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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

MARK HARMON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002191

APPENDIX

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
 4 THE STATE) TRANSCRIPT OF RECORD
 5 -vs-) 2012-GS-40-00953
 6 MARK W. HARMON,) 2011-GS-40-00694
 7 DEFENDANT.) 2011-GS-40-03117
 8) 2011-GS-40-03118
 9) 2011-GS-40-03113
 10) 2011-GS-40-03115
 11) FEBRUARY 8, 2012
 12) COLUMBIA, SOUTH CAROLINA

13 B E F O R E:

14 THE HONORABLE ALISON R. LEE, JUDGE.

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

16 RICHARC CATHCART, ASSISTANT SOLICITOR
 17 ATTORNEY FOR THE STATE

18 JENNIFER DAVIS, ASSISTANT PUBLIC DEFENDER
 19 ATTORNEY FOR THE DEFENDANT

20 MICHAEL R. WATTS
 21 CIRCUIT COURT REPORTER
 22
 23
 24
 25

9/26/12
S. J. [unclear]

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WITNESSES

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(NO WITNESSES CALLED)

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EXHIBITS

NO.	DESCRIPTION	ID.	EV.
(NO. EXHIBITS MARKED)			

1 (PROCEEDINGS, FEBRUARY 8, 2012)

2 MARK HARMON, having been first duly sworn,
3 testified as follows:

4 MR. CATHCART: Your Honor, if I may?

5 THE COURT: Yes, sir.

6 MR. CATHCART: There is one indictment that now I
7 haven't yet to hand up to you. It's indictment numbered
8 2011-GS-40-3113. It has those same issues that was before
9 us, that went before us just a couple back, and that says
10 burglary second degree, nonviolent. It is actually a
11 violent burglary. It says it has been True Billed by the
12 Grand Jury. I cannot amend it myself, but I would ask that
13 it be amended. I don't think there is an objection from
14 defense counsel.

15 MS. DAVIS: There would be no objection, Your
16 Honor.

17 MR. CATHCART: If I may amend the indictment, Your
18 Honor?

19 THE COURT: I will need to look at it first.

20 MR. CATHCART: Yes.

21 MR. CATHCART: The reason it is violent -- every
22 burglary committed occurred during the hours of darkness and
23 every burglary he committed comes with his past record of
24 three prior burglaries.

25 THE COURT: I'm sorry, say that again.

1 MR. CATHCART: Every burglary he's committed in
2 what he is pleading to now was at night, and every burglary
3 he has committed also has his record attached to it that he
4 has three prior housebreakings and/or burglaries. Two or
5 more burglaries is a circumstance of aggravation.

6 The sentence sheet reflects it as violent.

7 THE COURT: It says violent here.

8 MR. CATHCART: It says nonviolent on the front,
9 violent on the back, but it does not give the circumstance
10 of aggravation either, and it gives a CDR Code of 80, which
11 is also incorrect.

12 COURT REPORTER: Of what?

13 MR. CATHCART: 80.

14 THE COURT: 80.

15 MR. CATHCART: 80. It should be 86.

16 THE COURT: So basically the body of the
17 indictment says that it's a burglary in the second degree,
18 violent, but it doesn't list any circumstances of
19 aggravation under the statute, is that right?

20 MR. CATHCART: That's correct, Your Honor.

21 THE COURT: And Ms. Davis, do you understand what
22 the changes purport to do?

23 MS. DAVIS: Yes, Your Honor, and I have talked
24 with him on a burglary second, violent.

25 THE COURT: And you have discussed that with your

1 client?

2 MS. DAVIS: Yes, Your Honor.

3 THE COURT: And he's going to plead guilty to the
4 burglary second, violent?

5 MS. DAVIS: Yes, Your Honor.

6 THE COURT: This is a waiver. You need to get him
7 to initial it waiver and scratch out the part where it says
8 as indicted.

9 (Off the record)

10 (Back on the record)

11 THE COURT: Yes, sir.

12 MR. CATHCART: May it please the court, Your
13 Honor, standing before you is Mark Harmon. He's here
14 pleading guilty to five counts of burglary second degree,
15 violent; also one count of safecracking.

16 Pursuant to this plea the State will be nolle
17 prosequing a burglary in the first degree and a burglary
18 second that was also indicted by the Richland County Grand
19 Jury.

20 He is represented by Ms. Davis of the Public
21 Defender's office.

22 The State is going forward pursuant to the one
23 that he's going forward on, our strongest cases. The
24 burglary first occurred on the same night as the two prior
25 burglaries -- or I mean, excuse me, the two burglaries that

1 occurred on the 28th. This burglary first occurred on the
2 28th. He was caught the next day. He was found with items
3 in possession of the burglary first, but the main bit of
4 evidence that we had is that it occurred the same night, he
5 gets caught with those items. The State has decided to go
6 forward with just our strongest case.

7 In this case, Your Honor, because of the
8 defendant's prior record, the State the asking for a term of
9 20 years. He's looking at up to a 105.

10 There is a restitution in this case, Your Honor.
11 We have spoken with the victims in this case. It's over
12 \$10,000. It's \$10,269 worth of restitution. Despite that I
13 don't anticipate him making that and what I am asking for,
14 but I do have that sheet available, if that's something that
15 you wish to look at as well, but it's not part of the
16 paperwork that I have handed up forward.

17 THE COURT: Mark Harmon?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: How old are you, sir?

20 THE DEFENDANT: 45.

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

22 THE DEFENDANT: 12th grade.

23 THE COURT: You graduated?

24 THE DEFENDANT: GED.

25 THE COURT: Before you were arrested were you

1 employed?

2 THE DEFENDANT: Yes.

3 THE COURT: Where did you work?

4 THE DEFENDANT: Lonnie Robert's Auto Service.

5 THE COURT: And how long did you work there?

6 THE DEFENDANT: A little over four years.

7 THE COURT: Are you currently under the influence
8 of any drugs or alcohol, prescription medication?

9 THE DEFENDANT: Just medicine for Crohn's Disease.

10 THE COURT: It's a form of arthritis, right?

11 THE DEFENDANT: It's -- my intestines and the
12 pancreas.

13 THE COURT: Mr. Harmon, there are five separate
14 charges for burglary second, violent. Each one of those
15 charges carries the maximum of 15 years in jail.

16 And then there is a charge for safecracking, which
17 carries a maximum of 20 years in jail.

18 MR. CATHCART: I believe it's actually 30 years.

19 THE COURT: I'm sorry, 30 years in jail, that's
20 correct. Are you aware of that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And it's my understanding that you are
23 here to plead to those six charges, is that correct?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Harmon, do you also understand

1 that each one of those charges carries a strike and are
2 considered to be violent offenses?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And so you understand that there is --
5 that any time that would be imposed would be subject to
6 eighty-five percent, which would have to be served before
7 you would even be eligible to be considered for any release
8 from the Department of Corrections. Do you understand that?

9 MR. CATHCART: Your Honor, if I may, I believe
10 that's incorrect.

11 THE COURT: Okay.

12 MR. CATHCART: I'm sorry. As to the safecracking,
13 it carries a -- it is most serious and violent. It carries
14 up to eighty-five percent.

15 I believe the burglaries carrying up to 15 years
16 would be a violent 65 percent range before eligible for
17 parole. They are serious and a strike, that's correct. And
18 I did say I believe.

19 THE COURT: I understand, and I'm sure I could be
20 wrong.

21 I know the safecracking is eighty-five percent.

22 MR. CATHCART: Yes, ma'am.

23 THE COURT: Under the statute the burglary second
24 degree, violent, is not subject to eighty-five percent.

25 MR. CATHCART: Yes, ma'am.

1 THE COURT: That means that you must serve at
2 least -- not less than one-third of whatever sentence is
3 imposed.

4 MR. CATHCART: Yes.

5 THE COURT: But they do all carry strikes.

6 And so, Mr. Harmon, do you understand that if you
7 were subsequently convicted of other charges that carry a
8 strike, that at some point you could be looking at life
9 without the possibility of parole?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: With respect to the burglaries, do you
12 understand that if you were subsequently convicted of
13 another burglary, the State could charge you with a burglary
14 first? And so a burglary second or a burglary third later,
15 which it actually might be, and you could be looking at
16 anywhere from 15 to life. Do you understand that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Has Ms. Davis explained all these
19 things to you?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Did she explain to you the elements of
22 the burglary second, violent, as well as the safecracking?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Did she explain to you exactly what
25 evidence the State had against you on all these charges?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Did she explain to you the penalties
3 and consequences?

4 THE DEFENDANT: Yes, ma'am, she did.

5 THE COURT: And did she explain to you in more
6 detail your Constitutional Rights?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Ms. Davis, you have heard your client
9 indicate you had discussions with him about all these
10 charges, is that correct?

11 MS. DAVIS: Yes, Your Honor.

12 THE COURT: And did you, in fact, explain to him
13 all of these charges and the penalties for the burglary
14 second, as well as the consequences for their convictions?

15 MS. DAVIS: Yes, ma'am.

16 THE COURT: Did you also explain to him the
17 elements of the offenses and the penalties for the
18 safecracking as well?

19 THE DEFENDANT: Yes.

20 THE COURT: And the consequences?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Did you explain to him the evidence
23 that the State has against him?

24 MS. DAVIS: Yes, Your Honor.

25 THE COURT: Did you also explain to him in more

1 detail his Constitutional Rights?

2 MS. DAVIS: Yes, ma'am.

3 THE COURT: Do you believe that he understood all
4 of those discussions that you had?

5 MS. DAVIS: Yes.

6 THE COURT: Mr. Harmon, you have heard me earlier
7 when I explained the Constitutional Rights, is that correct?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Did you understand them as I explained
10 them to you at that particular time?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you understand that all of these
13 charges have been presented to the Grand Jury, that the True
14 Bill stamped on the front of them is a signature of the
15 foreperson of the Grand Jury to most of these charges? I'm
16 showing you those as we speak.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: While you can't see the True Bill on
19 this one, there is a signature of the foreperson of the
20 Grand Jury. If you were close enough to it, you might be
21 able to see it's a True Billed stamp.

22 There's a True Bill stamp on this one as well.

23 The only one that has not been presented to the
24 Grand Jury is the charge on October the 24th of 2010,
25 involving Michael's Jewelry. It has not been stamped here

1 on the front of the indictment that shows that it's been
2 presented to the Grand Jury. So do you understand that you
3 are giving up your opportunity to have the Grand Jury
4 consider this particular charge?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you also understand that on at
7 least one of these charges there was information that was
8 amended and added and so you could require that the State
9 resubmit that to the Grand Jury? Your attorney has agreed
10 to the amendment and you are aware of that as well?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And you agree to that amendment?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you understand, Mr. Harmon, that by
15 pleading guilty here today, that you are giving up your
16 right to remain silent; you are giving up your right to
17 confront your accusers; and you are giving up your right to
18 a jury trial?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Has anyone promised you anything to
21 come here and plead guilty?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Has anyone threatened you or coerced
24 you to plead guilty?

25 THE DEFENDANT: No, ma'am.

1 THE COURT: Has there been any hope of promise or
2 any type of reward or any benefit to you to plead guilty?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: And, Mr. Harmon, before I accept your
5 plea I'll hear from the State about the facts.

6 Yes, sir.

7 MR. CATHCART: If it please the court, Your Honor,
8 all this occurred here in Richland County on or around the
9 Forrest Drive, Tremble Road area.

10 The first one being on October 23rd, 2010. The
11 defendant broke into a beauty supply store or beauty parlor
12 also called Sheer Expressions. This is on 136 Pelham Drive.
13 He broke in by throwing a concrete block through a glass
14 door shattering the doors and glass. He went inside and
15 took and carried away a cash register. All this was caught
16 on video. As I say, this occurred in the nighttime and he
17 also has two prior convictions of burglary or housebreaking.

18 On October 24th, 2010, the defendant shattered the
19 front door of Michael's Jewelry Store. This is at 4840
20 Forrest Drive. Once inside he broke open two jewelry
21 display cases and stole jewelry in excess of \$2,000. It's
22 estimated to be \$12,000 worth of jewelry. He pawned several
23 of those items the next day, some of which were recovered,
24 and he also left some gloves and other items that we were
25 able to get evidence from. Other items, when he was

1 arrested after I believe the 29th, were found in his hotel
2 room and also recovered to the store. Stolen about \$5,500
3 worth of jewelry was recovered. Still \$6,500 out there.

4 Sheer Expressions was \$1,600 worth of damage that
5 was done to the building.

6 On October 24th, 2010, the defendant broke into
7 Boyd's Management, which is a property management company at
8 7700 Trenham Road extension. He broke into that by smashing
9 in a back window. He cut himself when he went in. There
10 was blood evidence there. He ransacked the business looking
11 for items to steal. He stole cash, checks, and a bottle of
12 Drambuie. He confessed. This was also on video. And, in
13 fact, this case, when they were running through it at the
14 sheriff's department, they knew him by name and sight and
15 recognized him as Mr. Harmon. There was restitution in the
16 amount of \$1,200 in damage in the items stolen from them.
17 Again, that happened during the hours of darkness. Again,
18 he has a prior record of two or more burglaries.

19 On October the 28th, 2010, at 5317 Forrest Drive
20 the defendant again smashed open the window of the
21 Ambassador Animal Clinic, this time with a brick. The owner
22 of the place did not call the police when the alarm was set.
23 Because there was a storm that night and he wasn't sure
24 about it, but when they went in the next morning they found
25 the place broken into and ransacked. Also a cash box was

1 taken. The money was taken out of the cash box and the cash
2 box was found on the property adjacent. There is \$407.35
3 restitution that's owed to them as to the damage and the
4 cash that was taken from the property.

5 On October 28th, 2010, the defendant broke into
6 10200 Two Notch Road, which is the Northeast Animal Clinic.
7 Again he crashed in through the back window, ripped the
8 window off the frame. At that point of entry when he got
9 into the building, right beside that window there is a wall
10 safe. He pried that open as well. You could see the pry
11 marks and also the broken lock. Inside that safe are
12 narcotics that were kept for the animals there at the
13 clinic.

14 By coincidence Dr. Ng, which is spelled N-G,
15 pronounced I-N-G, was there working late. She started to
16 hear things in the back, apparently the defendant either
17 crashed through the window or pulling out the safe. She
18 started walking that way a little bit and she felt better of
19 it and started to turn around and this man came up and was
20 there. She confronted him. He said he was there trying to
21 pick up his dog. This was early morning hours, way before
22 anything was open. She stated she was calling the police.
23 He then bolted and ran out the back. As he left, he took
24 and carried away her laptop computer. She ran out the
25 front, got into her car, called the police and waited for

1 them to arrive. She picked him out of the photo lineup. He
2 confessed when he was subsequently arrested. There was
3 restitution in the amount of \$562.49, which is the computer
4 and the window that was damaged, along with the safe.

5 As I stated, there was a burglary first that we
6 were nolle prosequing pursuant to this plea. That happened on
7 the same date as these two burglaries. I tried to get in
8 touch with the victim to tell her that this plea was going
9 on and that I'm nolle prosequing her charges. The main reason
10 I wanted to get in touch with her, however, her phone number
11 is disconnected now. I tried to e-mail her. I could not
12 get in touch with her either. There was no evidence at the
13 scene there. No one saw him at the scene of the burglary.
14 However, items from her house were found at the location
15 where he was arrested, or where he was staying.

16 MS. DAVIS: Your Honor, if I could just object at
17 this point in terms of him going into details about a
18 burglary first. That charge was nolle prosequed because of
19 lack of evidence to prosecute my client. I would just like
20 to put that on the record, that I don't think this is
21 relevant to this plea.

22 MR. CATHCART: The case, if I may say, Your Honor,
23 is not nolle prosequed yet. He hadn't pled yet. I'm
24 explaining why I'm nolle prosequing it instead of going
25 forward on something that's 15 to life.

1 THE COURT: Go ahead.

2 MR. CATHCART: The victim was mainly upset because
3 the door to her house was left open and her dog fled the
4 house and was subsequently found dead in the road.

5 The place where he said he was employed was the
6 other burglary location, Lonnie's -- what the heck is the
7 name of that place?

8 MS. DAVIS: Lonnie Robert's Automotive.

9 MR. CATHCART: That's right.

10 Lonnie Robert's Automotive Service. That incident
11 occurred on October 14th, 2010. He did used to work there.
12 Whoever broke into the place knew where the hard drive was
13 of the computer video system, and tools from that location
14 were found also in the room where he was arrested.

15 THE COURT: And that would be nolle prossed?

16 MR. CATHCART: That would be nolle prossed as
17 well, as well as the grand larceny that went with the
18 jewelry store and all the other petit larcenies.

19 The defendant's prior record dates back from 1984.
20 Out of Darlington and Richland County he has three counts of
21 housebreaking. 1984 to 1985.

22 He has a grand larceny of motor vehicle and four
23 counts of financial transaction card fraud out of 1985.

24 He has a driving under the influence out of 1995.
25 2003, open container.

1 Out of Florida he has a possession of cocaine and
2 a -- a possession of cocaine, as I stated, and a possession
3 of drug paraphernalia. His probation was revoked in 2006.

4 Back up here in South Carolina he had a criminal
5 domestic violence, 2004.

6 Failure to surrender a driver's license, open
7 container, 2005.

8 Receiving stolen goods, 2006.

9 That's the extent of his record.

10 Your Honor, this would be his eighth burglary
11 conviction. And obviously the State takes seriously
12 burglaries, because sometimes, as what happened to Dr. Ng, a
13 victim is there.

14 Also he is, as I stated, he is pleading guilty to
15 the safecracking where he broke open the safe.

16 He's looking at up to 105 years in the Department
17 of Corrections. State is asking for 20.

18 THE COURT: Mr. Harmon, you have heard the facts
19 as they have been stated. Is there anything that you wish
20 to add or change or correct about what's been stated?

21 THE DEFENDANT: Yes, ma'am, Your Honor. I would
22 like to apologize for --

23 (Off the record)

24 (Back on the record)

25 THE DEFENDANT: Oh, the facts. It's fine.

1 THE COURT: So do you agree with the facts as they
2 were stated by the assistant solicitor?

3 THE DEFENDANT: It's just very exaggerated.

4 COURT REPORTER: Did you say fairy saturated?

5 THE DEFENDANT: Exaggerated.

6 THE COURT: And so do you dispute the occurrences
7 or --

8 THE DEFENDANT: No, it's all -- it's all there.

9 THE COURT: So you admit that, as to the five
10 burglaries, that they occurred in the evening and that -- or
11 during the nighttime, which this would be nighttime, which
12 would be before seven a.m. and probably after seven p.m.?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And that those locations were broken
15 into by you at each of the locations?

16 THE DEFENDANT: Yes.

17 THE COURT: And with respect to the safecracking,
18 that you attempted to and you did open the safe in one of
19 the locations, break open the safe?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Was there someone present there at the
22 time?

23 THE DEFENDANT: Someone came in, yes, ma'am.

24 Somebody came in and checked on it. It was the store owner.

25 MR. CATHCART: The person that came in was Dr. Ng.

1 She was just doing late-night work.

2 THE COURT: Have you had enough time to discuss
3 these matters with Ms. Davis?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Have you cooperated with her so that
6 she could prepare a defense for you?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Has she done everything that you have
9 asked her to do in connection with these charges?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Mr. Harmon, are you pleading guilty to
12 these charges freely and voluntarily?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And are you pleading guilty to the
15 burglaries and to the safecracking because you are, in fact,
16 guilty of those offenses?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: I will accept your plea. I find it's
19 freely and voluntarily made and that you understand that you
20 are giving up your Constitutional Rights, including your
21 right to a jury trial.

22 Yes, Ms. Davis.

23 MS. DAVIS: Thank you, Your Honor. May it please
24 the court.

25 Mr. Harmon, from the very first time I met him,

1 has always said that he committed these crimes. He's always
2 wanted to plead guilty and accept responsibility for those,
3 for all of these burglaries.

4 He kind of had a fall from grace, I guess you
5 would say, Your Honor. He does have prior burglaries or
6 housebreakings, I should say, from 1984 and '85, which he
7 pled to when he was 18 years old. He got a YOA sentence at
8 that time.

9 And at that time he did everything that you would
10 want someone that gets in trouble at that age to do. He had
11 got his Masters in Caterpillar Engine from Blanchard
12 Machinery. He got his Masters from GM, as well as a welding
13 degree. He then, in 1986, I believe it was, started working
14 at Love Chevrolet. He then went onto Jim Hudson, then to
15 Seven Oaks Auto Repair, then to Harmon Transmissions, and
16 lastly was employed at Lonnie Robert's Auto Service.

17 I know he was in some -- he had some convictions
18 in between that time for, you know, what I consider
19 relatively minor offenses, other than the cocaine in 2006.
20 The rest of them were magistrate level offenses, and he was
21 an upstanding, very well lived, and I would say almost
22 renowned mechanic in the community. He actually worked on
23 patrol cars for Richland County, is my understanding, and
24 that a lot of them were familiar with him. So he did
25 everything that you would want someone to do when they first

1 get in trouble. He really turned his life around, was
2 working, and actually was exceeding in his field.

3 What happened is in July of 2010 he was diagnosed
4 with what he told you about was the Crohn's Disease, which
5 is a very painful disease of the stomach and intestines that
6 cannot be cured, but can just be treated and to try to lower
7 the amounts of inflammation that happens. And one of the
8 things he was given at that time for prescribed medication
9 was Oxycodone and Oxycontin for pain medicine. At that
10 point -- I do have those medical records that diagnose him
11 in July of 2010, at Providence Northeast, as well as the
12 medication being prescribed to him at that time. And what
13 he explained to me is over the next couple of months he did,
14 in fact, become addicted to that painkiller, which led to
15 him continuing to drink also while on the medication and was
16 then battling and using other illegal narcotics.

17 All of these burglaries, Your Honor, happened in a
18 five day period, and he knows that he can't take that five
19 days back. He always -- when I talked to him, we went over
20 the evidence and I explained to him, you know, the
21 seriousness of these burglaries and, you know, the evidence
22 in the case and told him, "you know, if you hadn't
23 confessed, you know, some of the cases might be a little
24 different." And he said "what, I'm not supposed to be
25 honest with the police?" And I thought that was very

1 meaningful in terms of what kind of guy he is, because he
2 wanted to cooperate with the police. He felt terrible for
3 what happened.

4 One of the investigators even noted that Mr.
5 Harmon was saying, "you know, I wanted to get caught. My
6 world was lost," meaning, you know, he had lost his job
7 because of his addiction. He had lost his fiance that he
8 was, you know, very much in love with and living with, and
9 he had been, you know, at that point lost respect from some
10 of his family members, I gather, just in terms of -- not
11 respect I shouldn't say, but he fell from they had seen him
12 in terms of being a very well known, renowned, very
13 successful in his field, to, you know, being an addict of
14 various drugs at that time. And he really just hit rock
15 bottom, Your Honor, and there is no other way to explain it,
16 other than, you know, he was trying -- he did not -- was not
17 able to get handles on this addiction when he first started
18 the addiction of Oxycontin.

19 Since he's been in jail, Your Honor -- he has been
20 in jail 467 days. He's been in jail since his arrest on
21 October 28th of 2010. He's taken the NA classes, the AA
22 classes, Going For Gold, Visions, the Work Keys Program,
23 Anger Management, Male Empowerment, substance abuse.
24 Virtually every class that has been offered to him since his
25 incarceration he has tried to take advantage of and really

1 wants to rebuild himself again to what he was and to show
2 his family that, you know, this is a misstep in a relapse --
3 I guess not a relapse, but an addiction that he accrued
4 after getting this prescription drug and not recognizing
5 probably the early symptoms that it was, I mean, out of
6 control and at this point lost control.

7 Your Honor, since being incarcerated he actually
8 did lose his father as well. His father passed away in
9 February of last year. It was very unexpected. He had not
10 been ill, and so that hit Mr. Harmon very hard, as well as
11 his mother Virginia. I have been touch with his mother and
12 his sister both. They were not able to be here today, but
13 they constantly checked in and asked how he was doing and
14 what the status of his case was all along.

15 Your Honor, I just want to note in terms of the
16 safecracking charge, and I understand that Mr. Harmon
17 understands that is a charge that carries zero to 30 years,
18 it's violent -- eighty-five percent time I should say. That
19 was a charge that was indicted three weeks ago. It was
20 indicted January 20th of this year. I don't know what led
21 to that indictment, other than I know the solicitor wants
22 and is requesting the court to sentence him to 20 years.
23 Mr. Harmon, prior to that, had always been willing to plead
24 to these charges as charged for these burglaries that he's
25 before you today.

1 The safe that is being referred to is -- I guess
2 under the definition is a locked container. It's -- if I
3 could approach, Your Honor, it's a colored picture actually
4 that Mr. Cathcart gave me. It is a lock box basically in
5 the wall that they had the medications for animals in.

6 The problem with the safecracking definition is
7 that it's extremely vague and it is a locked box. The latch
8 was broken. And the argument would be made that the
9 narcotics would be considered valuable under the plain
10 meaning of the word valuables and/or money. I just show
11 that to Your Honor so you can see kind of the difference in
12 the variance between, you know, breaking into a bank safe,
13 which, you know, I think was the initial intent of this law
14 that was drafted quite sometime ago in terms of the
15 seriousness of it being a 30 year, violent, as compared to
16 popping a lock of a lock box, but he did do that. In the
17 event of doing that, he looked in there. He didn't take
18 anything, but he did look in there and was looking for money
19 at that time, but I just wanted to let Your Honor see those
20 pictures in terms of what it was and the indictment of three
21 weeks ago, but we did talk about all the consequences of the
22 safecracking and what it carries.

23 Your Honor, because of all the things that Mr.
24 Harmon did when he was 18 to get himself back in, you know,
25 good graces with his family and society and being able to

1 pull himself up and get him out of trouble and stay out of
2 trouble for basically three decades, I have no doubt that he
3 can do it again. I know that he regrets very much any of
4 this happening. I know he's apologized and regrets, you
5 know, the police having to, you know, kind of chase him
6 around for those couple of days and find out what was going
7 on, but I think that he's also a man that can do what he did
8 once before and can get his life back together. He's got
9 his family support. His mother is willing to let him reside
10 with her, you know, upon his release.

11 And the other thing is, Your Honor, I think
12 that -- I know he does want to address Your Honor, but what
13 I'm asking Your Honor to consider is either, you know,
14 suspending a sentence to probation and allowing him drug
15 treatment; or, Your Honor, because of the amount of the drug
16 use and addiction that he got, he was screened by Pastor
17 Breen for Christ Bethel House Program in April of 2011, and
18 was accepted, was interviewed and accepted by Pastor Breen.
19 I talked with Pastor Breen again yesterday and he says that,
20 yes, of course, he's still welcome in the program. There is
21 a bed available for him. He would be willing to come and
22 get him and drive him to the facility, if Your Honor would
23 deem that appropriate. I have this schedule basically of
24 what the Bethel House Program is. I'm not sure how familiar
25 Your Honor is with the program, but it would be a minimum of

1 one year in-patient drug treatment. The first 30 days would
2 be total restriction, meaning he couldn't leave the church
3 property. He would get one family phone call a week. No
4 automobiles, no cellphones, no dating. And then through the
5 process of his, I guess, in-patient treatment there he would
6 slowly gain use of phones or use of automobiles and would
7 eventually be required to work and then pay for his -- take
8 responsibility for some of his own needs, in terms of food
9 and rent and those things. The service could go up to two
10 years, if that was something that the court wanted or if
11 that was something Mr. Harmon felt was needed or if that was
12 something Paster Breen thought was necessary and that one
13 year was not enough, but the minimum would be a one year
14 in-patient drug program.

15 My personal opinion is that's exactly what he
16 needs is a very intensive drug program. I think that would
17 alleviate concerns that this would ever happen again. He
18 would get the treatment that he obviously needs. I know he
19 would things if incarcerated and we talked about that means
20 compared to being out on your own and being able to abstain
21 from using narcotics or illegal drugs when you are out
22 versus being incarcerated when you are obviously very
23 limited in what you have access to.

24 I know he does want to address Your Honor and I
25 would just ask that you consider those in your sentencing

1 and allow him to speak.

2 THE COURT: Yes, sir.

3 THE DEFENDANT: Thank you, ma'am.

4 As Jennifer told you, this was a five day spree.
5 I found out I got sick, they put me on that Oxycodone. I
6 very much abused it at the time, very, very much, but I
7 imagine if you will let me, you know, out and about and let
8 me get back for --

9 You know, I was a business owner for years and I
10 had all this still sitting here that I can go back to. And
11 I have a wonderful mother that needs my help dearly. And I
12 have lost my father not long ago and it's been a mess. And
13 I'm just asking to be released and just -- this program here
14 sounds excellent. And having to get out and get the medical
15 tests I need to see what is wrong with me. It's probably,
16 like I say, is my pancreas. I don't know what's going on
17 with that, but if I can get the right pills without them
18 giving me all these pain pills, I think I will be all right
19 and clear up some of this stuff without having a bunch of
20 surgeries, but I very much want to get back to work and get
21 back to my family again.

22 THE COURT: Thank you.

23 Mr. Harmon, I'm going to sentence you to the
24 Department of Corrections on the burglary charges, all to
25 run concurrently, to 10 years.

1 And on the safecracking, I'm also going to
2 sentence you to the Department of Corrections for a period
3 of 10 years, all to run concurrently.

4 I considered what your attorney had to say in
5 reference to what occurred, and I have also heard from the
6 solicitor's office and what they thought was appropriate,
7 and I think somewhere in the middle lies the appropriate
8 penalty, and so that's what I have done in this case. I
9 have not suspended a portion of it and ordered probation.

10 I have asked that you receive substance abuse
11 counseling while you are incarcerated, for the programs that
12 you are eligible, and that you are to sign up for them.

13 Nothing further. Thank you.

14 MR. CATHCART: Thank you, Your Honor.

15 MS. DAVIS: Thank you.

16 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for RICHLAND County, South Carolina, on the 8th day of February, 2012.

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

SEPTEMBER 21, 2012



Michael R. Watts
Circuit Court Reporter

FORM 5

2012 CP400 4615

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF Richland)

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

Mark W Harmon 130332)

v.)

State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2012 JUL -2 PM 3:33
JEANETTE M MCBRIDE
Clerk P.S.S.
RICHLAND COUNTY
FILED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Evans C.I. Bennettsville SC.
2. Name and location of Court which imposed sentence Richland county
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) M-720899 I292098
 - (b) 1-938623 K643223
 - (c) M-720898 DP1207
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 8 2012 7:30 In The Afternoon
 - (b) 10 years on All charges

- (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓ A.
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
No

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) my lawyer would not do an appeal, she also wanted to long.
 - (b) my lawyer said an appeal would do no good, I did ask for one.
 - (c) my lawyer got me back into court on a motion to reconsider but did not bring my motion of discovery with the evidence

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

See No 10 Additional Page

10. A. My lawyer was very Ineffective In my Counsel. My lawyer Admitted To me several Times How sorry she was For The Time I received And For To Put In For Ineffective counsel Against Her And The Public Defenders Office. After Almost 16 months In county Jail And A lawyer Telling me I'm going To receive Probation The worst would Be A Few months At A christian Program called Bethel House. I Have A letter From my lawyer Telling me I'm Approved For Bethel House. My lawyer Tells me The Day of court I Have A New warrant From my solicitor For safe cracking. My lawyer Tells me This Is A very light Non-violent charge, This charge would Be ran Together with my Burglary 1st degree. I would never go In front of Any judge knowing I could get A violent charge. My lawyer did Nothing To Defend me Against This New charge From my solicitor. My solicitor made my lawyer Look Like A very Foolish Incompetent woman. Also my solicitor made me Into A very Bad person That I'm not. My lawyer just stood There And watch me get 10 years violent Time. I'm not A violent person. I Have worked my whole life Helping Familys with very costly car and truck repairs. I'm A 15 year plus master mechanic. A masters degree From C.M., A Diesel Truck Degree From Blanchard Machinery And A welding Degree From Aiken Technical College. My crimes were Broken winDow In 3 days. I Told The Police what I did I'm sorry. I Confessed, I was High on Prescription Pill given To me By my Doctor For Crshns Disease. I don't know How my lawyer can live with Herself To just stand There

- 10 A. In court AND watch me receive all this violent time.
- B. My motion of Discovery was never gone over with me by my lawyer. I was told by my lawyer months after month that my Discovery was not complete yet. My Discovery was finished months before I went to court. My Discovery was stamped dated and finished the 7th month 2011. I did not get my Discover from my lawyer until the end of March. I went to court Feb. 8 2011. To late.
- C. My Bonds were very High because of other charges that should have been dropped months before I went court. Had my lawyer just taken the time and go through my Discovery and see how false these charges really were. I told my lawyer I was being Aril Randed on a Big Burglary 1st by Investigator Donald Hicks. This and other charges were dismissed, but had my lawyer just spent a few minutes and look at my Discovery, these charges would have been dropped months before I went to court. I could have banded out and had a real lawyer come to the facts of my case. I confessed to my crimes and then the police made up new charges. After 10 months in county jail my solicitor makes up another charge, safe cracking for a 25.00 dollar lock box.
- D. Also my lawyer told me she was having problem with my solicitor in all her cases because his wife had died. My solicitor was man at the world. I asked her for a new solicitor, she said no after 3 more months of waiting. My lawyer said she had my solicitor under control and things would be ok.

11. A. Had my lawyer DEFENDED me like she should Have I would Not Be In Prison.

I would Be Back running my own Business, Helping Familys AND churches with car AND Truck repairs. I would Also Be getting good Health care while dealing with my crahn's Disease. I would Also Be with my mom That needs me very much, even more since my Father Has Died.

B. My Discovery was The Key To every Thing In my case. IF my lawyer would Have spent Just A little Time looking over my Discovery, she would Have seen The real Facts. I would Not Be In Prison

C. My lawyer was Haveing so much Trouble with my solicitor Because of His wife Dieing she should Have made A solicitor change. I Asked For A change several Times.

D. I Am upset with my lawyer Because my Family AND I Trusted Her. My Father Died A my Family was going Through so much. My lawyer Had To know ABOUT The violent Time That comes with A safe cracking charge. My lawyer Has lied To me, AND Is very InEFFECTive To me.

- (a) _____
- (b) _____
- (c) _____

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

- (a) See No 11 Additional Page
- (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? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? ✓ yes

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. To Reconsider the violent time I was given
 - ii. To Reconsider How much time I was given
 - iii. To Reconsider so much time for a Lock Box, not a safe
 - iv. To Reconsider the violent time for a Lock Box
- (b) the name and location of the Court in which each was filed:
 - i. Richland county Reconsider of sentence
 - ii. April 16 2012
 - iii. _____
 - iv. _____
- (c) the disposition thereof: No change in my sentence because my lawyer
 - i. was Incompetent and brought no new evidence from my
 - ii. discovery, pictures that show the different between
 - iii. a safe and a lock box.

iv. _____

(d) the date of each such disposition:

i. April 16 2012

ii. Richmond county

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?

yes

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. reconsideration of sentence

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) my lawyer did not raise grounds

(b) my lawyer was very incompetent and did not

(c) raise any new grounds

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

yes

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

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

- (a) the name and address of each attorney who represented you:
 - i. Jennifer Davis, Deputy Public Defender
 - ii. Richland county 1701 main st Columbia S.C. 29201
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. At A reconsideration of sentence
 - ii. Date April 16 2012
 - iii. _____

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

see No. 19 Additional Page

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

No

19. The relief I seek In Filing This Application.

I would like to get Back Into court with A New lawyer Thats Not Ineffective And Is willing To HELP me get some of This Violent Time Back. I was Told By My lawyer Feb. 8 2012 That After over 15 months In The county Jail I was going Home To Be with my grieving mother. My Father Had just Passed. I want To work In The Prison system, Go To work release, Have chance For Parole. I'm Not A Violent Person. My Ineffective lawyer stood In court And let me take A safe cracking charge For A \$25.00 dollar Lock Box, with No Lock That Is used To Hold vitamins For Dogs And cats. I was given this new charge The day I went to court By my solicitor. My lawyer Told me This safe cracking charge Is Non-violent And would Be run with my Burglary second's. Had my lawyer Looked At my Discovery crime scene Photo, And did A little Homework To HELP, could Have shown A Judge This Is Not A safe just A Broken Home made lock Box. I would like To get A lesser Time For the safe cracking so my Prison Time Is Not violent 85 For A lock Box I never opened.

STATE OF SOUTH CAROLINA)
)
County of)

VERIFICATION

I, _____, 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.

Mark W. Hammer

SWORN to and subscribed before me this 28
day of June, 2012.

Jon Thomas (L.S.)
Notary Public

My Commission Expires: Sept 19, 2019

Place of detention

Richland County Columbia SC

Co-Defendants None

DM720899 1-938623 m720898 I292098 K643223 DP12017

February 8 2012 3:30 In The Afternoon 10 years on All charges

Allea of Guilty

yes Reconsider of sentence by the judge No

The court was Richland County Columbia SC.

No change In sentence

Reconsider of sentence date was April 16 2012 No

None

yes was Answered To No 7 No

see Page

see Page

yes

Reconsider my Violent Time

To Reconsider How much Time I was given

To Reconsider so much Time For A Lock Box, Mt A safe

To Reconsider All The violent Time For A Lock Box

Richland County S.C. Reconsider of sentence April 16 2012

No change In sentence because my lawyer was Incompetent AND brought My New Evidence As To The Differences In A safe AND A Lock Box.

My lawyer did Not even bring my Full motion of Discovery To show The Judge About This Lock Box AND Not A safe. The Pictures Are In my Discovery showing The Lock Box.

April 16 2012 - Reconsideration of sentence.

yes I had A motion To Reconsider sentence.

Which grounds Have been presented: None, my lawyer did nothen To Present New grounds To why my sentence should Be reduced or dropped. she just Talked like she did In The first sentencing. she never tryed To explain Facts To The judge, witch she Had Pictures in my motion she could Have showed my Judge.

Not much was raised or brought up New In my case because of The Incompetent Things My lawyer did In my case.

Grounds were set In 10. Grounds need To Be set But my lawyer Failed me.

yes, my lawyer handled my Entire case From start To Finish, even my reconsideration of sentence By my Judge.

Jamiter Davis Deputy Public Defender Richland County 1701 main st. Astor Office
Box 192 Columbia SC 29201

my court date February 8 2012 AND my Reconsideration of sentence April 16 2012

see page



ALAN WILSON
ATTORNEY GENERAL

July 16, 2012

2012 AUG 17 AM 6:15
JEANETTE W. MCBRIDE
O.C.P. & G.S.
RICHLAND COUNTY
FILED

Honorable Jeanette W. McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202-2766

JAN 17 2013

RE: Mark Harmon, 130332 v. State of South Carolina
2012-CP-400-4615

Dear Ms. McBride:

The above-referenced individual has filed an Application for Post-Conviction Relief (PCR) in the Circuit Court and needs to have an attorney appointed to represent him. If you will appoint an attorney and let me know his or her name, I will send him or her a copy of our file in this matter.

If you have any questions with regard to this matter, please let me know.

Sincerely,

Robert D. Corney
Assistant Attorney General

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 HARMON Mark W -)
 # 00130332,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

2012CP4004615

RETURN

RICHLAND COUNTY
 FILED
 2012 SEP -4 AM 10:39
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 2, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the July 2011 term of the Richland Grand Jury for three (3) counts of Burglary 2nd Degree (Violent) (2011-GS-40-3113;7;8).² He was represented by Jennifer Davis, Esquire, on the charge(s). On February 8, 2012, the Applicant appeared before The Honorable Alison Renee Lee where he waived presentment to the Grand Jury on one additional count of Burglary 2nd Degree (Violent), and pled guilty to all four (4) counts as indicted. He was sentenced to ten (10) years imprisonment on each count, all to run concurrently.

¹<http://www4.rcgov.us/publicindex/PCCaseDetails.aspx?County=40+&Casenum=2012CP4004615&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00130332>

Direct Appeal

The Applicant did not appeal his conviction and/or sentence .

The application for post conviction relief (PCR) was filed July 2, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

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

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

- (a) *my lawyer would not do an appeal, she also wanted to long.*
- (b) *my lawyer said an appeal would be no good, I did ask for one.*
- (c) *my lawyer got me back into court on a motion to reconsider but did not bring my motion of discovery with the evidence*

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

See No 10 Additional Page

Revised 3/2003

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

10. A. My lawyer was very Ineffective In my Counsel. My lawyer Admitted To me several Times How sorry she was For The Time I received And For To Put In For Ineffective counsel Against Her And The Public Defenders Office. After Almost 16 months In county Jail And A lawyer telling me Im going To receive Probation The worst would Be A Few months At A christian Program called Bethel House. I Have A letter From my lawyer Telling me Im Approved For Bethel House. My lawyer Tells me The Day Of court I Have A New warrant From my Solicitor For safe cracking. My lawyer Tells me This Is A very light Non-Violent charge. This charge would Be ran Together with my Burglary 1st. I would never go In Front of Any judge knowing I could get A violent charge. My lawyer did Nothing To Defend me Against This New charge From my solicitor. My solicitor made my lawyer Look Like A very Foolish Incompent woman. Also my solicitor made me Into A very Bad Person That I'm not. My lawyer ~~just stood~~ there And watch me get 10 years violent Time. I'm Not A violent Person. I Have worked my whole life Helping Families with very costly car And truck repairs. I'm A 35 year plus master mechanic. A masters degree From LM, A Diesel Truck Degree From Stanchard Machinery And A weilding Degree From Aiken Technical College. My crimes were Broken window In 3 days. I Told The Police what I did I'm sorry. I can Fessed, I was High on Prescription Pill given To me By my Doctor For Crohns Disease. I don't know How my lawyer can live with Herself To just stand there

10 A. In court AND watch me receive all this violent time.

B. My motion of Discovery was never gone over with me by my lawyer. I was told by my lawyer months after month that my Discovery was not complete yet. My Discovery was finished months before I went to court. My Discovery was stamped dated and finished the 7th month 2011. I did not get my Discover from my lawyer until the end of March. I went to court Feb. 8 2011. To late.

C. My Bonds were very High because of other charges that should have been dropped months before I went to court. Had my lawyer just taken the time and go through my Discovery and see how false these charges really were. I told my lawyer I was being rail roaded on a big burglary I did by Investigator Donald Hicks. This and other charges were dismissed, but had my lawyer just spent a few minutes and look at my Discovery, these charges would have been dropped months before I went to court. I could have bonded out and had a real lawyer come to the facts of my case. I confessed to my crimes and then the police made up new charges. After 10 months in county jail my solicitor makes up another charge, safe cracking for a 25.00 dollar lock box.

D. Also my lawyer told me she was having a problem with my solicitor in all her cases because his wife had died. My solicitor was mad at the world. I asked her for a new solicitor, she said no after 3 more months of waiting. My lawyer said she had my solicitor under control and things would be OK.

11. A. Had my lawyer defended me like she should have I would not be in prison.

I would be back running my own business, helping families and churches with car and truck repairs. I would also be getting good health care while dealing with my Crohn's disease. I would also be with my mom that needs me very much, even more since my father has died.

B. My discovery was the key to every thing in my case. If my lawyer would have spent just a little time looking over my discovery, she would have seen the real facts. I would not be in prison.

C. My lawyer was having so much trouble with my solicitor because of his wife dying she should have made a solicitor change. I asked for a change several times.

D. I am upset with my lawyer because my family and I trusted her. My father died and my family was going through so much. My lawyer had to know about the violent time that comes with a safe cracking charge. My lawyer has lied to me, and is very ineffective to me.

19. The relief I seek in filing this Application.

I would like to get back into court with a new lawyer that's not ineffective and is willing to help me get some of this violent time back. I was told by my lawyer Feb. 8, 2012 that after over 15 months in the county jail I was going home to be with my grieving mother. My father had just passed. I want to work in the prison system, go to work release, have a chance for parole. I'm not a violent person. My ineffective lawyer stood in court and let me take a safe cracking charge for a \$25.00 dollar lock box, with no lock that is used to hold vitamins for dogs and cats. I was given this new charge the day I went to court by my solicitor. My lawyer told me this safe cracking charge is non-violent and would be run with my burglary second's. Had my lawyer looked at my discovery crime scene photos, and did a little homework to help, could have shown a judge this is not a safe just a broken home made lock box. I would like to get a lesser time for the safe cracking so my prison time is not violent 85 for a lock box I never opened.

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 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, 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 117-18, 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). Even 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 (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 cannot be conclusively refuted by the record. **The Respondent requests an evidentiary hearing to fully resolve this issue.** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, TBT, Esquire regarding when the hearing should be set.⁴

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

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By: 
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August 28, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>
HARMON Mark W - State's Return - (2012CP4004615)
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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

HARMON Mark W -)
00130332,)

2012CP4004615)

Applicant,)

v.)

CERTIFICATE OF SERVICE)

State of South Carolina,)


Respondent.)
_____)

RICHLAND COUNTY
FILED
2012 SEP -4 AM 10:39
JANETTE W. MCBRIDE
C.C.P. & G.S.

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 a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

**HARMON Mark W, 130332 - Evans Correctional Institution, 610 Highway 9
West, Bennettsville, SC 29512**

DATED August 29, 2012.



Jean R. Indriago
Legal Assistant

State of South Carolina

Court of Common Pleas

County of Richland

2013-CP-40-02191

Mark Harmon

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

June 5, 2013

Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge.

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

Kristy G. Goldberg, Esquire
Attorney for the Applicant

Daniel F. Gourley, Esquire
Attorney for the State

Daphne D. Helms

Circuit Court Reporter

I N D E X

Witness

Mark Harmon

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Cross-Examination by Mr. Gourley.....20

Jennifer Davis

Direct Examination by Mr. Gourley.....24
Cross-Examination by Ms. Goldberg.....27

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
P-1	indictment 2012-GS-40-00694		10
P-2	three photographs		15

1 **The Court:** All right. Are we ready to go on to
2 something else?

3 **Ms. Harrigan:** Yes, Your Honor. We're ready to proceed
4 on Mark Harmon.

5 **The Court:** Mark Harmon.

6 **Ms. Harrigan:** Daniel Gourley from our office will be
7 handling that file.

8 **The Court:** Tell me your name.

9 **Mr. Gourley:** Daniel Gourley.

10 **The Court:** Corley?

11 **Mr. Gourley:** Gourley. Yes, Your Honor. May it please
12 the Court?

13 **The Court:** All right. Let's proceed.

14 **Mr. Gourley:** Thank you, Your Honor. Your Honor, this
15 is Mark Harmon versus The State of South Carolina, docket
16 number 2012-CP-40-460 or 4615. The applicant was indicted
17 for four counts of burglary second degree violent and one
18 count of safecracking. The applicant also waived presentment
19 for one count of burglary second degree violent. Jennifer
20 Davis, Esquire, represented applicant.

21 On February 8th, 2012, applicant pled guilty before the
22 Honorable Alison R. Lee without negotiations or
23 recommendations. Judge Lee sentenced applicant to ten years
24 for each burglary second degree violent count and ten years
25 for safecracking. All charges were to run concurrent.

1 A. Richland County. Oh, Evans. I'm sorry.

2 Q. Thank you. And what convictions are you serving time
3 for?

4 A. What convictions?

5 Q. What charges?

6 A. Oh, burglary second and safecracking.

7 Q. Multiple counts of burglary second?

8 A. Four, I think. Oh, no, safecracking is one. The
9 burglary seconds are four, I think.

10 Q. Okay. And what is your current sentence?

11 A. Ten years.

12 Q. Did you draft your P.C.R. application personally?

13 A. Yes.

14 Q. Do you understand that if your P.C.R. is granted here
15 today, the charges that you are convicted of won't be
16 dismissed? They'll actually be brought back and you could
17 have the possibility of a retrial?

18 A. Yes, ma'am.

19 Q. Have to face them all over again.

20 A. Yes, ma'am.

21 Q. Do you still want to go forward today?

22 A. Yes, ma'am.

23 Q. Do you recall that you also had multiple charges that
24 were dismissed in exchange with your guilty plea?

25 A. Yes. Yes, ma'am.

1 Q. And you understand that those charges could possibly
2 also be reinstated by the solicitor's office?

3 A. Yes, ma'am.

4 Q. Do you understand that at that time you were facing up
5 to 105 years in prison?

6 A. Yes, ma'am.

7 Q. And you received a ten-year sentence.

8 A. Yes, ma'am.

9 Q. And you wish to go forward today.

10 A. Yes, ma'am.

11 Q. Who was your attorney in this matter?

12 A. Jennifer Davis.

13 Q. Was she appointed?

14 A. Yes.

15 Q. Were you in jail the entire time while these charges
16 were pending?

17 A. Yes.

18 Q. Did you meet with your attorney while in jail?

19 A. Yes.

20 Q. Did you meet -- do you have any idea of how many times
21 you met with her or was it several?

22 A. Several, yes.

23 Q. Several times?

24 A. Several times.

25 Q. Did you review your discovery with her?

1 A. No.

2 Q. Did she discuss what was in your discovery materials
3 with you?

4 A. Lightly. Just -- we didn't go over it a whole lot.

5 Q. Have you since reviewed your discovery materials?

6 A. Oh, yes, I have.

7 Q. How did you receive those discovery materials?

8 A. I was given it after, you know, after I had already went
9 to court.

10 Q. By who?

11 A. Ms. Davis sent them to me.

12 Q. After your -- after you were convicted.

13 A. Yes. It took a little while to get because I had to go
14 through the department of corrections with approval of the
15 pictures, and all that had to be approved through S.L.E.D.
16 and...

17 Q. In those materials -- did you provide a statement to law
18 enforcement regarding the burglary charges?

19 A. Yes.

20 Q. Okay. And did you admit to some of those charges?

21 A. Yes, I admitted to everything I did.

22 Q. Did you discuss your desire to plead guilty with Ms.
23 Davis?

24 A. Yes.

25 Q. Based on your conversations with Ms. Davis, what did you

1 expect to happen at the guilty plea?

2 A. Well, I had been scanned for the Bethel House program,
3 and this all took place in just a few days. I messed up for
4 three days in life and wound up with a, you know, this
5 sentence. And I was expecting after 15 months of sitting in
6 the county jail that all of this was going to be resolved and
7 I was going to have the burglary seconds and I understood
8 they were violent because of the strikes. That meant -- I
9 was explained that if it kept happening -- you know, if it
10 happened again, that means that's habitual and I understood
11 that, but I had no idea about a -- the whole thing is about
12 this safecracking deal that was thrown at me right, you know,
13 when I walked into court, and I'm thinking the safecracking
14 is going to be no more than like the burglary second or --
15 I'm thinking in my mind it's like a trespassing. I had no
16 idea.

17 Q. When you were originally arrested, do you recall what
18 year you were arrested on the burglary charges?

19 A. October of '10.

20 Q. 2010.

21 A. Yes.

22 Q. And your plea wasn't until February of 2012. Correct?

23 A. Yes. Yes.

24 Q. When you were arrested, you were arrested for multiple
25 burglaries; correct?

1 A. Yes.

2 Q. And multiple larceny charges?

3 A. Yes.

4 Q. You were not originally arrested on a safecracking
5 charge.

6 A. No. No. No. No.

7 Q. When did you first hear about the safecracking charge?

8 A. I was scheduled to go to court that Monday. Yeah, the
9 Monday, Tuesday -- when I finally got into court, just a
10 couple of days before. I had actually come waiting to get in
11 line to court when I found out about it on that Monday.

12 Q. The week of your guilty plea?

13 A. Yes. Yes.

14 **The Court:** Can you explain to me what the safecracking
15 has to do with -- it doesn't carry any different sentence
16 than the burglary.

17 **Ms. Goldberg:** It does, Your Honor.

18 **The Court:** In what way? They're all violent.

19 **Ms. Goldberg:** They are all violent. The violent isn't
20 the issue which I will -- and I can go into that a little bit
21 more with Ms. Davis, as Mr. Harmon obviously is not an
22 attorney and cannot express that eloquently, but the
23 burglaries are parole-eligible after a third of the sentence.
24 The safecracking charge is a no-parole offense.

25 **The Court:** All right. So it's an 85 percenter.

1 **Ms. Goldberg:** Yes, Your Honor. That's the issue. Your
2 Honor, at this time with the Attorney General's consent, I'd
3 like to enter into evidence the indictment on the
4 safecracking charge.

5 **The Court:** All right.

6 (Plaintiff's Exhibit 1 was received in evidence.)

7 **Ms. Goldberg:** And I'd like for the record to reflect
8 that the indictment was issued January 20th of 2012.

9 **Mr. Gourley:** Your Honor, that's in your packet.

10 **The Court:** Pardon me?

11 **Mr. Gourley:** The indictment is in your packet.

12 By Ms. Goldberg:

13 Q. Mr. Harmon, you stated that your plea was in February.
14 I believe it was February 8th, 2012; is that correct?

15 A. Yes, ma'am.

16 Q. And it appears the safecracking charge was indicted
17 January 20th of 2012? Is that correct?

18 A. Yes, ma'am.

19 Q. To the best of your knowledge?

20 A. Yes.

21 Q. And you heard about it for the first time the week of
22 your plea; correct?

23 A. Yes, that Monday. Yes.

24 Q. Did you discuss with your lawyer this additional charge?

25 A. Yes, we did.

1 Q. And how -- and what took place in that conversation?

2 A. That it's -- the way I understood it, it was -- I didn't
3 understand why it was being thrown in. I took it as a very
4 light charge. Like I say, I'm thinking this is going to be
5 like a burglary second or -- I had no idea that there would
6 be anything to do with this violent 85. I knew if I did
7 happen to get time -- you know, Ms. Lee gave me time. I
8 mean, there was no problem with that. I understand. You
9 know, I messed up a few days; I've got to pay the price. But
10 I had no idea that I -- you know, you can't work. You can't
11 go to work releases. You can't do anything. Me just being
12 -- you know, working with these officers -- I owned a shop
13 across the road from Kirkland. I mean, I know that I need to
14 go to work release; I need to work. And by this violent 85,
15 I can't do any of that and I had no idea. I would have
16 never, ever pled to anything if I knew I'd have got any kind
17 of violent time.

18 But I understood the violent with the strikes. That was
19 well -- you know, because of the habitual, if it were to
20 happen again -- and those were considered I think a 65. And
21 I really did not understand all this deal with this violent
22 safecracking until after I'm at Kirkland awhile and I've
23 talked to the people and they're showing me this and going,
24 look, you know, you realize you're really all nonviolent with
25 the department of corrections, but this safecracking here at

1 the end, this is, you know, really crucial.

2 And then on the reconsideration with Judge Lee, I think
3 we were trying to tell her I need to do something with the
4 time or get it down. I was under the assumption that ten or
5 eight years or less, this thing became nonviolent. I had no
6 idea until here recently that safecracking is violent
7 regardless.

8 Q. And to clarify what you stated, did Ms. Davis explain to
9 you the difference in sentencing between a safecracking
10 charge and the burglary charge?

11 A. Yeah. We had discussed it, like I said, but I thought
12 it was really going to be -- if it was a type of a violent,
13 it's still going to be like, you know, the burglary seconds
14 would be, the parole-eligible thing. You know, you can go to
15 work release and all this.

16 Q. And you've since learned that that's not correct.

17 A. That is not correct, no.

18 Q. If you had known this information prior to the plea,
19 would you have pled guilty to the safecracking charge?

20 A. Oh, no way. I'm not a violent person.

21 Q. During your -- during the conversations with Ms. Davis,
22 did you discuss the possibility of pleading guilty to the
23 burglaries while going to trial on the safecracking charge?

24 A. I'm trying to think if we discussed it.

25 Q. Or did you believe---

1 A. I would have done that. I would have -- most definitely
2 would have went on with these burglaries and at least tried
3 to do a trial or something on the safecracking because -- and
4 if I would have seen the pictures with this -- you know, the
5 circumstances of this, there's just no way I would have went
6 through with this.

7 **Ms. Goldberg:** May I approach, Your Honor?

8 **The Court:** You may.

9 **The Witness:** This is some kind of a file cabinet that's
10 been put in a wall and...

11 By Ms. Goldberg:

12 Q. Mr. Harmon, I've handed you three documents. Can you
13 tell me what those are?

14 A. This is the -- well, this is what the wall -- actually
15 on this night it was -- a huge storm went on, and I went to
16 the Plexiglas and pushed the Plexiglas in and went to dry
17 off. I was soaking wet. And they tell me that this -- 15
18 months later that this had been in two or something. I mean,
19 there's -- there's no damage or whatever. I never saw this.
20 There's not even a lock on the thing. It's got a key on it,
21 and it doesn't even have the lock.

22 Q. Mr. Harmon, are those photographs of what the State
23 alleged---

24 A. This is safe---

25 Q. ---the safecracking charge---

1 A. Yes.

2 Q. ---originated from?

3 A. Yes, ma'am.

4 Q. Okay. Did you see those photographs prior to entering
5 your plea?

6 A. I saw them that morning, that day.

7 Q. The day of the plea.

8 A. Yes, when I was sitting in court.

9 Q. Is there anything in those photographs that concerns you
10 that makes you believe that the State would not have been
11 able to convict you of safecracking?

12 A. Well, I understand that they're saying anything you go
13 into now is a safe, a drawer or... I did not go into this to
14 start with. I don't know what it was. It's a box with
15 vitamins for animals I think is what they say, and then once
16 I got to looking at all the police reports with all the
17 experts -- they fingerprinted all this stuff, and none of
18 that's there. There's nothing missing here. And it's a box.
19 It's a regular file cabinet that's been put in a wall and
20 hammered in which I still -- I understand it's going to still
21 be considered a safe, but I -- if I would have saw this
22 anything at all like this -- I think I saw this one picture
23 the day of the court or the day I'm going in there and
24 getting a safecracking charge, I would have -- I just
25 wouldn't have went through with this. There's no way.

1 Q. Thank you, sir. At this time the applicant would like
2 to enter these as Exhibit 2.

3 **Mr. Gourley:** No objection, Your Honor.

4 **The Court:** So admitted.

5 (Plaintiff's Exhibit 2 was received in evidence.)

6 **The Court:** I saw them. He showed them to me.

7 **Ms. Goldberg:** All right, sir. Thank you.

8 By Ms. Goldberg:

9 Q. Mr. Harmon, at this time you believe that you should
10 have gone to trial on the safecracking charge? Is that true?

11 A. Yes, or at least tried to negotiate something different
12 because this charge was a regular burglary second, and like I
13 say, it was a Plexiglas thing; there wasn't nothing to it. I
14 would have never -- I would have had to have gone to some
15 kind of trial or some kind of negotiation or spent some time
16 to figure it out. I mean, I spent 15 months on the first
17 ones. There should have been something more done than just
18 going in that morning and pleading to a safecracking.

19 **The Court:** How many burglary charges was he facing?
20 Does the State know?

21 **Mr. Gourley:** I believe it was six, Your Honor.

22 **The Court:** Six burglary charges?

23 **Mr. Gourley:** He had one burglary first nol prossed and
24 five burglary seconds.

25 **The Court:** All right.

1 **Ms. Goldberg:** That sounds generally correct.

2 **The Court:** Burglary first, you understand you could get
3 15 -- 15 years to life on a burglary first?

4 **The Witness:** Yes, sir.

5 **The Court:** And on the burglary seconds, you could get
6 up to 15 years, regardless of the safecracking.

7 **The Witness:** Yes, sir.

8 **Mr. Gourley:** Your Honor, I apologize. Just for the
9 record, he also had six charges nol prossed, ranging from
10 grand larceny to petit theft.

11 **Ms. Goldberg:** Yes.

12 **The Court:** Well, so -- even if you're successful here
13 today, you're going back and you're admitting your guilt on
14 the burglaries?

15 **The Witness:** Oh, yes, I admitted -- wrote it out
16 exactly what I did. I mean... But there was a lot of stuff
17 that they were charging me for that I didn't know nothing
18 about that---

19 **The Court:** Well, I don't know about that.

20 **The Witness:** They didn't have anything---

21 **The Court:** You're guilty of the burglaries; correct?

22 **The Witness:** Yes, sir. Yes, sir.

23 **The Court:** So that's 75 years---

24 **The Witness:** Yes, sir.

25 **The Court:** ---plus life. So you're looking at life

1 plus 75 years just on the burglaries alone.

2 **The Witness:** Yes, sir.

3 **The Court:** And you want to go back and roll the dice.
4 You think you'd come out better.

5 **The Witness:** Yes, sir. I -- it's just the violent part
6 that gets me.

7 **The Court:** Well, those other ones are violent.

8 **The Witness:** Yes.

9 **The Court:** I mean, isn't there -- so you're not going
10 to get the violent part out. The burglaries are violent. Do
11 you understand that?

12 **The Witness:** Yes, sir.

13 **The Court:** So -- and they really come into apply that
14 if you do it again in the future, you're looking at---

15 **The Witness:** Yes, sir.

16 **The Court:** ---some problems. It doesn't really affect,
17 other than the 85 percent on the other one.

18 **The Witness:** I guess my whole thing was about the --
19 just not understanding with the -- I mean, Ms. Lee gave me
20 time. I mean, there's no complaint.

21 **The Court:** I noted in the transcript where it was
22 pointed out that the safecracking is 85 percent.

23 **The Witness:** Yeah, I seen that in the transcript.

24 **The Court:** You didn't ask to withdraw your plea at that
25 time, did you?

1 **The Witness:** No.

2 **The Court:** So---

3 **The Witness:** I wasn't thinking about it. I just -- it
4 just... I wasn't realizing the consequences of what this 85
5 means.

6 **The Court:** Well, you know, I don't know if he's
7 successful what some judge is going to do on this thing, but
8 be careful what you ask for because sometimes you might get
9 it and then -- all right. Anything further?

10 **Ms. Goldberg:** Only briefly, Your Honor.

11 By Ms. Goldberg:

12 Q. Mr. Harmon, are you eligible for parole currently?

13 A. No.

14 Q. Do you understand -- is it your understanding that that
15 is caused simply because of the safecracking charge?

16 A. Just because of the safecracking.

17 Q. When is your max-out date?

18 A. '19. 2019.

19 Q. Okay. And you had mentioned briefly and I know that
20 it's a concern for you -- so I want you to elaborate on it.
21 You had mentioned briefly that Ms. Davis spoke with you about
22 a rehabilitation program?

23 A. Yes.

24 Q. Just please explain to the Court how that plays into
25 what you expected to happen on the date of your plea.

1 A. This is a full one-year program, and I was already
2 approved in thinking -- going that route ten months earlier,
3 and then I sat, you know, in the county jail ten more months
4 trying to get all this resolved and trying to get a lot of
5 this dropped. There was a lot of stuff I was charged for
6 that was -- I mean, if I did it, I did it. I'll write it up
7 and tell you. I'm going to be as honest as I can be about
8 it. I messed up a few days, and I'm sorry that when it---

9 **The Court:** Well, unfortunately you don't have to mess
10 up but once.

11 **The Witness:** That's right; it gets you. But when it
12 came down to the end when I'm already in prison and I'm
13 waiting for---

14 **The Court:** You knew that -- you knew this was without a
15 recommendation on anybody's part. It was a straight-up plea
16 with the judge; right?

17 **The Witness:** Yes.

18 **The Court:** The judge could do whatever she wanted to
19 do.

20 **The Witness:** Yes, sir.

21 **The Court:** There's no guarantees as to anything;
22 correct?

23 **The Witness:** Yes, sir. Yes, sir.

24 **The Court:** All right.

25 **Ms. Goldberg:** Thank you, Your Honor.

1 supposed to feel? I mean, how, you know...

2 Q. And you're talking about the Bethel House?

3 A. Yes.

4 Q. And Ms. Davis did bring that up to Judge Lee's
5 attention. She did explain that.

6 A. Yes.

7 Q. You had been approved for that program---

8 A. Yes.

9 Q. That the preacher was going to come pick you up that
10 day.

11 A. Yes.

12 Q. She did -- she did explain that, too.

13 A. Yes.

14 Q. And you knew that this wasn't a negotiated sentence,
15 that Judge Lee could give you anything?

16 A. Yes. Yes. Yes.

17 Q. And you did confess to these crimes.

18 A. Yes, except that safecracking thing.

19 Q. So you are guilty of these crimes.

20 A. The burglary seconds but not the safecracking.

21 Q. And you did plead to the safecracking.

22 A. I pled to it at the end, yes.

23 Q. And you recall the solicitor---

24 A. I was kind of suckered into it that we're going to drop
25 all these that you didn't really do, we know, and then to

1 take the safecracking which I thought was a very light
2 charge. I had no idea. And, again, I'm thinking like a
3 safecracking is like a trespassing.

4 Q. And you were advised that it was 85 percent.

5 A. I did not understand that, no.

6 Q. And when Judge Lee asked if you had any questions, you
7 didn't feel it was necessary to say, "Hey, I don't understand
8 this 85 percent"?

9 A. I don't know if it was scared, not thinking right, or I
10 wasn't thinking something right because I would have never --
11 no way. Twenty-five years I'd been turning riches around
12 Columbia, and I'm as honest as I can be with people to bring
13 their cars and families to me, and I'm not about to plead to
14 nothing that's no violent crime like that. I'm not like
15 that; I ain't been that way.

16 Q. And with this safecracking charge, your attorney did try
17 to argue to Judge Lee and showed Judge Lee the pictures and
18 tried to show Judge Lee that this wasn't a bank safe I
19 believe is what she compared it to?

20 A. The one picture, yeah. I think we had the one color
21 thing.

22 Q. So Judge Lee did have an adequate understanding of what
23 exactly this was.

24 A. I think she saw it, but I didn't know until the end
25 about this lock thing and I...

1 Q. As a matter of fact---

2 A. I should have went over it.

3 Q. You went to Judge Lee on a motion for reconsideration---

4 A. Yes.

5 Q. ---of the sentence specifically on the safecracking;
6 correct?

7 A. Yes.

8 Q. And at that point Mrs. Davis tried to again mitigate the
9 fact that this wasn't a bank safe and that she should maybe
10 take into consideration a lesser charge of less than eight
11 years.

12 A. Yes.

13 Q. And Judge Lee denied that motion.

14 A. Yes. We actually thought that -- I think she was
15 thinking that if it went under ten or eight years it became
16 nonviolent. I still don't understand the safecracking. I
17 mean, like other charges had one's, two's, and three's. The
18 safecracking to me is just...

19 Q. You didn't feel that it was necessary to bring that up
20 to Judge Lee.

21 A. I did not understand that at all.

22 Q. And you never wanted a trial, did you?

23 A. I would have went to trial on the safecracking, yes.

24 Q. But just a minute ago on direct examination you
25 testified that you never wanted a trial.

1 A. I would have went to trial just on safecracking. We had
2 already worked everything out on the burglaries. The
3 safecracking is the problem that I was thrown into at the
4 end.

5 **Mr. Gourley:** All right. No further questions, Your
6 Honor.

7 **The Court:** All right. Ms. Goldberg, anything?

8 **Ms. Goldberg:** No, Your Honor.

9 **The Court:** All right. Thank you. You may step down.

10 **Mr. Gourley:** Your Honor, the State would call Mrs.
11 Davis to the stand.

12 Jennifer Davis, after being duly sworn, testified
13 as follows:

14 Direct Examination

15 By Mr. Gourley:

16 Q. Mrs. Davis, how long have you been practicing law?

17 A. Six and a half years.

18 Q. And how much of that has been criminal?

19 A. All of it.

20 Q. Do you recall when you were appointed to this case?

21 A. I know he was -- I looked at the file. He was arrested
22 on October of 2010. He was initially assigned to Ashley
23 Thomas in our office, and I inherited that case from her. I
24 can't remember exactly why, but I inherited it from her in
25 2011.

1 Q. Okay. And do you recall how many times you met with the
2 applicant?

3 A. I reviewed my notes. It was over ten times.

4 Q. Did you receive discovery in this case?

5 A. Yes.

6 Q. Did you review it with the applicant?

7 A. Yes.

8 Q. Did you discuss the elements of the charges and what the
9 State had to prove to meet its burden?

10 A. We did.

11 Q. And you discussed the 85 percent with the safecracking
12 charge and that it was violent?

13 A. That would have been discussed much later because he was
14 not indicted until about three weeks before the plea, but at
15 that time we did discuss what the difference was between
16 safecracking and his prior charges.

17 Q. All right. So he was made aware that it was an
18 85 percent?

19 A. Yes. Yes, we discussed that.

20 Q. And you informed him of the consequences of his plea?

21 A. Right.

22 Q. Did he ever tell you that he didn't understand
23 something?

24 A. When he had questions, he would certainly ask them and
25 we would -- I would discuss them with him until he was --

1 seemed to understand or was satisfied with the explanation.

2 Q. And would you briefly discuss the State's evidence in
3 the case, just kind of characterize it if you would?

4 A. I mean, the biggest part of it was the confession. He
5 gave a signed statement to everything in terms of the
6 burglaries. Like I said, the safecracking charge was
7 indicted much later, so we discussed that separately after he
8 was indicted on that charge. But they had other
9 corroborating evidence, but the confession was...

10 Q. Okay. Can you explain the State's offer in this case?

11 A. There was no offer. I believe the only time Mr.
12 Cathcart made any sort of -- I wouldn't call it an offer, but
13 he made it clear he would be asking for 20 years.

14 Q. Judge Lee gave him ten years concurrent?

15 A. Yes. Yes.

16 Q. Did the applicant ever indicate that he wanted to go to
17 trial?

18 A. He did not.

19 Q. Even after the safecracking charge came about?

20 A. Once the safecracking charge came about, we had a
21 separate discussion on that charge. I explained that we
22 could plead to the burglary charges. He is correct in that
23 he was always adamant about pleading to those charges, and in
24 terms of safecracking we had a separate discussion on whether
25 he wanted to pursue that issue at trial.

1 Q. Okay. And whose decision was it to plead guilty?

2 A. I would have had that left with him to make that
3 decision.

4 Q. And in regards to the Bethel House, did you ever promise
5 him that he was going to receive this, receive the Bethel
6 House?

7 A. No, I never promised him that. We did have him
8 screened; he was accepted into that program. I agree that it
9 would have been, you know, probably helpful to him, but he
10 knew that it was up to the judge ultimately and that the
11 solicitor was in no way agreeing to that program and was
12 asking for an active 20 years.

13 **Mr. Gourley:** No further questions.

14 **The Court:** All right.

15 **Ms. Goldberg:** Beg the Court's indulgence.

16 (Pause in proceedings.)

17 **The Court:** All right. Ms. Goldberg, we need to
18 proceed.

19 **Ms. Goldberg:** Yes, sir.

20 Cross-Examination

21 By Ms. Goldberg:

22 Q. Ms. Davis, briefly, you stated that you did review Mr.
23 Harmon's discovery with him; correct?

24 A. Yes.

25 Q. Did you ever provide him with a copy of that discovery?

1 A. He never asked for a copy of it at the jail. If he had
2 asked for it, I would have done what I always do which is try
3 to dissuade him from having it at the jail for reasons of
4 other people viewing it or seeing it, but we just reviewed it
5 in person at the jail, but I don't think he ever had his own
6 copy.

7 Q. When you say reviewed it in person, does that mean you
8 actually showed him a copy even though you didn't leave him a
9 copy?

10 A. Correct. We would have went through it together and
11 reviewed it.

12 Q. When you discussed -- when the time came for him to
13 enter his guilty plea, what did you tell him would happen
14 regarding sentencing?

15 A. We discussed the burglary violence and what those
16 penalties were and the charges, also of safecracking and the
17 difference between those, and I explained to him that was an
18 85 percent charge and that that would be a no-parole offense
19 and that that would alter any sentence he got and that that
20 would likely control basically what his sentence was in terms
21 of his sentence.

22 Q. Do you recall why you did not file a notice of appeal in
23 this case?

24 A. He didn't want one.

25 Q. Beg the Court's indulgence. Ms. Davis, did you tell Mr.

1 Harmon anything about the procedure of things regarding
2 appeal, P.C.R., what his motion to reconsider was and what
3 his rights were in that regard?

4 A. I had told him -- well, we had -- prior to the plea, I
5 explained he had ten days to file an appeal. After the
6 guilty plea -- and I will admit I didn't think he would get
7 ten years on the safecracking either, but after that I knew
8 he would probably be frustrated and we discussed his options
9 at that point. I told him I was going to file a motion to
10 reconsider and that before he filed anything in terms of the
11 P.C.R. - because he was clear that he did not want a direct
12 appeal filed - that he should wait until that motion to
13 reconsider had been heard and ruled on by Judge Lee.

14 Q. And you stated just now that you did not believe he
15 would receive a ten-year sentence on the safecracking. Did
16 you tell him what you believed he would receive?

17 A. I didn't. I told him it was going to be up to the judge
18 and that, you know, again that Mr. Cathcart was asking for
19 20 years and that I was going to do my best to explain and
20 mitigate the safecracking charge since it was indicted late
21 and I did hand up the photos of the -- what I call a lockbox,
22 but it does fit the safecracking statute and showed her
23 colored pictures of it in an attempt to mitigate that charge
24 and asking that she consider that separate from the
25 burglaries.

1 Q. Did you tell him that you would be asking for a specific
2 sentence?

3 A. I told him that we would be asking the judge to consider
4 the Bethel House program, and we highlighted the fact that he
5 had become addicted to Oxycontin which he was legally
6 prescribed but then abused and became addicted and that
7 that's why we were trying to seek the Bethel House.

8 **Ms. Goldberg:** No further questions.

9 **The Court:** All right. Anything from the State?

10 **Mr. Gourley:** No, Your Honor.

11 **The Court:** All right. Thank you, ma'am. You may step
12 down. Anything further?

13 **Mr. Gourley:** Nothing from the State, Your Honor.

14 **The Court:** All right. We'll take it under advisement.

15 **Ms. Goldberg:** Thank you, Your Honor.

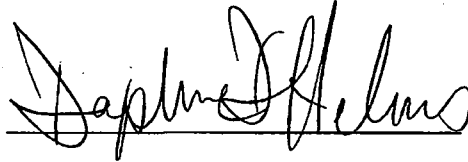
16 **Mr. Gourley:** Thank you, Your Honor.

17 (Whereupon, the proceedings were concluded.)
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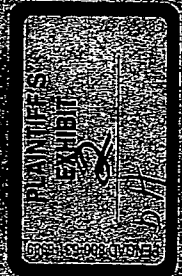
I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 5th of June, 2013.

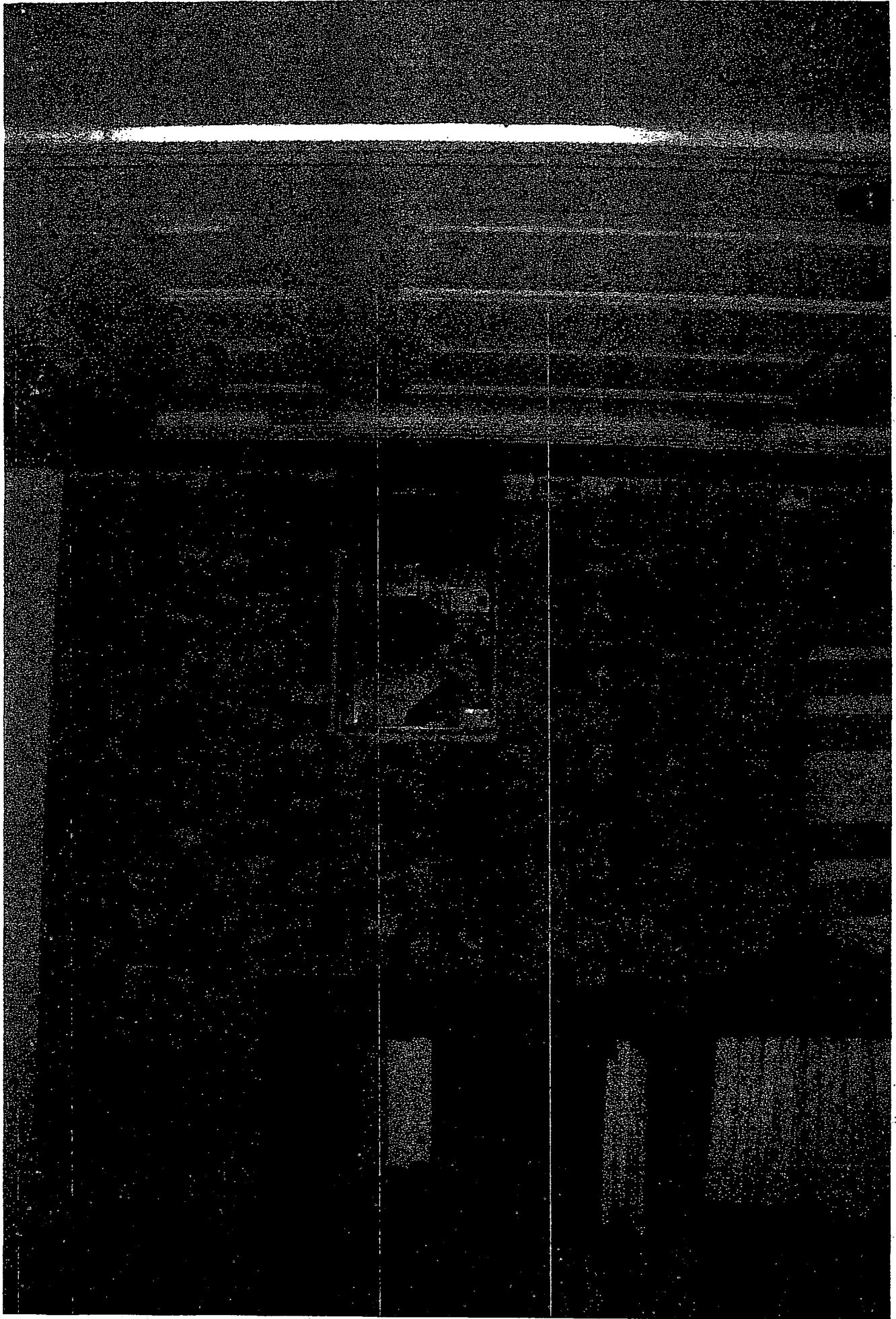
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 26, 2013

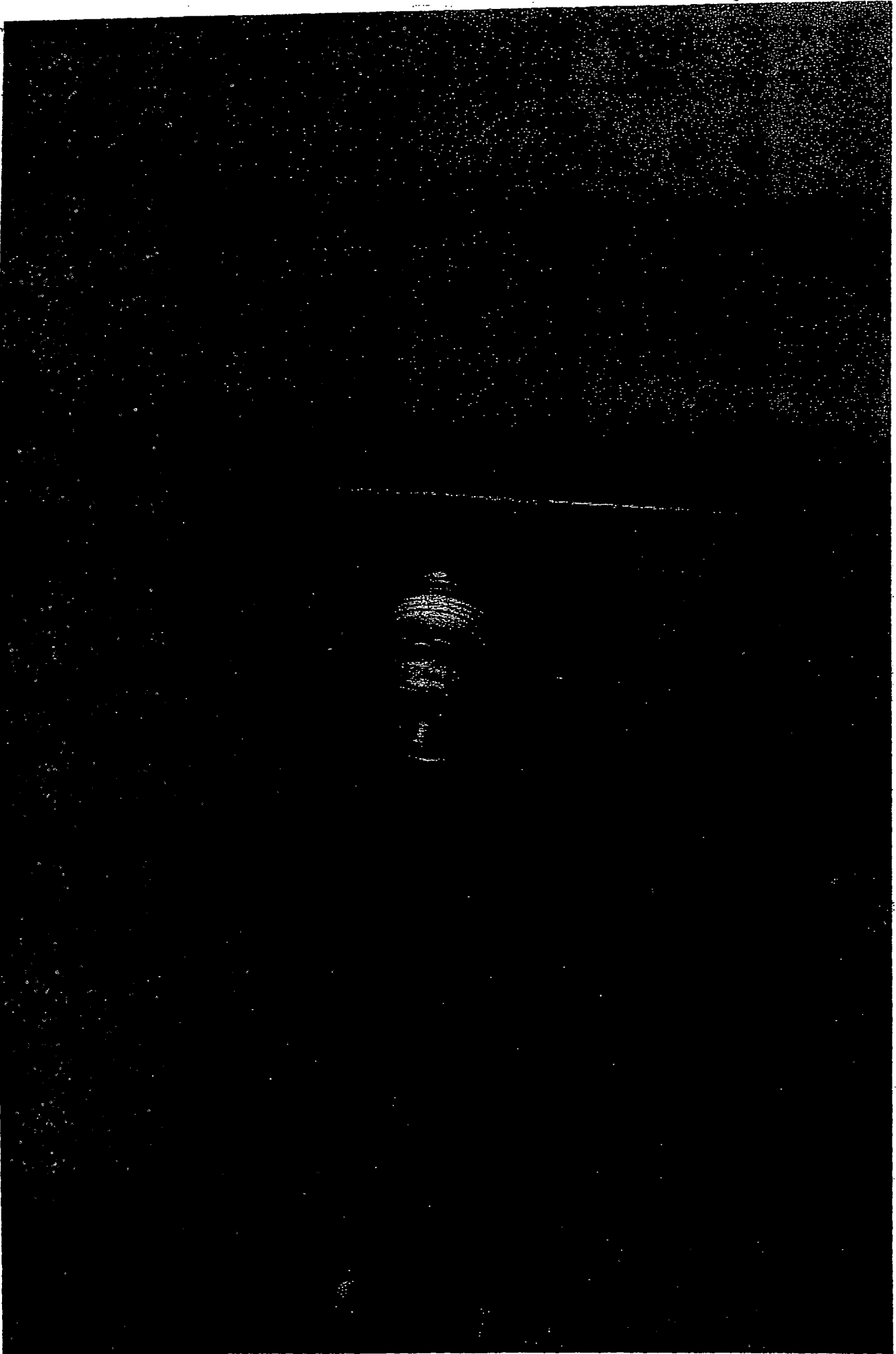
A handwritten signature in cursive script that reads "Daphne D. Helms". The signature is written in dark ink and is positioned above a horizontal line.

Daphne D. Helms, court reporter





Age 20 No Lock No Damage To Door



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Mark W. Harmon, #130332,)
Applicant,)

Case No. 2012-CP-404615

v.)

State of South Carolina,)
Respondent.)

RECEIVED

OCT 10 2013

ORDER OF DISMISSAL
S.C. SUPREME COURT

2013 AUG 23 AM 10:55
JEANETTE M. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

This matter comes before the Court by way of an application for post-conviction relief filed July 2, 2012. The Respondent made its Return on August 29, 2012. An evidentiary hearing into the matter was convened on June 5, 2013, at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Kristy Goldberg, Esquire. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was indicted at the July 2011 term of the Richland County Grand Jury for four counts of Burglary 2nd Degree (violent) (2001-GS-40-3113;5;7;8). Applicant pled guilty as charged on February 8, 2012 on four counts of Burglary 2nd (violent) and in addition waived presentment to an additional count of Burglary 2nd (violent). Applicant also plead guilty to an additional indictment for Safecracking which had been directly presented (2012-GS-40-00694) to the Grand Jury on January 20, 2012. Immediately after his plea the Honorable Alison

SCANNED

Renee Lee sentenced Applicant to ten years for each Burglary 2nd (violent) charge and ten years for Safecracking with all sentences to run concurrent. Applicant did not appeal his sentence or conviction.

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

1. Ineffective Assistance of Counsel.
 - a. Failure to review discovery with Applicant.
 - b. Failure to review elements and consequences of pleading to Safecracking charge.
 - c. Promised that I would attend Bethel House.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Jennifer Davis, Esquire (Counsel). This Court also had before it a copy of Applicant's guilty plea transcript, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified Counsel was appointed to represent him for his various charges and he met with Counsel several times prior to his guilty plea. Applicant testified he knew he could receive a possible sentence of life plus seventy five years imprisonment on the Burglary charges alone. Applicant testified he did not know about the existence of the Safecracking charge until shortly before his guilty plea, and admitted that at that time Counsel discussed with him that Safecracking was a "violent" offense. Applicant testified the Honorable Judge Lee advised him that the Safecracking charge would require him to serve a minimum eighty-five percent of the sentence. Applicant further testified "I know I deserved time and [Judge] Lee gave me time I know I deserve."

Applicant testified he feels Counsel was ineffective for failing to review all the discovery material with him. Specifically, Applicant testified Counsel "lightly" reviewed discovery with him. Applicant alleges Counsel sent him a copy of his discovery after his guilty plea. Applicant testified Counsel advised him that he would most likely be sentenced to Bethel House. Applicant elaborated that he was approved to attend Bethel House. However, Applicant testified that he understood he was pleading without negotiations.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified she has practiced exclusively criminal law for approximately six and a half years. Counsel testified she reviewed discovery in full with Applicant. Counsel further testified Applicant never asked for a copy of his discovery and she typically does not give clients discovery while they are incarcerated. Counsel explained to Applicant the elements for each charge he was facing. Specifically, Counsel testified she reviewed with Applicant the new Safecracking charge, the elements, and how he would be required to serve a minimum of eighty-five percent of the sentence. Counsel testified that she answered all of Applicant's questions and Applicant understood everything prior to his guilty plea. Counsel further testified Applicant understood it was Judge Lee's decision as to whether Applicant would be given a sentence where he would be allowed to attend Bethel House rehabilitation facility.

Additionally, Counsel testified she filed a motion for reconsideration on the Safe Cracking charge. Counsel attempted to mitigate the charge on the basis that the Safe was not necessarily a bank safe, but more like a lock box, and presented pictures to Judge Lee. Counsel further asked Judge Lee to consider Bethel House because Applicant became addicted to Oxycontin, a pain killer Applicant was originally prescribed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient

performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

This Court finds Applicant's allegation that he was denied effective assistance of trial counsel due to Counsel's failure to advise him that Safecracking requires service of eighty-five percent of his sentence is without merit. This Court finds the guilty plea transcript, along with Counsel's credible testimony, reveals Applicant was well aware of the minimum eighty-five percent requirement. Applicant alleges Counsel failed to advise him that he would be required to serve eighty-five percent of his sentence, and had he known this requirement he would have insisted on going to trial. However, Counsel testified that she explained to Applicant that Safecracking requires he be incarcerated for at least eighty-five percent of his sentence. Counsel explained to Applicant the elements of the offense and consequences of his plea. Further, the plea transcript shows that Judge Lee advised him that Safecracking requires service of at least eighty-five percent of the sentence imposed. This Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

Additionally, this Court finds Applicant's allegation of ineffective assistance of trial counsel due to Counsel's alleged failure to review his discovery material is also without merit.

Based on the credible testimony of Counsel, this Court finds Counsel reviewed Applicant's case, including all discovery materials, extensively with Applicant and answered all of Applicant's questions prior to the guilty plea. Counsel testified it is her practice to not give her clients a copy of the discovery if they are incarcerated. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). This Court finds that the Applicant's attorney demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. Additionally, this Court finds that the Applicant has not shown actual prejudice from this alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Finally, this Court finds Applicant's allegation that Counsel was ineffective for advising him that he would be sentenced to a year at Bethel House is without merit. Applicant testified Counsel explained to him prior to his guilty plea that he would be sent to Bethel House due to his addiction to Oxycontin, a pain killer that he was previously prescribed. However, Applicant further testified that he was aware that his guilty plea was entered into without negotiations and Judge Lee had complete discretion when sentencing Applicant. Applicant testified that no one had promised him anything in order for him to plead guilty. Counsel testified that she asked Judge Lee to consider allowing Applicant to go to Bethel House, but she also advised Applicant that Judge Lee had complete discretion in deciding Applicant's sentence. Applicant understood the State was asking for twenty years. This Court finds that Applicant has failed to meet his burden of proof in regards to this allegation, and accordingly this allegation must be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present sufficient evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

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.

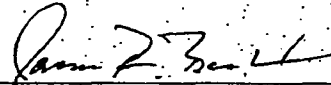
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right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

[signature block on following page]

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 19 day of August, 2013.



JAMES R. BARBER, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4004615

Mark W #130332 Harmon

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Non-suit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 27 August 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Mark W #130332 Harmon Kristy Grafton Goldberg Robert Daniel Comey

Mark W #130332 Harmon

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

RECEIVED

OCT 9 2013

Janette W McBride

S.C. SUPREME COURT

RICHLAND COUNTY
FILED
2013 AUG 27 AM 11:56
JANETTE W. MCBRIDE
CLERK

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Mark W. Harmon, #130332)

Plaintiff)

v.)

State Of South Carolina)

Defendant)

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-40-4615

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

RICHLAND COUNTY
FILED
2013 AUG 23 AM 10:55
DEANETTE W. MORRIS
C.C.P. & G.S.

Plaintiff's Attorney: Kristy Grafton Goldberg, Bar No. Address: 1720 Main Street, Suite 301 Columbia, SC 29201 phone: fax: e-mail: other:	Defendant's Attorney: Daniel Gourley, Bar No. Address: P.O. Box 11549 Columbia, SC 29211 phone: (803) 734-3737 fax: (803) 734-1133 e-mail: other:
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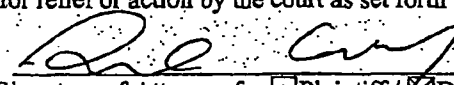
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:
 Estimated Time Needed: Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

July 17, 2013
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT:
 EXEMPT:

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

Name of Court Reporter:
 Other:

JUDGE'S SECTION

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

JUDGE: _____
 CODE: _____ Date: _____

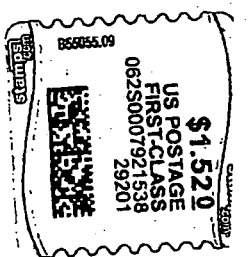
CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: _____
 CONTESTED - AMOUNT DUE: _____

LAW OFFICE OF
Kristy Grafson Goldberg, LLC
ATTORNEY AT LAW
1720 MAIN STREET, SUITE 301
COLUMBIA, SOUTH CAROLINA 29201

The Honorable Daniel E. Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211



WITNESSES

(S) F BRYANT - Columbia Police Department

DOCKET NO. 2011GS4003113

The State of South Carolina

County of

Richland

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

COURT OF GENERAL SESSIONS

JULY TERM 2011

67

Defendant

Witness:

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

ARREST WARRANT NUMBER

K643223

ACTION OF GRAND JURY

INDICTMENT

[Handwritten signature]

Foreperson of Grand Jury
Date: JUL 14 2011

VERDICT

MARK W HARMON

Indictment for
BURGLARY 2ND DEGREE (NON-VIOLENT)

SC Code: 16-11-0312
CDR Code: 0088 B6 JCD

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JULY 13, 2011, the Grand Jurors of Richland County present upon their oath:

BURGLARY, SECOND DEGREE

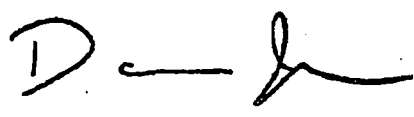
(VIOLENT)

96 RC JCD

CDR: 0080 16-11-0312

That MARK W HARMON did in Richland County on or about October 23, 2010, enter without consent and with the intent to commit a crime therein, the building of SHEAR EXPECTATION, located at 136 PELHAM DR., in violation of Section 16-11-0312, S. C. Code of Laws, 1976, as amended. All Done Days Hours of Darkness and on while have been convicted of 2 or more Counts of Housebreaking RE RE JCD

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Christopher Lindler - Richland County Sheriff

DOCKET NO. 2011GS4003117

The State of South Carolina

County of

Richland

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

ARREST WARRANT NUMBER

M720898

COURT OF GENERAL SESSIONS

JULY TERM 2011

67

Defendant

THE STATE vs.

Witness:

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

ACTION OF GRAND JURY

TRUE BILL

MARK W HARMON

Foreperson of Grand Jury Date: JUL 14 2011

VERDICT

Indictment for BURGLARY 2ND DEGREE (VIOLENT)

SC Code: 16-11-0312(B) CDR Code: 0086

Foreperson of Petit Jury Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JULY 13, 2011, the Grand Jurors of Richland County present upon their oath:

BURGLARY, SECOND DEGREE
(VIOLENT)

CDR: 0086 16-11-0312(B)

That MARK W HARMON did in Richland County on or about October 28, 2010, enter without consent and with the intent to commit a crime therein, a building of N.E. ANIMAL CLINIC located at 10200 TWO NOTCH RD., and the defendant, MARK W HARMON, did enter the building in the nighttime, in violation of Section 16-11-0312(B), S. C. Code of Laws, 1976, as amended.

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


DAN JOHNSON, SOLICITOR

WITNESSES

(s) Christopher Lindler - Richland County Sheriff

DOCKET NO. 2011GS4003118

The State of South Carolina

County of

Richland

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 of to

COURT OF GENERAL SESSIONS

JULY TERM 2011

67

ARREST WARRANT NUMBER

M720899

Defendant

THE STATE

vs.

MARK W HARMON

Witness:

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

ACTION OF GRAND JURY
TRUPELL

Foreperson of Grand Jury JUL 14 2011

VERDICT

Indictment for BURGLARY 2ND DEGREE (VIOLENT)

SC Code: 15-11-0312(B)

CDR Code: 0086

Foreperson of Petit Jury
Date:

WITNESSES

(S) WALT BALES - Forest Acres Police
Department

DOCKET NO. 2012-GS-40-00953

The State of South Carolina
County of Richland

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

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

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

67

THE STATE
vs.

MARK W HARMON

Defendant

Witness:

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

ARREST WARRANT NUMBER

I-292098

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

BURGLARY 2ND DEGREE (VIOLENT)

SC Code: 16-11-0312
CDR Code: 0086

Foreperson of Petit Jury
Date:

