, #350403,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2012-CP-46-2765

RETURN

In response to the post-conviction relief application filed on August 1, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the March 2012 term of the York County Grand Jury for Entering a Bank with Intent to Steal (2012-GS-46-1033) and Possession of a Hoax Destructive Device (2012-GS-46-1034). The Applicant was represented by Casey Cornwell, Esq. On April 2, 2012, the Applicant pled guilty to both charges as indicted. The Honorable Lee S. Alford sentenced the Applicant, pursuant to a recommendation from the State, to confinement for ten (10) years for Entering a Bank with Intent to Distribute and one (1) year, concurrent, for Possession of a Hoax Destructive Device. The Applicant did not appeal his conviction or sentence.

II.

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

1. “My Public Defender lied and misrepresented me. The Solicitor did the same in open court.”
 - a. “My Public Defender told me that the Solicitor could charge me with Entering a Bank with Intent to Steal and Armed Robbery at the same time.”
2. “Also my Public Defender never came to see me in 95 days.”

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections’ records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent interprets the Applicant’s claims as claims of ineffective assistance of plea counsel. The Respondent asserts that the Applicant’s attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (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. 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, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C.

at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

IV.

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

V.

WHEREFORE, the Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's plea counsel was ineffective and whether the Applicant's plea was knowingly and voluntarily entered.

Respectfully submitted,

ALAN WILSON
Attorney General

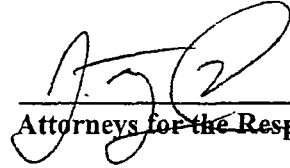
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

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

By:



Attorneys for the Respondent

Columbia, South Carolina
October 18, 2012

State of South Carolina.,) In the Common Pleas
) Court of York
)
) Case No. 2012-CP-46-02765
 County of York.)

John Edward Burchfield.,)
)
 Applicant.,)
)
 -vs-) Transcript of Record
)
 State of South Carolina.,)
)
 Respondent.)
 _____)

May 16, 2013
 York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge.

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

Mr. Justin D. Bice
 James McElroy & Diehl
 600 S. College Street
 Charlotte, North Carolina 28202-1825
 704-372-9870
 704-350-9366
Jbice@msslaw.com
 For the Applicant

Mr. J. Rutledge Johnson
 Assistant Attorney General
 State of South Carolina
 Attorney General's Office
 Rembert C. Dennis Building
 Post Office Box 11549
 Columbia, South Carolina 29211-1549
 803-734-3970
 For the Respondent

ORIGINAL

Wanda Nelson, CVR-M
 Official Court Reporter
 Sixteenth Judicial Circuit
 To the Honorable John C. Hayes, III

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I N D E X

E X A M I N A T I O N

<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
John Burchfield	Mr. Bice	P.5-9
	Mr. Johnson	P.10-12
Casey Cornwell	Mr. Johnson	P.13-15
	Mr. Bice	P.15-16

Court Reporter's Certificate Page P.17

1

I N D E X - C O N ' T

2

E X H I B I T S

3

NO.

DESCRIPTION

ID.

EVD.

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No Exhibits were received into the record.

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1 (COURT IN SESSION IN THE MATTER OF JOHN BURCHFIELD
2 VERSUS STATE OF SOUTH CAROLINA THURSDAY, MAY 16, 2013 AT
3 12:29 P.M..)

4 MR. JOHNSON: May it please the court, Your Honor.

5 THE COURT: Sure.

6 MR. JOHNSON: John Burchfield versus State of South
7 Carolina case Number 2012-CP-46-2765. Mr. Burchfield was
8 indicted at the March 2012 term of the York County Grand
9 Jury for entering a bank with intent to steal and
10 possession of a hoax destructive device.

11 He was also I believe indicted for armed robbery which
12 was dismissed pursuant to a guilty plea. On April 2, 2012
13 he pled guilty to both charges as indicated before the
14 Honorable Lee S. Alford. The current recommended sentence
15 of ten years for entering a bank with intent to steal and
16 one year for possession of a hoax destructive device.
17 There was no appeal filed however there was a timely PCR
18 application filed on August 1st, 2010. The State filed
19 it's return October 18th, 2012, and he is represented here
20 today by Mr. Justin Bice.

21 THE COURT: Mr. Bice, are you ready to proceed?

22 MR. BICE: Yes, your Honor. We'd like to call John
23 Burchfield.

24 THE COURT: Mr. Burchfield, please come up.

25 MADAME CLERK: Mr. Burchfield, place your left hand on

JOHN BURCHFIELD: BY MR. BICE

-5-

1 the Bible and raise your right.

2 (WHEREUPON: JOHN BURCHFIELD,
3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 DIRECT EXAMINATION

5 JOHN BURCHFIELD BY MR. BICE:

6 Q. Good afternoon. Would you state your full name,
7 please.

8 A. John Edward Burchfield, Junior.

9 Q. And you were charged with possession of a hoax device,
10 entering a bank with intent to steal and armed robbery; is
11 that correct?

12 A. No, sir. I was never charged or indicted for armed
13 robbery. My indictments I have in my possession right now
14 are for possession of a hoax destructive device and
15 entering a bank with intent to steal.

16 Q. Were you represented by Casey Cornwell from the public
17 defender's office in this case?

18 A. Yes, sir.

19 Q. Did you in fact plead guilty to the charge of entering
20 a bank with intent to steal and possession of a hoax
21 device?

22 A. Yes, sir, I did.

23 Q. When did you first meet Mr. Cornwell?

24 A. About five minutes before I went into court.

25 Q. Is that the first time you ever met Mr. Cornwell?

1 A. Pretty much. Yes, sir.

2 Q. What do you mean pretty much?

3 A. I was instructed that he was my attorney but I never
4 saw him until five minutes before I went into Judge
5 Alford's courtroom and then he brought me the plea from the
6 solicitor's office.

7 Q. Is that the first time that you were aware of the
8 terms of any plea?

9 A. Yes, sir.

10 Q. And what were the terms of the plea as you understood
11 it at that time?

12 A. To plead to entering a bank with intent to steal and
13 possession of a hoax destructive device and armed robbery
14 but I have never - I told Mr. Cornwell I'd never been
15 indicted for armed robbery and I didn't understand why they
16 were putting that on there.

17 Q. What did Mr. Cornwell say about that?

18 A. He said that they could do that.

19 Q. What was the proposed sentence ---

20 A. Ten years.

21 Q. --- that was enacted?

22 A. Ten years.

23 Q. Was it a ten to fifteen year range?

24 A. I don't know. I never actually received any paperwork
25 stating anything. All I know is it just said ten years.

JOHN BURCHFIELD: BY MR. BICE

-7-

1 I'm sorry. I have a disorder that my mind doesn't actually
2 do things normal. It - I don't know if it said ten to
3 fifteen years of not. I can't remember back that far.

4 Q. Okay. But your understanding was that plea agreement
5 would involve three different offenses, including armed
6 robbery?

7 A. Right.

8 Q. So when you arrived at the plea hearing, what happened
9 with the armed robbery charge?

10 A. Well I kept discussing it with my attorney right there
11 in the courtroom about I didn't think I should be able to
12 be charged with armed robbery also because it was one
13 crime. There's not two crimes or three crimes, it was one
14 crime.

15 And the judge called them up to the sidebar at that
16 time and informed the solicitor that he could not charge me
17 with armed robbery at the same time because it was one
18 crime. It even says it in my transcript, that he didn't
19 understand how that I was being charged with armed robbery
20 and entering a bank with intent to steal at the same time.
21 And then they left the bar and just a few minutes later he
22 called them back up to the bar again and I heard the judge
23 himself say that if you don't drop the armed robbery, he is
24 going to come back and beat this on appeal and we do not
25 want that and then the armed robbery was dismissed with

1 prejudice.

2 Q. And at that point did you have any further discussions
3 with your attorney before entering the plea?

4 A. No.

5 Q. So your attorney didn't explain to you that you were
6 no longer being charged with armed robbery at that point?

7 A After the judge said one more thing, I don't quite
8 remember what it says because I don't believe all my
9 transcripts are actually there because there are pages
10 missing and then he did come to me and say they're dropping
11 the armed robbery but you're still - the plea agreement for
12 ten years is still the same.

13 Q. Did he discuss how perhaps he should renegotiate the
14 plea agreement ---

15 A. No, sir.

16 Q. --- if you aren't being charged?

17 A. Not at all. I even asked to speak to the solicitor
18 about something and I was told I could not.

19 Q. You asked your attorney if you could speak to the
20 solicitor?

21 A. Yes, sir.

22 Q. And that was immediately before you entered your plea?

23 A. Right.

24 Q. But you were given no chance to renegotiate this plea
25 agreement?

JOHN BURCHFIELD: BY MR. BICE

-9-

1 A. No.

2 Q. And when you initially agreed to this plea, term of
3 ten to fifteen years, it included all three charges?

4 A. All three charges.

5 Q. And you did attempt to discuss the plea agreement with
6 the solicitor directly?

7 A. Yes, sir.

8 Q. Are there any other points you'd like to make to the
9 judge about why your plea should be set aside other than
10 what we've already discussed?

11 A. I just think that - I don't believe that it was fair
12 or impartial of the judge at that time to tell the
13 solicitor how to get my conviction. I mean, maybe I'm
14 wrong with that but it just seems like - it doesn't seem
15 right to me.

16 Q. You talking about the potential to appeal your case

17 ---

18 A. Right.

19 Q. --- if they went forward with all three crimes?

20 A. Right.

21 MR. BICE: Thank you. I have no further questions.

22 MR. JOHNSON: May it please the court, Your Honor.

23 THE COURT: Yes.

24 CROSS EXAMINATION

25 JOHN BURCHFIELD BY SOLICITOR JOHNSON:

JOHN BURCHFIELD: BY MR. JOHNSON

-10-

1 Q. Mr. Burchfield.

2 A. Yes, sir.

3 Q. The judge discussed that dropping the armed robbery
4 because he didn't understand kind of what you said how you
5 could be charged with both. Correct?

6 A. Right.

7 Q. So you ultimately pled to ten years?

8 A. Yes, sir.

9 Q. But you were actually facing thirty years on that
10 charge. Correct? Entering a bank with intent to steal.

11 A. I was just informed of that yeah.

12 Q. But he went over it in the guilty plea, didn't he, the
13 judge?

14 A. That I was facing thirty years? No, sir. It doesn't
15 say that in there.

16 SOLICITOR JOHNSON: Judge, it's on Page 7.

17 A. It does state it? Maybe that's one of the pages ---

18 Q. That's --

19 A. --- that's missing. I'm not sure.

20 Q. Okay.

21 MR. JOHNSON: May I approach, Your Honor?

22 A. I'm missing some pages out of mine, sir.

23 Q. Okay. It's from six onto seven.

24 A. I'm sorry, I have Huntington disease.

25 Q. You're fine. Seven you can flip this way. There you

JOHN BURCHFIELD: BY MR. JOHNSON

-11-

1 go, up top.

2 A. Okay. It does say that. I'm sorry I didn't --

3 Q. You're fine. So you are aware that if you're
4 successful here today that you do face that thirty year
5 charge?

6 A. Yes, sir.

7 Q. And you're willing to take that chance?

8 A. Yes, sir.

9 Q. Okay. But after hearing that, you wished to plead
10 guilty. Correct?

11 A. Oh, yes.

12 Q. Because you are guilty of this crime?

13 A. Yes, sir.

14 Q. And the judge read your constitutional rights to a
15 jury charge to you?

16 A. To a jury trial? Yes, sir.

17 Q. And you waived those rights?

18 A. I signed a waiver I believe. I'm not sure.

19 Q. And there were no other promises to you other than a
20 negotiated sentence of ten to fifteen years. Correct?

21 A. If that's what it says, yeah. I thought it was just
22 ten years. I didn't see ten to fifteen.

23 Q. Okay.

24 MR. JOHNSON: Judge, that's on Page 9, Line 25.

25 Q. And you said that you were satisfied with counsel.

JOHN BURCHFIELD: BY MR. JOHNSON

-12-

1 Correct?

2 A. Well that was before I knew the law, yeah. I looked
3 up afterwards that the judge wasn't suppose to told the
4 solicitor how to do my case. The solicitor should have
5 known himself.

6 Q. You weren't under any influence of alcohol or drugs
7 during the plea?

8 A. Just my seizure medicine.

9 Q. But nothing that would impair your ability to
10 understand what was going on?

11 A. No.

12 Q. Okay. And you pled on your own freewill?

13 A. Yes, sir.

14 Q. Because like I asked earlier, you were in fact guilty?

15 A. Oh, yeah. I'm not destructing the fact that I was
16 guilty. The fact whether or not I got a fair shake.

17 Q. Okay.

18 MR. JOHNSON: No further questions, your Honor.

19 MR. BICE: We have no other witnesses, your Honor.

20 THE COURT: All right. You can step down and have a
21 seat with your attorney.

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: The State have any witnesses?

24 MR. JOHNSON: We call Mr. Cornwell to the stand.

25 THE COURT: Come up and be sworn

CASEY CORNWELL BY MR. JOHNSON:

-14-

1 robbery?

2 A. Yes.

3 Q. And ultimately that charge was kicked out?

4 A. Yes.

5 Q. Does that have any effect on plea negotiations?

6 A. No. It didn't have any effect on the negotiations at
7 all.

8 Q. Did you try to approach Mr. Springs about changing
9 those plea negotiations?

10 A. Yes. He and I kind of talked briefly but he wasn't
11 inclined to change anything.

12 Q. And he got the lower end of this recommendation didn't
13 he?

14 A. That's correct.

15 Q. And did you discuss the discovery with Mr. Burchfield?

16 A. I did. We talked about this case and went over the
17 discovery.

18 Q. And did he ever admit to you that he actually did in
19 fact commit this crime?

20 A. Yes. He did tell me that he was guilty and he wanted
21 to enter a guilty plea.

22 Q. When a client does that, what steps do you take?

23 A. I basically inform them of their rights to have a
24 trial or what rights they're giving up to enter a guilty
25 plea.

CASEY CORNWELL: BY MR. JOHNSON
BY MR. BICE

-15-

1 Q. And did you agree with his decision to plead guilty?

2 A. Yes. Even the evidence that was against us I think
3 that was probably the best decision.

4 MR. JOHNSON: That's all the questions I have, your
5 Honor.

6 THE COURT: Mr. Bice.

7 CROSS EXAMINATION

8 CASEY CORNWELL BY MR. BICE:

9 Q. Mr. Cornwell, did you ever have any discussions with
10 Mr. Burchfield after the solicitor dropped the armed
11 robbery charges?

12 A. I can't recall the specifics but I'm - something like
13 that I am pretty sure I would have explained to him what
14 was going on.

15 Q. Do you have any recollection of telling him that he
16 should attempt to renegotiate the plea agreement now that
17 armed robbery was no longer a crime that he was being
18 charged with?

19 A. No. I don't remember specifically talking about
20 renegotiating the plea. I do remember talking to Mr.
21 Springs about some kind of possible - you know any way we
22 do that but he wasn't open to it.

23 Q. You don't remember if you passed that conversation on
24 to Mr. Burchfield about your discussion with Mr. Springs?

25 A. The most I probably told him, you know, solicitor said

1 no.

2 Q. So the ten to fifteen years was the same plea
3 agreement both before and after the dismissal of the armed
4 robbery charges?

5 A. Yes. It was the same thing that it always been on the
6 table.

7 Q. As far you know, Mr. Burchfield was not aware that
8 there were some failed negotiation attempts with Mr.
9 Springs?

10 A. Mr. Burchfield should know at least about the initial
11 attempt, you know, to get a better plea.

12 Q. Okay, but that was when there was still three charges
13 on the table?

14 A. Yes. Yes.

15 MR. BICE: I have no further questions. Thank you.

16 MR. JOHNSON: No redirect.

17 THE COURT: You can step down and be excused. Good to
18 see you.

19 MR. CORNWELL: Good to see you, Judge.

20 MR. JOHNSON: The State has no further witness.

21 THE COURT: I'll take this one under advisement.

22 (END OF TRANSCRIPT OF RECORD.)

23

24

25

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 John Edward Burchfield, #350403,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 Case No.: 2012-CP-46-2765

ORDER

FILED-RECEIVED
 2013 MAY 28 PM 3:28
 DAVID M. HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

Applicant filed his application for Post-Conviction Relief (PCR) on August 1, 2012. The case was heard by the undersigned on the 16th day of May 2013. The State of South Carolina was represented by J. Rutledge Johnson, Esquire, and the Applicant was represented by Justin Bice, Esquire.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the March 2012 term of the York County Grand Jury for Entering a Bank with Intent to Steal (2012-GS-46-1033) and Possession of a Hoax Destructive Device (2012-GS-46-1034). The Applicant was represented by Casey Cornwell, Esq. On April 2, 2012, the Applicant pled guilty to both charges as indicted. The Honorable Lee S. Alford sentenced the Applicant, pursuant to a recommendation from the State, to confinement for ten (10) years for Entering a Bank with Intent to Distribute and on (1) year, concurrent, for Possession of a Hoax Destructive Device. The Applicant did not appeal his conviction or sentence.

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

1. "My Public Defender lied and misrepresented me. The Solicitor did the same in open court."
 - a. "My Public Defender told me that the Solicitor could charge me with Entering a Bank with Intent to Steal and Armed Robbery at the same time."
2. "Also my Public Defender never came to see me in 95 days."

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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 professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Applicant first took the stand to testify on his own behalf. The Applicant testified that he was initially charged, along with Entering a Bank with Intent to Steal and Possession of a Hoax Destructive Device, with Armed Robbery. The Applicant testified that prior to the taking of his plea, the Armed Robbery charge against him was dismissed with prejudice. The Applicant

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testified that he was not told until the time of the plea that the Armed Robbery charge was dismissed, the plea agreement included all three charges, and the recommended plea range remained at ten (10) to fifteen (15) years. The Applicant further testified that he did not believe it was right for the Court to counsel the State on how the Applicant should be charged.

The record reflects that, after Judge Alford's inquiring from the State as to why the Applicant would be charged with both Armed Robbery and Entering a Bank with Intent Steal and after sidebar discussion with the parties, the State announced to the Court that it would not proceed on the Armed Robbery charge against the Applicant. (TR p. 4, LL 22-25; TR p. 5, LL 5-14).

The State called Casey Cornwell (Plea Counsel) to the stand to testify. Plea Counsel testified that, at the time of his representation of the Applicant, he was employed by the York County Public Defender's Office. Plea Counsel testified that he met with the Applicant prior to taking the plea on at least two occasions. Plea Counsel testified that he made several attempts to have EB Springs (Solicitor) reduce the negotiated range to no avail. Plea Counsel further testified that he would have talked to the Applicant about the change of charges and that he talked to the Solicitor concerning the change in the charges mid-plea, but the Solicitor was not inclined to make any changes in the negotiated range based on the Armed Robbery charge being dropped. Therefore, Plea Counsel testified that the Armed Robbery charge being "kicked out" had no bearing on the negotiations. Plea Counsel testified that the Applicant was notified of all of his rights and that, even in light of the change, the Applicant's best option was to enter a plea of guilt.

The record reflects that the Applicant was made aware by the Court of the Armed Robbery charge being dismissed by the State, and the Applicant affirmed that he was aware of


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the change and the charges to which he would be pleading. (TR p. 6, LL 20-25; TR p. 7, LL 1-3). At the time of the plea, the Applicant was apprised by the Court of his right to a jury trial, which he would be forfeiting should he enter a plea of guilt, and the Applicant acknowledged that he understood the right and still wished to plead guilty. (TR p. 8, LL 2-25; TR p. 9, LL 1-17). At the time of his plea, the Applicant affirmed that he was satisfied with Plea Counsel's representation, that Plea Counsel had discussed the evidence and witnesses the State had against him, and that Plea Counsel had fully discussed the charges and possible defenses with him. (TR p. 10, LL 1-17). The Applicant affirmed that he was pleading guilty and that he was, in fact, guilty of the two charges. (TR p. 11, LL 7-12). At the time of the plea, Plea Counsel spent a relatively lengthy period of time mitigating for his client (TR p. 14, LL 13-25 – p. 16, LL 1-22), and the Solicitor commended Plea Counsel for the efforts he made in negotiating the plea for the Applicant. (TR p. 4, LL 13-15). At the time of the plea, the Applicant was sentenced to ten (10) years of incarceration, the least amount of time in the negotiated range. (TR p. 17, LL 12-16).

The Court finds that the Applicant's claim of ineffective assistance of counsel is without merit. The Applicant was apprised of all of his rights by the Court and Plea Counsel, he was effectively advised by Plea counsel as he attested to at the time of his plea, and the Applicant was made fully aware of the charges to which he was pleading at the time of the plea. The Court finds that there was no deficiency in Plea Counsel's making the Applicant aware of the change in charges, as the Applicant was made aware of the change practically simultaneously with Plea Counsel, and even if there was a deficiency in Plea Counsel's advisement, the Applicant was not prejudiced, as the plea terms or recommendation would not have been altered. The Court further finds that the Court, at the time the plea was taken, was in no way out of line in pointing out the redundant and superfluous nature of the charges.

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Therefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.
IT IS SO ORDERED.



John C. Hayes, III
Presiding Judge
HS

May 28, 2013
York, South Carolina

BICE LAW LLC

North and South Carolina Attorney-at-Law

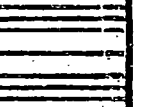
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Fort Mill, SC 29708

803.639.8777



The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
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Columbia SC 29211-1330



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WITNESSES

HPD / Welch

DOCKET NO. 2012-GS-46-01033

The State of South Carolina

County of York

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

Defendant

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

March 22, Term 2012

COURT OF GENERAL SESSIONS

jm

ARREST WARRANT NUMBER

134795

John Edward Burchfield Jr.
Defendant

THE STATE

vs.

JOHN EDWARD BURCHFIELD JR.

Witness: *Dee Williams*
C.C.C. RLS. AND G.S. *Spearing*

ACTION OF GRAND JURY

TRUE BILL

Paul W.
Foreperson of Grand Jury
Date: 3/12/12

VERDICT

Indictment for

ENTERING A BANK WITH INTENT TO STEAL

SC Code: 16-11-380
CDR Code: 0257

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

CERTIFIED TRUE COPY

2012 AUG -3 PM 3:14

At a Court of General Sessions, convened on March 22, 2012, the Grand Jurors of York County present upon their oath

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

ENTERING A BANK WITH INTENT TO STEAL

The Defendant, John Edward Burchfield Jr., did in York County, South Carolina, on or about January 3, 2012, did unlawfully enter a building occupied as a bank, depository, or building and loan association, with the intent to steal money, either by force, intimidation, or threats, in that the Defendant did enter the Citizens South Bank located at 2215 India Hook Road in Rock Hill, South Carolina, and he then walked to the bank teller station of bank employee Yeon Valinski and the Defendant displayed a package which he said was an explosive devise, a bomb which he would explode if he was not given money from the bank, and because of that intimidating threat of force the Defendant was given cash money belonging to the bank. All in violation of Section 16-11-380, 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.

E B Springs IV
ASSISTANT SOLICITOR

WITNESSES

HPD / Welch

DOCKET NO. 2012-GS-46-

01034

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

March 22, Term 2012

ARREST WARRANT NUMBER

134796

THE STATE

vs.

JOHN EDWARD BURCHFIELD, JR.

TRUE BILL

ACTION OF GRAND JURY

Person of Grand Jury

Date: 3/22/12

VERDICT

Indictment for
POSSESSION OF A HOAX DESTRUCTIVE
DEVICE

SC Code: 16-23-730
CDR Code: : 2778

Person of Petit Jury
Date:

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

Defendant

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

Defendant

Witness:
C.C.C. PLS AND G.S.

[Signature]
[Signature]
Specialist

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

CERTIFIED TRUE COPY

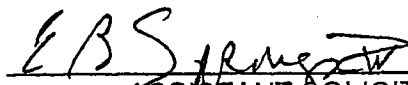
2012 AUG -3 PM 3:15

At a Court of General Sessions, convened on March 22, 2012, the Grand Jurors of York County present upon their oath
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

POSSESSION OF A HOAX DESTRUCTIVE DEVICE

The Defendant John Edward Burchfield Jr., did in York County, South Carolina, on or about January 3, 2012, willfully and knowingly manufacture, and/or possesses a hoax destructive device or replica of a destructive device or detonator which caused person(s) at Citizens South Bank at 2215 India Hook Road in Rock Hill, South Carolina to reasonably believe that the hoax destructive device or replica was in fact a real destructive device or detonator, all in violation of Section 16-23-730, 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

60 COUNTY OF YORK STATE

York VS. John Edward Burchfield Jr. Jail

INDICTMENT/CASE#: 2012GS4601033 A/W#: J134795 Date of Offense: 1/3/2012 Race: Sex: Age: 49 DOB: SS#: CDR Code #: 0257

ORIGINAL

Address: 2012 AUG -3 PM 3:14 City, State, Zip: Rock Hill, SC 29732 DL#: SID#: SC02020122 DAVID HAMILTON

*CDL Yes No CMV Yes No Hazmat Yes No YORK COUNTY, SC CONVICTED OF or PLEADS TO: Entering a bank with intent to steal

in violation of § 16-11-0380 of the S.C. Code of Laws, bearing CDR Code # 0257 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Spring, E.B. 13568 SC Bar# Defendant T-L P. Law 73191 SC Bar# Attorney for Defendant

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

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. 92 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

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:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 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, 3% to County (if paid in installments) \$, TOTAL \$130-

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk David Hamilton Court Reporter: Mike Watts SCCA/217 (03/2011)

Presiding Judge Judge Code: 2113 Sentence Date: 4-2-12

COUNTY OF York)
 STATE VS. Jail)
John Edward Burchfield Jr)
 AKA:)
 Race: Sex: Age: CERTIFIED TRUE COPY)
 DOB: SS#:)
 Address: 2012 AUG -3 PM 3:14)
 City, State, Zip: Rock Hill, SC 29732)
 DL#: SID#: DAVID HAMILTON)
 *CDL Yes No CMV Yes No Hazmat)
 In disposition of the said indictment comes now the Defendant who was YORK COUNTY, SC)
 TO: possession of hoax destructive device)

INDICTMENT/CASE#: 2012GS4601034
 A/W#: J134796
 Date of Offense: 1/3/2012
 Code §: 16-23-0730
 CDR Code #: 2778

ORIGINAL

SENTENCE SHEET

in violation of § 16-23-0730 of the S.C. Code of Laws, bearing CDR Code # 2778
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

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: BSAmp 13568 David Hamilton T. L. A. C. 73191
 Springs, E.B. 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 1 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 92 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 PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
 Recipient: _____ May serve W/E beginning _____
 Substance Abuse Counseling

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100-
§ 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-
§ 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	\$ 5-
3% to County (if paid in installments)		\$
TOTAL		\$130-

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.

Clerk of Court/ Deputy Clerk David Hamilton
 Court Reporter: Mike Watts
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code: 2115
 Sentence Date: 4-2-12