

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Greenwood County

Eugene C. Griffith, Jr., Circuit Court Judge

S.C. Supreme Court

DENNIS T. DEAL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001615

APPENDIX

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State of South Carolina	)	
County of Greenwood	)	Court of General Sessions
	)	2011-GS-24-2264, 2265

State of South Carolina	)	
vs.	)	Transcript of Record
Dennis Deal	)	
<u>DEFENDANT</u>	)	

December 13, 2011
Greenwood, South Carolina

B E F O R E:

Honorable Frank R. Addy, Judge.

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

Andrew Hodges, Assistant Solicitor
Attorney for the State

Janna Nelson, Assistant Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

EXHIBITS

No exhibits were introduced.

1 DECEMBER 13, 2011

2 MR. HODGES: Your Honor, standing before you is
3 Dennis Thomas Deal. Mr. Deal is charged on three
4 warrants. The first is I829919, charging him with
5 shoplifting, third or subsequent offense. He was released
6 on September 14, 2011 on that charge on a \$25,000.00
7 dollar personal recognizance bond. He was then arrested
8 approximately two weeks later on two warrants, I829975 and
9 I829976. Those warrants charging him with attempted
10 murder and possession of a knife during the commission of
11 a violent crime. He received a \$250,000.00 dollar surety
12 bail on those two offenses. He is represented by Janna
13 Nelson of the Greenwood Bar and this is a motion for bail
14 reduction.

15 THE COURT: What is the, when did you say the second
16 offense occurred?

17 MR. HODGES: The incident date on the second offense
18 is September the 21st of 2011 which is approximately a
19 week after his release from the shoplifting charge.

20 THE COURT: What was the allegation of the murder,
21 attempted murder?

22 MR. HODGES: Well, on the shoplifting it is
23 essentially, you know, the store owner saw him, officers
24 were called, he fled into the woods. The officer found
25 him in the woods with the objects and took him into

1 custody. The attempted murder case, he was going down the
2 street, according to the victim, actually according to the
3 defendant's own recorded statement. He was going down the
4 street where the victim lives trying to buy a crack rock,
5 going house to house. Ended up coming into the victim's
6 yard seeking crack. The victim basically told him to get
7 out of there. He approached, they ended up getting into a
8 altercation there in the front yard of the victim's
9 residence. The defendant then left, went on. Later on an
10 individual came to the victim asking for a ride to another
11 part of town, the victim agreed to give him a ride, gave
12 him a ride to a residence and while he was out front of
13 that residence the defendant came out and cut him several
14 times with a knife. I would like to pass forward a number
15 of photographs, Your Honor, from that.

16 THE COURT: Thanks, please.

17 MR. HODGES: He cut the victim several times, most
18 significantly across the throat. He was later taken into
19 custody, did give a recorded statement to law enforcement
20 where he indicated that it was his full intention to kill
21 the victim but he was upset about the altercation that had
22 occurred earlier at the victim's residence and it was
23 fully his intention to kill the victim, he was just
24 unsuccessful. I do have his criminal history if you would
25 like to hear that.

1 THE COURT: Why don't you give me the criminal
2 history.

3 MR. HODGES: His criminal history starts in 1981,
4 petty larceny, shoplifting, drawing a knife; 1982,
5 shoplifting; '82, assault and battery, trespassing; '83,
6 assault and battery with intent to kill; '83, petty
7 larceny; '84, assault and battery; '84, probation
8 violation, received nine months on that; '85, possession
9 of marijuana, receiving stolen goods, assault and battery,
10 shoplifting; receiving stolen goods multiple counts in
11 '86; a ten year sentence on a drug charge in '96; driving
12 under suspension, assault and battery in '96; resisting
13 arrest in '98; grand larceny in '98; driving under
14 suspension in '99; failure to stop for blue lights in
15 2000; malicious injury in 2000; another failure to stop
16 for a blue light in 2001, did a straight one year on that;
17 carrying a concealed weapon and driving under suspension,
18 another failure to stop for blue lights and resisting
19 arrest in '01; criminal domestic in '03; driving under
20 suspension in '03; possession of crack in '03; burglary
21 second degree nonviolent in '03, 12 years suspended on the
22 service of 6 with 5 years of probation; he got a
23 probationary sentence in June of this year for assault and
24 battery, second degree, the sentence on that was three
25 years suspended to 179 days time served, five years of

1 probation, that was on June the 16th of 2011. I looked
2 back at the facts on that case, that was also a cutting
3 case. Speaking with the probation department they
4 indicate they have a warrant for him on this because he
5 did not report, immediately didn't report in July and
6 August and then was arrested in September. He also failed
7 a drug test, they indicate that he has been, over his
8 career on probation ten times and revoked six out of the
9 ten.

10 THE COURT: All right. You said he had a conviction
11 for ABWIK back in '83?

12 MR. HODGES: That is what the report indicates, Your
13 Honor.

14 THE COURT: Ms. Nelson, let me hear from you on the
15 issue of bond.

16 MS. NELSON: Thank you, Your Honor. Dennis' bond on
17 the attempted murder charge is set at \$250,000.00 thousand
18 and his bond on the probation violation warrant is at \$50
19 so he has a total of \$300,000.00 thousand bond, Your
20 Honor. He is from Greenwood, has lived here his entire
21 life. His family is here. As Your Honor already knows he
22 is seeking to try to go home at least for a brief period
23 of time to try to kind of put his affairs in order. His
24 mother recently died and he tells me that in the past he
25 would have been able to rely on her to kind of tie up

1 loose ends for him but he has got some things he needs to
2 pack away and put into a safe place so that they are not
3 taken when his home is taken over by someone else and
4 wants to help his siblings with getting his mother's
5 affairs finalized. As I said his family is here, he does
6 have, is it brothers and sisters that you have here in
7 Greenwood?

8 MR. DEAL: Yes.

9 MS. NELSON: He was working at the time the incident
10 doing, working for his nephew who is basically a shade
11 tree mechanic and he was being paid in cash for that and
12 can do that work again at any time. He tells me that the
13 most he might be able to post is a bond in the
14 neighborhood of \$10 to \$15,000.00 dollars and is asking
15 for a reduction to that amount, somewhere in that
16 neighborhood. He does have two children, 8-year-old twins
17 who live with their mother in Laurens and he tells me that
18 he sees them regularly and is involved in their life.
19 Your Honor, I think, he has not been in jail very long on
20 this charge and I think we are very close to trying to
21 work out the case for a negotiated sentence. And of
22 course we talked to Your Honor about that earlier today.
23 I think Dennis is just trying to see if he can make some
24 arrangements just to go home for at least a brief period
25 of time so that he can get everything finished up before

1 he resolves this case. I think that ultimately this is
2 going to be something that we will resolve with a plea.
3 And I don't expect it to drag along for an extended period
4 of time before it does resolve. I think he is just asking
5 for the bond to be reduced so that he could go home for a
6 brief period of time.

7 THE COURT: I appreciate your position very much, Ms.
8 Nelson, and certainly your advocacy on behalf of your
9 client. Part of me is surprised that he made bond or that
10 he had bond set in the first place on the attempted murder
11 charge with his record.

12 MS. NELSON: Your Honor, would you be willing to hear
13 from him?

14 THE COURT: I will be more than happy to hear from
15 him. I don't know what he can say to change my mind. Go
16 right ahead, sir.

17 MR. DEAL: I don't want to try to change your mind.
18 I just want to go ahead and tell you my side of the story.
19 It was a lie on the statement of the warrants or what have
20 you. I was walking down the street. I did not ask for no
21 dope, no crack. I walked up to the man, he told me,
22 excuse my french, he said fuck you. He jumped up and
23 knocked my teeth out of my mouth, see my plate, put a
24 pistol in there. I walked away. I caught him later on
25 that night, yes sir, I did try to kill him because he

1 jumped on me for no reason at all. I don't know them
2 people. I know his son because I sell dope to his son but
3 other than that, I mean, yeah I did assault him. I was in
4 this court the last time and I told you I was trying to
5 live right. I fell back to being on drugs. Yeah. But I
6 am still trying to live properly. This man assaulted me
7 for no reason at all. So, yes, Your Honor, I did try to
8 kill him. My mother passed away.

9 THE COURT: Mr. Deal, you have my condolences of your
10 mother's passing, I am sure that has been hard for you
11 especially with you being in jail right now. What I
12 indicated to your attorney in-chambers, in all candor, Mr.
13 Deal, is that I would not rule out the possibility of
14 allowing you out until Friday to get your affairs in
15 order. I didn't represent to her, however, that if I were
16 to do that it would be against my better judgment. So my,
17 I would pretty much, I would not let you have that
18 additional time out before you went to prison. Quite
19 honestly, Mr. Deal, the reason for that is I would have,
20 if I let you out I would have to put a condition on you
21 being out either that you would pass a drug test on Friday
22 when you came back or that and if you show up on Friday.
23 And I know what they have been talking giving you, Mr.
24 Deal.

25 MR. DEAL: I will take the drug test.

1 THE COURT: I understand. I don't want to give you
2 twenty years instead of the fifteen that you had worked
3 out because you failed to test and if you are late showing
4 up. Not that I don't doubt your word, not that I don't
5 doubt that you would stay clean for 48 hours. I don't
6 want to have to do that. Do you understand?

7 MR. DEAL: But I appreciate if you would do it for
8 me. Your Honor, you been knowing me for years and have
9 been my lawyer. I just want to take care of my needs at
10 home before I go down there.

11 THE COURT: How many siblings do you have?

12 MR. DEAL: How have sisters and brothers?

13 THE COURT: Yes.

14 MR. DEAL: But we do not see, it was been
15 consequences since my mother died with my sisters and
16 brothers. It it wasn't until Friday, I would set for a
17 day so I can get all of my stuff done, if you let me out
18 for a day. By Wednesday, Thursday morning I could be back
19 in court. I just need to get all of my stuff packed up
20 and put away.

21 THE COURT: Surely there is somebody in Greenwood
22 County that you can trust enough to call, there has got to
23 be one person who likes you well enough that you can trust
24 to throw some stuff in some boxes. I am not ruling out,
25 Mr. Deal, but I am not comfortable lowering your bond.

1 That is the question I am being asked today, okay, to
2 lower your bond. I can't help you. There is where I am.

3 MR. DEAL: I don't understand, the past, I done paid
4 for my past, over years and years. That is my problem,
5 you pay for your past and then it still, still backs up in
6 your face.

7 THE COURT: That is particularly true, Mr. Deal, when
8 you do the same stuff over and over you have done before.

9 MR. DEAL: If someone violates you. If I come up to
10 you and knock your teeth out and put a pistol in your face
11 wouldn't you want to hit back at me?

12 THE COURT: Oh, yeah.

13 MR. DEAL: That is what happened to me. Look at me.

14 THE COURT: I understand. I am being asked one
15 simple question right now and that is the bond issue. I
16 am not saying whether you are guilty or innocent. I am
17 just being asked about bond, I can't help you on that. I
18 apologize.

19 MR. DEAL: Can I speak one other. I have been trying
20 to sign a warrant ever since this happened against the
21 victim and his son. But the police, this officer right
22 here, the detective took a picture of my face when they
23 arrested me but they didn't come back and question me
24 about the signing the warrants. They won't let me sign
25 the warrants with them but they are pushing the issue

1 trying to get me for this. That is all I am trying to
2 say.

3 THE COURT: Mr. Deal, let me suggest that you focus
4 on the task at hand. And I am not going to start
5 directing the police to sign warrants or not to sign
6 warrants. You are in a lot of trouble right now, why
7 don't you focus on that. Obviously you have been through
8 a lot with the death of your mother. I wish I could help
9 you but I can't. I am sorry.

10 MR. HODGES: Thank you, Your Honor.

11 MS. NELSON: Thank you very much, Your Honor.

12 DECEMBER 14, 2011.

13 MR. HODGES: Your Honor, before you is Dennis Deal,
14 Mr. Deal is waiving Grand Jury presentment and entering
15 pleas of guilt on two indictments. Those are indictments
16 2011-GS-24-2264 and 2265. Those indictments charge him
17 with assault and battery in the first degree, shoplifting.
18 The State's recommendation is for a ten year sentence on
19 the assault and battery, first degree and a consecutive
20 five year sentence on the shoplifting. In consideration
21 for his plea on these two indictments the State will be
22 dismissing an additional charge, charge on possession of a
23 knife during the commission of a violent crime. The
24 defendant is represented by Janna Nelson of the Greenwood
25 Bar.

1 THE COURT: All right. Ms. Nelson, you are
2 representing Mr. Deal?

3 MS. NELSON: Yes sir, Your Honor.

4 THE COURT: I am informed he wants to plead guilty to
5 the offenses of shoplifting as well as assault and battery
6 in the first degree. Is that correct?

7 MS. NELSON: Yes sir, Your Honor. This is where we
8 were asking that you accept the plea today and defer
9 sentencing until Friday. And I do have a family member
10 here.

11 THE COURT: All right. Have you explained to Mr.
12 Deal the elements of these offenses and all of his
13 constitutional rights including his right to a jury trial
14 and the penalty involved in these offenses?

15 MS. NELSON: I have, Your Honor.

16 THE COURT: And do you agree with his decision to
17 plead guilty?

18 MS. NELSON: Yes sir, I do.

19 THE COURT: Ms. Nelson, in your investigation of the
20 facts and circumstances from these incidents do you
21 believe that the State possesses sufficient credible
22 evidence to prove Mr. Deal's guilt to a jury beyond a
23 reasonable doubt, that if he were to stand trial his
24 conviction would be probable?

25 MS. NELSON: Yes, sir.

1 THE COURT: All right. Mr. Deal, if you could just
2 raise your right hand.

3 DENNIS DEAL, being
4 first duly sworn, testified as follows:

5 THE COURT: You are Dennis Thomas Deal?

6 MR. DEAL: Yes, sir.

7 THE COURT: Mr. Deal, I am told by your attorney that
8 you want to plead guilty to these two charges,
9 shoplifting, third or subsequent offense; and assault and
10 battery, first degree. Is that correct?

11 MR. DEAL: Yes..

12 THE COURT: Do you understand that both of these
13 carry up to ten years?

14 MR. DEAL: Yes.

15 THE COURT: I am also told that there is a
16 recommendation by the State of a ten year sentence for the
17 assault and battery first degree and a five year, I am
18 sorry, consecutive sentence on the shoplifting meaning you
19 would be sentenced to a total of fifteen years. Is that
20 your understanding?

21 MR. DEAL: Yes.

22 THE COURT: Now in talking to your attorney in
23 chambers this morning and the Solicitor it is my
24 understanding that they are going to request for you to be
25 released from the jail and sentencing would be deferred

1 until Friday. I am told that apparently this is your
2 daughter, she is willing to say that she is willing to
3 take responsibility for you for these two days that you
4 are out. Do you understand, Mr. Deal, that the Solicitor
5 is going to be requesting a drug test on you Friday
6 morning and if you were to test positive for drugs on
7 Friday, you have been in jail for some time now. So if
8 you were to test positive for drugs on Friday I would be
9 at liberty to give you a full twenty years on this. Do
10 you understand that?

11 MR. DEAL: Yes.

12 THE COURT: Of course, it has been represented to me
13 the main reason you are wanting this time out is that your
14 mother passed away last week and you want to get your
15 affairs in order and meet with your siblings about her
16 estate. Do you understand, Mr. Deal, if there is any
17 problem, any sort of rue-haha, any sort of trouble that
18 you cause in the next 48 hours, be it criminal or general
19 acting out, do you understand that I would be at liberty
20 to give you the full twenty years. Do you understand
21 that?

22 MR. DEAL: Yes.

23 THE COURT: So if your family comes in here or your
24 siblings come in here Friday morning and telling me that
25 you are showing out and wanting this or wanting that and

1 being a general pain trying to distribute your mother's
2 property, which I have got some experience in this on a
3 previous job, they come in here and tell me that I am
4 going to be able to give you the full twenty. However if
5 you maintain good behavior, don't do any drugs in the next
6 48 hours I will give you the fifteen the State is
7 recommending. Do you understand that?

8 MR. DEAL: Yes.

9 THE COURT: The recommendation, do you understand
10 that the Court is not bound by a recommendation. I could
11 still give you the full twenty. If there are no problems,
12 no issues, no drugs used I will give you the fifteen.
13 That is what I am assuring. Do you understand?

14 MR. DEAL: Yes, sir.

15 THE COURT: Do we understand each other?

16 MR. DEAL: Yes.

17 THE COURT: Are you willing to accept my terms?

18 MR. DEAL: Yes.

19 MR. HODGES: And, Your Honor, I would also ask that
20 we add to that that he have no contact with the victim
21 while he is out for these 48 hours. I don't won't there
22 to be any additional problems there.

23 THE COURT: That goes without saying. Do you
24 understand, Mr. Deal?

25 MR. DEAL: Yes, sir.

1 THE COURT: Now, Mr. Deal, within the last
2 twenty-four hours have you taken any medications or any
3 substance that affects your thinking?

4 MR. DEAL: No.

5 THE COURT: And you don't suffer from any emotional
6 or physical problems that would prevent you from
7 understanding what is going on right now?

8 MR. DEAL: No, sir.

9 THE COURT: Mr. Deal, again, I am told that you want
10 to plead guilty to these two charges. Are you in fact
11 guilty of these?

12 MR. DEAL: Yes, sir.

13 THE COURT: Solicitor, if you will give me the facts.
14 Mr. Deal, I need you to listen closely so that in a minute
15 when I ask you whether you agree or disagree with what the
16 Solicitor says happened you will be able to answer. So
17 listen to what he has to say about what happened. Go
18 ahead, Solicitor.

19 MR. HODGES: Your Honor, the shoplifting occurred on
20 September the 13th of this year. Mr. Deal took three
21 boxes of soap from the Price Wise store. Law Enforcement
22 was contacted, he fled into the woods and was captured by
23 law enforcement. He did give a voluntary statement
24 admitting to that offense. Approximately a week later on
25 September the 21st of 2011 Mr. Deal got into an

1 altercation with the victim in the case, Mr. Devlin,
2 earlier in the evening. And later that night he had a
3 second confrontation with him at that time cutting him
4 with a knife, cutting him in the throat. And did give a
5 statement to law enforcement admitting to cutting and
6 indicated that he intentionally wanted to kill him with a
7 knife. Now, we have been in contact with Mr. Devlin this
8 morning, he is aware of the plea going forward and may
9 come for sentencing on Friday.

10 THE COURT: All right. Mr. Deal, you heard the
11 Solicitor, he has two prior convictions for shoplifting?

12 MR. HODGES: He does, Your Honor, and I would just by
13 reference we had a bond hearing yesterday and I put his
14 whole record on the record.

15 MS. NELSON: We would stipulate to the prior
16 convictions.

17 THE COURT: I do recall seeing my notes the prior
18 criminal history put on the record yesterday at a bond
19 hearing. Mr. Deal, you heard what the State alleges
20 happened on September the 13th at the Prise Wise where
21 they allege you stole some soap. And what happened on the
22 21st of September where you cut Mr. Devlin, D-E-V-L-I-N.
23 And you gave a statement to law enforcement. Is that what
24 happened on those occasions?

25 MR. DEAL: Yes, sir.

1 THE COURT: So you admit that you are in fact guilty
2 of these charges, sir?

3 MR. DEAL: Yes, sir.

4 THE COURT: Mr. Deal, I need to review with you
5 certain rights that you are giving up by pleading guilty.
6 At any time you don't understand what I am telling you
7 just ask for a second and I will let you speak to Ms.
8 Nelson. Okay, Mr. Deal?

9 MR. DEAL: Yes, sir.

10 THE COURT: Now, Mr. Deal, you realize that neither
11 of these indictments have been acted upon by the Greenwood
12 County Grand Jury. You have the right to have the Grand
13 Jury consider these matters before you receive either a
14 guilty plea or a trial. If you go forward today, if you
15 plead you will have to waive Grand Jury presentment. Do
16 you understand that when the Grand Jury meets, Mr. Deal,
17 they have one of two options. If they believe there is
18 probable cause and believe that you committed this offense
19 or these offenses they would true bill the indictments.
20 If they thought there was a lack of probable cause or a
21 lack of evidence they would no bill the indictments. Are
22 you comfortable with going forward and are you okay to
23 waive Grand Jury presentment today?

24 MR. DEAL: Yes, sir.

25 THE COURT: Mr. Deal, you realize of course you also

1 have the right to a jury trial on both of these charges.
2 You would actually have two different jury charges because
3 the incident dates are different. In a jury trial you and
4 Ms. Nelson would assist in selecting a jury in Greenwood
5 and you would sit right over there to my right. And you
6 would have the ability to confront and cross-examine the
7 witnesses that the State would have to bring in in their
8 effort to prove your guilt beyond a reasonable doubt. Do
9 you understand, Mr. Deal?

10 MR. DEAL: Yes, sir.

11 THE COURT: That means that you could ask those
12 witnesses any question you want to ask them. In a jury
13 trial the State would always have the burden of proof.
14 You would not have to prove anything. Do you understand,
15 Mr. Deal?

16 MR. DEAL: Yes, sir.

17 THE COURT: If you want to, however, you could call
18 witnesses to testify before you. If you wanted to you
19 could subpoena witnesses who were reluctant to come in
20 here and testify. If you wanted to take the stand
21 yourself you would be free to do that, Mr. Deal, you would
22 be subject to the same rules and cross-examinations as any
23 other witness. And, of course, perhaps part of your
24 criminal history, you would come in, if I were to
25 determine the prejudicial effect is not outweighed by the

1 probative value of your prior criminal history certainly
2 you would have a hearing on that before you, before you
3 even testified. If you plead guilty though you waive your
4 right to call witnesses or present any testimony from
5 yourself. Do you understand that, Mr. Deal?

6 MR. DEAL: Yes, sir.

7 THE COURT: Mr. Deal, if you did not want to testify
8 I would explain to the jury they couldn't hold that
9 against you or use it as evidence of guilt. That is your
10 fifth amendment right to self-incrimination. I would
11 explain to them that they are to draw no inference from
12 any, your failure to testify, no inference of guilt, they
13 can't even discuss it in the jury room. Do you understand
14 that, Mr. Deal?

15 MR. DEAL: Yes, sir.

16 THE COURT: Certainly you would not have to testify.
17 Nobody could force you, not the Solicitor, not Ms. Nelson,
18 I can't even make you testify in any case for you are a
19 criminal defendant. Do you understand that, sir?

20 MR. DEAL: Yes, sir.

21 THE COURT: If you plead guilty of course you waive
22 your fifth amendment right to self-incrimination, that you
23 are admitting to me that you did commit this offense. By
24 pleading guilty you also waive your right to your
25 presumption of innocence. I would explain to the jury you

1 are presumed innocent of any wrongdoing until the State
2 has met its burden of proof. The way I would describe
3 that to them is that I would tell them the presumption of
4 innocence is like a robe of righteousness. It is a very
5 real presumption in the eyes of the law. That means that
6 right now, Mr. Deal, as we stand here today you are not
7 guilty of these charges. That is what that means. You
8 are not guilty because I have not accepted your plea. You
9 have not been found guilty by a trial jury. Do you
10 understand?

11 MR. DEAL: Yes, sir.

12 THE COURT: That is how I put it to the jury, that is
13 how I explain it to them. If you plead guilty though you
14 waive your presumption of innocence and admit that you did
15 commit this offense. Do you understand, sir?

16 MR. DEAL: Yes, sir.

17 THE COURT: Now in a jury trial, Mr. Deal, you would
18 have the ability to challenge any evidence that the State
19 has against you in this case. On the stabbing case I am
20 told that you gave a statement to law enforcement where
21 you admitted to stabbing a fellow and admitted to wanting
22 to kill him. Do you understand that?

23 MR. DEAL: Yes, sir.

24 THE COURT: That simply is what the State is telling
25 me about what you told the police. Do you understand, Mr.

1 Deal, that you could have a hearing wherein this Court
2 would have to determine first of all if your Miranda
3 rights were read to you. If I concluded that the police
4 didn't read you your Miranda rights and no other exception
5 applied then the jury would never even hear about that
6 statement. If you alleged that the statement was coerced
7 or forced by the police I would instruct the jury that
8 they would have to determine whether the statement was
9 voluntarily given before they could even consider that
10 statement as evidence against you. Do you understand, Mr.
11 Deal?

12 MR. DEAL: Yes, sir.

13 THE COURT: If you plead guilty though you waive your
14 right to challenge that statement or the manner in which
15 it was taken from you. Do you understand, sir?

16 MR. DEAL: Yes, sir.

17 THE COURT: You also waive your right by pleading
18 guilty to challenge any of the evidence that the State
19 seizes in this case or in these cases. I have no idea
20 whether any searches were conducted of your person or your
21 property, whether any evidence was seized from you or your
22 house. But you realize by pleading guilty you waive your
23 right to contest any search warrants and any searches that
24 were conducted or any evidence that was seized in this
25 case. Do you understand that, sir?

1 MR. DEAL: Yes, sir.

2 THE COURT: Mr. Deal, all of these are very important
3 rights guaranteed to you under the laws of our State and
4 are you quite certain that you want to waive them and
5 plead guilty?

6 MR. DEAL: Yes, sir.

7 THE COURT: Ms. Nelson, have you had a full
8 opportunity to review discovery in this case?

9 MS. NELSON: Yes sir, Your Honor.

10 THE COURT: Are you satisfied with the State's
11 responses?

12 MS. NELSON: I am.

13 THE COURT: And have you reviewed the material
14 provided to you by the State for Mr. Deal and reviewed and
15 seen them?

16 MS. NELSON: Yes sir, Your Honor.

17 THE COURT: Mr. Deal, I am told again there is a
18 recommendation in this case for fifteen years. Do you
19 understand that if I accept your plea and you maintain
20 your behavior I will give you that fifteen years. Do you
21 understand that?

22 MR. DEAL: Yes, sir.

23 THE COURT: So I might have discretion to go below
24 that fifteen. But do you understand right now that
25 fifteen is where I am at. Sentence everything within 48

1 hours. Do you understand, sir?

2 MR. DEAL: Yes, sir.

3 THE COURT: Mr. Deal, I don't know that you have had
4 any conversations with Ms. Nelson about the actual amount
5 of time or parole eligibility or things like that. Do you
6 understand though, I am telling you right here right now
7 that it is very difficult for anybody including myself to
8 give you any projection of how much time of this fifteen
9 that you will actually serve. Do you understand that,
10 sir?

11 MR. DEAL: I know it.

12 THE COURT: So if anybody has made any assurances to
13 you you will be parole eligible in sixty percent or
14 seventy percent or fifty percent of this time, I am
15 telling you right now you can't rely on that.

16 MR. DEAL: Yes, sir.

17 THE COURT: I have got no idea how much time you are
18 actually going to have to serve. The safest thing for you
19 to do is go in this assuming that you will have to serve
20 the whole fifteen years. Do you understand?

21 MR. DEAL: Yes, sir.

22 THE COURT: Do you still want to go forward on this,
23 Mr. Deal?

24 MR. DEAL: Yes, sir.

25 THE COURT: Mr. deal, are you happy with the services

1 of Ms. Nelson?

2 MR. DEAL: Yes, sir.

3 THE COURT: Do you have any complaints to make
4 against her?

5 MR. DEAL: No.

6 THE COURT: Has she done everything that you have
7 wanted her to do?

8 MR. DEAL: Yes, sir.

9 THE COURT: Do you need any more time to talk to her
10 about this?

11 MR. DEAL: No, sir.

12 THE COURT: So you are totally satisfied with her
13 assistance to you?

14 MR. DEAL: Yes, sir.

15 THE COURT: Do you have any complaints to make
16 against the Solicitors office, law enforcement or anyone
17 associated with this case?

18 MR. DEAL: No, sir.

19 THE COURT: Aside from the fifteen year
20 recommendation has anyone promised you anything else or
21 held out any other rewards to get you to plead guilty,
22 sir?

23 MR. DEAL: No, sir.

24 THE COURT: Has anyone tried to threaten you, force
25 you or coerce you in any way to get you to plead guilty?

1 MR. DEAL: No, sir.

2 THE COURT: Have you understood all of my questions?

3 MR. DEAL: Yes, sir.

4 THE COURT: Do you need more time to think about
5 this?

6 MR. DEAL: No, sir.

7 THE COURT: Do you need any more time to talk to Ms.
8 Nelson?

9 MR. DEAL: No, sir.

10 THE COURT: And has anybody told you how to answer my
11 questions other than just telling the truth?

12 MR. DEAL: No, sir.

13 THE COURT: Are you pleading guilty, Mr. Deal, with
14 your own free will?

15 MR. DEAL: Yes, sir.

16 THE COURT: Are you guilty of these offenses?

17 MR. DEAL: Yes, sir.

18 MR. HODGES: Your Honor?

19 THE COURT: Yes.

20 MR. HODGES: One other collateral consequence, I
21 mentioned yesterday that the defendant is on probation and
22 this would constitute a probation violation. I think it
23 is the intention of the probation department to handle
24 that violation on Friday. But you may want to discuss
25 with him those implications.

1 THE COURT: Thank you for reminding me. I will be
2 glad to hear from probation.

3 MS. SEARS: Your Honor, he stood before Your Honor in
4 June of this year and he has got two indictments. One is
5 for assault and battery, second offense, I am sorry,
6 second degree and criminal domestic violence second
7 offense.

8 THE COURT: These are three--

9 MS. SEARS: Three years and Your Honor made this case
10 PTUP after one year. And we issued a warrant for him and
11 charged him with failing to report as instructed. He has
12 missed reports July the 6th, July 19th, September 7th. He
13 tested positive for cocaine June 27th. He was sentenced
14 June 16th. He failed to work and he failed to notify us
15 of his new arrest.

16 THE COURT: All right. Mr. Deal, you realize that
17 this is, this plea today would constitute a violation of
18 your probation?

19 MR. DEAL: Yes, sir.

20 THE COURT: All right. I do find that there is a
21 substantial factual basis for these pleas, they are freely
22 and voluntarily and knowingly and intelligently made. Mr.
23 Deal is happy with Ms. Nelson. I will accept his plea
24 today. I am more than happy to delay mitigation evidence
25 or get that on Friday. If I could though, what is the

1 circumstances where he is going to be released to. Is
2 this his daughter?

3 MS. NELSON: Yes sir, this is his daughter, Lakeida
4 Neal. She is currently not employed, Your Honor, so she
5 is totally available to be with Dennis the whole time he
6 is out. She is willing to be over at the jail to pick him
7 up after lunch time. She said that he could come home
8 with her. She said they would probably go visit his
9 grandmother and they will pack up his things that are in
10 the house he was living in. And she is completely willing
11 to accept responsibility for him, Your Honor. Judge, my
12 only concern, I probably don't need to be concerned about
13 this since he has been in jail since mid September but you
14 know a whole lot more about drug testing than I do. He
15 admits to using right before he was arrested. And of
16 course you just heard Ms. Sears, he tested positive back
17 in June. I just want to make sure there isn't any, he
18 would not need any kind of baseline test to make sure
19 there is nothing residual in there.

20 THE COURT: September I doubt, I seriously doubt that
21 there would be. I mean marijuana stays in your system
22 typically the longest. Cocaine doesn't remain in your
23 system for very long. Just so the record is clear the
24 reason I know that is because the Court has conducted drug
25 court for a number of years, not personal knowledge or

1 experience.

2 MS. NELSON: I knew you would know better than I did.
3 I just didn't want it to be a situation where there could
4 still be something remaining that would show up on Friday.

5 THE COURT: Very good. Now, is it Ms. Deal?

6 MS. NEAL: Ms. Neal.

7 THE COURT: Do you, spell your first name.

8 MS. NEAL: L-A-K-E-I-D-A.

9 THE COURT: N-E-A-L.

10 MS. NEAL: Yes, sir.

11 THE COURT: What is your address?

12 MS. NEAL: [REDACTED], [REDACTED] as in
13 Harry, Greenwood, South Carolina.

14 THE COURT: Do you have a phone?

15 MS. NEAL: [REDACTED].

16 THE COURT: [REDACTED]?

17 MS. NEAL: Yes, sir.

18 THE COURT: All right.

19 MS. NELSON: And, Your Honor, Ms. Neal's got my cell
20 phone number as well just in case anything happens she
21 will be able to get me any time.

22 THE COURT: All right. What I have done is I have
23 signed off on a new bond form authorizing Mr. Deal's
24 part-time release to the custody of Ms. Neal. She will
25 have to sign saying that she is willing to take

1 responsibility for him, will have to sign saying he is
2 willing to accept the terms and placed on the record.

3 MS. NELSON: Your Honor, would you be okay with us
4 putting his probation warrant on this bond?

5 THE COURT: That will be up to probation as well.

6 MS. NELSON: Okay. And you are fine with deferring
7 his probation matter until then as well?

8 THE COURT: Yes.

9 MS. NELSON: And just for the record what I have
10 discussed with probation last term, my understanding was
11 is that they were not opposed to a one-year concurrent
12 revocation and termination.

13 THE COURT: That would probably be the case. All
14 right, Mr. Deal, let me remind you of what I mentioned a
15 moment ago, okay. Do not force me to give you twenty
16 years. Do you understand?

17 MR. DEAL: Yes.

18 THE COURT: You break the law while you are out, you
19 get convicted later on you will be back and you will be
20 tried or you will plead guilty and will give you
21 consecutive on that. Do you understand?

22 MR. DEAL: Yes, sir.

23 THE COURT: How old are you now?

24 MR. DEAL: 48.

25 THE COURT: 48. Okay. You get in any kind of

1 trouble I guarantee you you are going to have a lot of
2 gray by the time you get out. Do you understand?

3 MR. DEAL: Yes, sir.

4 THE COURT: All right. Can I trust you?

5 MR. DEAL: Yes, sir.

6 THE COURT: You are not going to cause any problems
7 to your family or to society in general?

8 MR. DEAL: No, sir.

9 THE COURT: And you are going to do what your
10 daughter tells you to do?

11 MR. DEAL: Yes, sir.

12 THE COURT: You aren't going to smoke any crack or
13 any drugs, or do any drugs at any time?

14 MR. DEAL: No, sir.

15 THE COURT: Are you going to get drunk and cut
16 anybody, are you?

17 MR. DEAL: No, sir.

18 THE COURT: Promise?

19 MR. DEAL: Promise.

20 THE COURT: All right. Ms. Neal is willing to vouch
21 for you and I will see you in 48 hours. If you don't show
22 back up on Friday you will violate the terms and
23 conditions of your bond and will violate an order that was
24 given to you. Do you understand?

25 MR. DEAL: Yes, sir.

1 THE COURT: Don't do anything, okay?

2 MR. DEAL: Yes, sir.

3 THE COURT: You listen to her and do what she tells
4 you?

5 MR. DEAL: Yes, sir.

6 THE COURT: You are going to keep an eye on him for
7 the next 48 hours?

8 MS. NEAL: Yes, sir.

9 THE COURT: See y'all Friday morning. Have him back
10 here Friday morning. Okay, Mr. Deal?

11 MR. DEAL: Yes, sir.

12 THE COURT: Bring him back, come right on in. 9:00
13 o'clock, not 9:01, not 9:02. That means you better get a
14 goods night sleep tomorrow night. Don't go out and party
15 until the break of dawn. All right.

16 MR. DEAL: Yes, sir.

17 THE COURT: Don't come in drunk or disheveled or
18 whatever.

19 MR. DEAL: Yes, sir.

20 THE COURT: Don't cause any problems and I will see
21 you Friday.

22 MS. NELSON: Thank you very much, Your Honor.

23 MR. HODGES: Thank you, Your Honor.

24 December 16, 2011.

25 MR. HODGES: May it please the Court, Your Honor?

1 THE COURT: Yes, sir.

2 MR. HODGES: Your Honor, standing before you is
3 Dennis Deal. As the Court may recall Mr. Deal entered a
4 plea on Wednesday on indictments 2011-2264 and 2265 to the
5 offenses of assault and battery in the first degree and
6 shoplifting. He is represented by Janna Nelson of the
7 Greenwood Bar. We are before the Court this morning for
8 the purpose of sentencing. The Court may recall that the
9 State, at that time, recommended a fifteen year sentence.
10 Mr. Deal asked for two days to be out of jail before
11 sentencing for the purpose of dealing with some matters
12 relating to his Mother's death from last week. The State
13 specifically requested that the Court give Mr. Deal a drug
14 test this morning upon his return. The State's concern
15 was when he is using drugs as he was when this incident
16 occurred that there was some great potential of him
17 getting into more trouble. Mr. Deal did come back this
18 morning and before the drug test indicated that he was
19 headed to prison so he enjoyed himself. He did take the
20 drug test, failed with regard to the cocaine. The State
21 at this point would be asking the Court to impose a twenty
22 year sentence. And the victim in the case, Mr. Devlin, is
23 here as far as for sentencing.

24 THE COURT: Mr. Devlin, I don't believe that you were
25 present on Wednesday. Is there anything that you want to

1 tell me concerning this matter or anything that you want
2 to say?

3 MR. DEVLIN: No sir, Your Honor.

4 THE COURT: Thank you, sir. Ms. Nelson, mitigation.

5 MS. NELSON: Thank you very much, Your Honor. Judge,
6 Dennis has been in jail for 79 days and I did not count
7 the past two days when he did get to go home. I would ask
8 that you give him credit for that. Your Honor, I know you
9 indicated to him before he left that you were willing to
10 go along with the fifteen year recommendation. I would
11 just let the Court know that from the time I first met
12 with Dennis he was not under any illusions about the fact
13 that because of his record and because of what he was
14 accused of doing that prison time was what was going to be
15 appropriate. And he immediately started working toward,
16 you know, offering up various proposals to the State in an
17 effort to resolve the case. And he was willing to, as we
18 went along in discussions he was willing to gradually
19 offer up more and more time until the point where we were
20 able to actually get to a fifteen year sentence. We were
21 just working towards something that would keep him out an
22 eighty-five percent time sentence. I believe that gives
23 people the opportunity to be in institutions where they
24 can actually work. And so there were things like that
25 that he was concerned with and I think we were able to get

1 a good resolution on the case and an appropriate
2 resolution. Your Honor, as far as what happened during
3 the two days that he was out the only thing that I can say
4 to Your Honor is that when we came in this morning he
5 freely admitted to the activity and I know he wasn't
6 suppose to do that, I know the Court admonished him but
7 the only thing that I would have to add in that regard is
8 that it did not cause him to get into, to hurt anybody or
9 get into any trouble. I don't think that there is any
10 indication that he, I know one of the officers who was
11 present in the court house maybe the day after Dennis
12 plead was concerned that he would go after Mr. Devlin and
13 try to finish what he had started, those kinds of words
14 were used. And I don't think there has been any
15 indication that he tried to make contact with him or
16 sought him out or went after him in any way. Your Honor,
17 I have to of course ask you to still consider going along
18 with what we had worked out. I know that you may feel
19 like you have to give some additional punishment because
20 of the drug use. I would just submit to you you have got
21 other numbers to consider besides twenty and I would ask
22 that even though he did something he wasn't suppose to do
23 that I would ask that you consider the fact that there
24 wasn't any harm to anybody else that resulted because of
25 that. He didn't cut up or go out or get in a fight or

1 hurt anybody at all and when he came in today he freely
2 admitted to what he had done, there wouldn't have even
3 really been any need for the test because he admitted to
4 it right off the bat. So, Your Honor, I am asking you not
5 to give him the full twenty, consider still going along
6 with the fifteen that we had worked out or if you are
7 going to do more than that to not do substantially more,
8 Your Honor.

9 THE COURT: Thank you, Ms. Nelson.

10 MR. HODGES: I would also remind the Court, Your
11 Honor, there is a probation matter as well.

12 THE COURT: Will hear from Ms. Sears.

13 MS. SEARS: Your Honor, just refresh the Court's
14 memory. I presented this violation to you earlier this
15 week. Our warrant charges him with missed reports, use of
16 cocaine, failure to work and probable cause on his current
17 charges. He stood before Your Honor in June and plead to
18 two indictments, one was a CDV second offense, the other
19 was assault and battery second degree. The assault and
20 battery was a three year sentence suspended to five years
21 probation. The CDV second offense was one year suspended
22 to five years of probation. And Your Honor made these
23 sentences consecutive.

24 THE COURT: Give me the sentences again.

25 MS. SEARS: The assault and battery second degree was

1 three years suspended to 179 days timed served and five
2 years of probation. The CDV was one year suspended to 179
3 days time served and five years of probation.

4 THE COURT: Mr. Deal, anything that you care to say,
5 sir?

6 MR. DEAL: The only thing that I really wanted to
7 know, I never even knowed him, did anything to him. That
8 is the only thing that I want to know.

9 THE COURT: I am afraid that is not the information
10 that I have, Mr. Deal. Anything else that you would care
11 to say?

12 MR. DEAL: I lost my children while I was in there.
13 I went to see my children, I went and laid on my mama's
14 grave the day that I got out.

15 THE COURT: Ms. Nelson, you want to add something?

16 MS. NELSON: I think I mentioned this the other day,
17 Your Honor. But on the probation matter he doesn't
18 dispute being in violation and of course even if he wasn't
19 pleading this would violate him. My understanding was
20 that probation was not opposed to a one year concurrent
21 revocation and termination. I don't know if that has
22 changed but that was my discussion with them.

23 MS. SEARS: It has not changed. I just realized
24 though that those sentences were ordered consecutive.

25 THE COURT: All right. Anything before sentencing?

1 MS. NELSON: Nothing further, Your Honor.

2 MR. HODGES: Not from the State, Your Honor.

3 THE COURT: Mr. Deal, I let you out because your
4 mother passed away last week. You represented to me that
5 you had family affairs to attend to and I let you out to
6 handle those family affairs, not to smoke crack. So the
7 sentence on indictment 2264 and that is the assault and
8 battery first is that you are committed to the Department
9 of Corrections for ten years. This sentence will be
10 concurrent with the probation violation. Give him credit
11 for 79 days in jail. The sentence on 2265, that is the
12 shoplifting third or subsequent offense is that you are
13 committed to the Department of Corrections for ten years.
14 The sentence is consecutive to that on the assault and
15 battery first degree, indictment 2264. I have noted here
16 that you are to receive anger management counseling while
17 in prison. On the probation case just revoke two years
18 and run it concurrent with the first indictment, the
19 assault and battery first degree. Good luck to you, Mr.
20 Deal.

21 MR. HODGES: Thank you, Your Honor.

22 MS. SEARS: Your Honor, one other thing on the
23 probation. He owes fees, do you want me to issue civil
24 judgments.

25 THE COURT: Time will satisfy that.

1 MS. SEARS: Okay.

2 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER

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3

4 State of South Carolina)

5 County of Newberry)

6

7

8 I, Joy Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in Greenwood County, South Carolina,
14 on the 13th of December, 2011.

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

17

18

19

September 25, 2012

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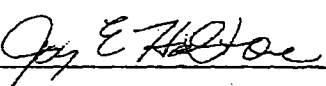
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Joy Holston, Court Reporter

STATE OF SOUTH CAROLINA

County of GreenwoodDennis Deal # 294446

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

12CP24

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correctional Institution
430 OAKLawn Rd, Pelzer, SC 29669
2. Name and location of Court which imposed sentence Greenwood County
Courthouse Greenwood, SC 29646
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 11CS44-2265 2011-65-24-2264
 - (b) ASSAULT/Battery 1st degree Shoplifting Entered 3rd

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

(a) 12-14-11

(b) Guilty Plea 2 year sentence consecutive

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ☒

(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?

NA

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)

(b)

Ineffective Assistant Counsel

11(A) Applicant contends that his United States and South Carolina Constitutional Rights to have effective assistant of Counsel, During those sessions of a criminal proceeding ^{the Court} Designated As crucial were violated and for whatever Reasoning Continued with the plea Hearing, deceiving Applicant that he was pleading guilty to the states first plea agreement which was negotiated. If applicant would have known that the state had reneged on the initial plea, applicant would have prepared for a complete defense. At the aforementioned Hearing Applicant did not have Counsel to represent him consistently and effectively as set forth in the United States and South Carolina Constitutions, And in Violation of the Civil Rights acts Applicant contends that there was deprivation on the part of the Court in depriving him of a fair Hearing in Court. The conduct of the States attorney was a cause in fact of the alleged deprivation and consequence to the Lack of Counsel the Court erroneously allowed the plea to be changed without the Applicant Knowledge of the plea arrangements. In Conclusion of Ground A Applicant contends that the Sentence of 30 years and the imposition of the consecutive Sentences cause the state alleged he turned his self in under the Influence is illegal on its Face contrary to requirements set forth in the plea arrangement. Theine Counsel was ineffective for failing to object to such punishment.

Coerced Involuntary Plea

11B. Applicant also claims that the state offered him a simple way to plead which was that we will let you out of Jail for a certain amount of time if you plead guilty to this charge, But then stated, Don't use drugs. Applicant contends that he was under the influence of drugs at the time and was not fully aware of any provisions that was stipulated, when he returned the state made him take a drug test knowing he was still going to test positive for drugs since he was never off of drugs. That's when they reniged on the negotiated plea not informing Applicant of specific reasons, which was not wrote. In the plea itself. This type of behavior can only be explain as coerced Involuntary Plea.

Violation of Due Process

11. C.

Applicant contends that he was denied Due process because his court appointed Counsel ~~Failed to perform any Investigation,~~ which prevented Counsel from learning valuable Information about the ~~(C)~~ Applicant back ground involving Drug use and a significant error in the plea negotiation, saying they would give applicant consecutive sentences if he use drugs. This denies Applicant of Fundamental Fairness when (1) He did not know of any such ultimatums nor was he informed of such. Counsel also deprived Applicant of Due process when he Failed to give Applicant any substantive Advice as to whether he should plead guilty even though the plea entered provided him with no Sentencing Benefit at all. Lambert v Blodgett, 248 F. Supp. 2d 988, 1000-1004 (E.D. WA 2007).

In Conclusion Applicant Request an evidentiary Hearing to determine whether this plea negotiation was Fundamentally Fair, and was Applicant deprive of Due process of Law, AND Applicant Request for the Honorable Court to ascertain that he was sentenced under the legal guideline for shoplifting in 3rd degree, Applicant Feels that he should have been sentenced under the 2nd offense.

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

- (a) Ineffective Assistant of Counsel
- (b) Coerced involuntary Plea
- (c) Violation of Applicant Due process Rights

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

- (a) SEE Additional pages
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (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? _____

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. Filed A PCR in reference to this case
- ii. and the Application was never acknowledged
- iii. or placed on the Docket
- iv. _____

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

- i. Court of General Sessions Greenwood County
- ii. Courthouse Clerk of Court
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Sent me a new Application to
- ii. fill out which is this one.
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

NA

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

16. 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) First PCR Application Filed
 (b) in reference to these grounds
 (c) _____

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

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

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. JANNA A. NELSON, Chief Public Defender
Suite 208, Park Plaza 600 Monument Street
 ii. Greenwood, South Carolina 29649
 iii. _____

(b) the proceedings at which each such attorney represented you:
 i. Janna A. Nelson plea hearing attorney
 ii. _____
 iii. _____

19. Clearly the relief you seek in filing this application:

For the Court to stick with original plea arrangement
and to Remand sentencing for original 15 year 5 month
violent sentence and determine if the shoplifting was 2nd
offense

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

N/A

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

I, Dennis Deal, 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.

Dennis Deal

SWORN to and subscribed before me this 17th
 day of April, 2014

Ernest F. Mullins (Jr.)
 Notary Public

My Commission Expires: June 7, 2016

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

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

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

Dennis Deal
Applicant

SWORN or affirmed to and subscribed before me this

the day of July, 2012.

Steven T. Mulvaney
Notary Public

My Commission Expires: January 3, 2016

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STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

Dennis T. Deal #294446

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-24-0837

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

John D. Compton, Iii, Bar No.

Address:

212 Grace Street Greenwood, SC 29646

phone: fax:

e-mail: other:

Defendant's Attorney:

J. Rutledge Johnson, Bar No. 78871

Address:

PO Box 11549 Columbia, SC 29211-1549

phone: 803-734-3737 fax: 803-734-4113

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

November 8, 2012

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

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	EIGHTH JUDICIAL CIRCUIT
	)	
Dennis T. Deal, #294446,	)	2012-CP-24-0837
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed on July 24, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenwood County Clerk of Court's orders of commitment. The Applicant was indicted by the May 2011 term of the Greenwood County Grand Jury for Assault & Battery 2nd Degree (2011-GS-24-1111) and Criminal Domestic Violence, 2nd Offense (2011-GS-24-1110). The Applicant was represented by Janna A. Nelson, Esquire. On June 16, 2011, the Applicant pled guilty to Assault and Battery, 2nd degree and Criminal Domestic Violence, Second Offense. The Honorable Frank R. Addy, Jr. sentenced the Applicant to imprisonment for three (3) years, suspended to 179 days and five (5) years' probation for Assault and Battery, 2nd Degree and one (1) year suspended to 179 days and five (5) years' probation.

The Applicant was also charged with Assault and Battery 1st Degree (2011-GS-24-2264) and Shoplifting (2011-GS-24-2265). The Applicant waived presentment to the Grand Jury and pled

guilty to both charges. The Honorable Frank R. Addy, Jr. sentenced the Applicant to ten (10) years for Assault and Battery, 1st Degree and ten (10) years for Shoplifting/Enhancement for 3rd or Subsequent Offense, sentences to run consecutively. The Applicant's probation was also revoked for one (1) year for the Criminal Domestic Violence sentence and two (2) years for the Assault and Battery, 2nd Degree sentence, both to run concurrently with the Applicant's ten-year sentence. The Applicant did not appeal his convictions or sentences.

II.

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

1. "Ineffective Assitant [sic] of Counsel"
2. "Coerced Involuntary Plea"
3. "Violation of Applicant Due Process Rights"

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

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the

trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry, 300 S.C. at 117, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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

IV.

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

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

V.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States

Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

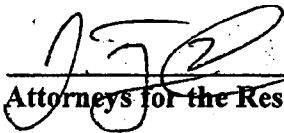
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Chief Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

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

By:


Attorneys for the Respondents

Columbia, South Carolina
November 8, 2012

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS

2012-CP-24-0837

DENNIS T. DEAL, 294446,

Applicant,

vs

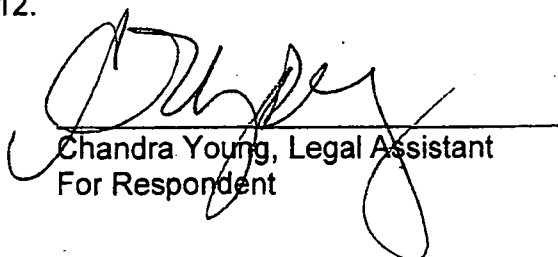
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

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

John D. Compton, III, Esquire
 212 Grace Street
 Greenwood, South Carolina 29646

DATED this 8th day of November 2012.


Chandra Young, Legal Assistant
 For Respondent

State of South Carolina)
County of Greenwood) Court of Common Pleas
) 2012-CP-24-837

Dennis Deal)
 vs.) Transcript of Record
)
State of South Carolina)
 DEFENDANT)

June 3, 2013
Laurens, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

J. Rutledge Johnson, Assistant Attorney General
Attorney for the State

John D. Compton, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1	<u>I N D E X O F W I T N E S S E S</u>	
2	(IC) - Denotes In Camera	
3	(DW) - Denotes Defense Witness	
4	(SW) - Denotes State's Witness	
5	<u>Dennis Deal</u>	
6	Direct examination by Mr. Compton:	3
7	Cross-examination by Mr. Johnson:	11
8		
9	<u>Janna Nelson</u>	
10	Direct examination by Mr. Johnson:	18
11	Cross-examination by Mr. Compton:	24
12	Redirect examination by Mr. Johnson:	27
13	Recross examination by Mr. Compton:	28
14		
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17	Certificate of Reporter	30
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1 MR. JOHNSON: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 MR. JOHNSON: This is the case of Dennis Deal versus
4 the State of South Carolina. This is case number
5 2012-CP-24-0837. Mr. Deal was charged with assault and
6 battery first degree and shoplifting. He waived
7 presentment to the Grand Jury and pled to both charges on
8 December 14th of 2011. He also had some previous charges
9 wherein Judge Addy revoked his probation. He sentenced,
10 pursuant to the recommendation for 10 years for the
11 assault and battery first degree and 10 years consecutive
12 for the shoplifting third subsequent offense. There was
13 no direct appeal filed however there was a timely PCR
14 application filed on July the 24th of 2012. The State
15 filed its return on November 8th of 2013. He is
16 represented here today by Mr. John D. Compton.

17 THE COURT: All right, Mr. Compton.

18 MR. COMPTON: Thank you, Your Honor, may it please
19 the Court. I would call Dennis Deal to the stand.

20 DENNIS DEAL, being
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 By Mr. Compton:

24 Q Mr. Deal, what is your full name?

25 A Dennis Deal.

1 Q And where are you incarcerated?

2 A Perry Correctional Institute.

3 Q You filed a PCR from your prior convictions?

4 A Yes.

5 Q And you heard the Assistant Attorney General read
6 what you were, what you plead to?

7 A Yes.

8 Q Shoplifting, more than third and assault and battery
9 first?

10 A Correct.

11 Q Is that correct?

12 A Yes.

13 Q And were you given two consecutive 10 year sentences?

14 A Yes.

15 Q And that is what you are filing for relief from in
16 this case?

17 A Yes.

18 Q What is, let me just go over your petition for a
19 second. In your application, let's see, your application
20 was filed in 2012, on or about July the 24th. Does that
21 sound right?

22 A Right.

23 Q Now, you are alleging that your rights were violated
24 for several reasons. You say that the State remitted on
25 an initial plea and I think the other main point is that

1 you were under the influence of crack cocaine at the time
2 that you gave your plea. Is that correct?

3 A Yes.

4 Q Let's go back to the plea and let me ask you, what do
5 you remember about the plea, Ms. Janna Nelson was your
6 attorney?

7 A Yes.

8 Q She is from the Public Defender's office?

9 A Right.

10 Q And you talked about the case with her?

11 A Right.

12 Q What do you remember was the plea that Ms. Nelson and
13 the State negotiated on your behalf?

14 A I started off to go catch no plea. I was telling my
15 lawyer, Ms. Nelson, I would plead to a 10 year sentence
16 but they wouldn't go for the 10 year sentence, they wanted
17 to give me a 10 violence sentence. So I told her, I kept
18 pushing, I said, well I will take 10 years as long as it
19 is non-violent. So she said they wouldn't go for that.
20 So what, they come to me with a 15, she came to me and she
21 said they said they will give me 15 non-violent. So I
22 took the plea of 15 years non-violent but on the grounds
23 to let me go home for 72 hours because my mother just had
24 passed. And so the grounds, I didn't suppose to do drugs.
25 Well, they know I am a known drug addict, I was addicted

1 to crack cocaine. Yes, I had used drugs before I got
2 locked up and I approximately used a little drugs while I
3 was in the county jail. They didn't give me a urine test
4 before I went out to the streets. Well, they gave me a
5 urine test when I came back but they didn't show me I
6 failed the urine test. They just said I failed the urine
7 test. I didn't never see a results of that. I accept my
8 assault and battery with intent to kill because I was in
9 the right but I didn't feel like I was treated right.

10 Q Let me stop you there. You weren't punished for
11 assault and battery with intent to kill. You were
12 punished for just a assault and battery, correct?

13 A Right. It was dropped from an assault and battery
14 with intent to kill.

15 Q So that is what you plead to?

16 A Right.

17 Q So go ahead.

18 A And so when I got in front of the Judge, Judge Addy
19 said I failed the piss test and he was sentencing to a 20
20 year.

21 Q You failed a urine test?

22 A Urine test, urine test.

23 Q Let's use proper language in the courtroom.

24 A Yes. I am not a real educated person but I failed
25 the urine test. And I was sentenced to 20 years. But I

1 didn't, I was under drugs at the time they say I failed
2 the urine test. So how could you sentence me when I am
3 still up under, if you say I failed the piss, the urine
4 test so I am up under grounds.

5 Q You plead when you came back?

6 A I took the plea before I went out.

7 Q But you weren't high then?

8 A I was up under the influence but I wasn't high.

9 Q Okay. So, you had had access to drugs in the county
10 jail?

11 A Right.

12 Q What kind of drugs?

13 A Crack cocaine.

14 Q And they did not test you beforehand?

15 A No.

16 Q And what you are saying is is that if you had been
17 tested, well that your history was well known as a drug
18 addict?

19 A Right.

20 Q And you think that they should have took the
21 responsible thing and the fair thing would have been to
22 make sure you weren't high when you gave your plea
23 arrangement?

24 A Yes.

25 Q Okay. Did you ask for that?

1 A No sir, that is what I was fixing to say. I wasn't
2 going to fight on them giving me the urine test because I
3 know that if they had of given me the urine test they
4 probably wouldn't have never let me went home. My main
5 issue was, not just saying, I am an addict so you know I
6 am addict, you know I have been an addict ever since 1984
7 because the Judge had been my lawyer and he know my prior,
8 he know my priors. And I had never got in front of a
9 Judge or a lawyer and deny what I have done.

10 Q Well, you didn't make an issue of this in your PCR
11 but because of that knowledge that the Judge had do you
12 think he should have excused himself from the case?

13 MR. JOHNSON: Objection.. Anything the Judge did or
14 did not do is a direct appeal issue, not proper for PCR.

15 THE COURT: I sustain that.

16 Q Go ahead.

17 A See most of my life I have told my lawyers, I have
18 told the Judges, I am illiterate, whatever how you suppose
19 to say it. I am illiterate, I can't read or write. When
20 I had my PCR done another inmate helped me done it. I
21 told him about my cases. I am not that dumb, I don't know
22 what I am doing. But I know, I am not really pushing the
23 issue about the assault and battery case. The issue I am
24 really pushing is the shoplifting case. I got 10 years,
25 they gave me 10 years for that when I hadn't had a

1 shoplifting since 1989.

2 Q So you don't think it should have been a third?

3 A No, not when the cases are 20 something years old. I
4 hadn't, I never had a shoplifting case since 1989.

5 Q So basically you are asking the Court for a couple of
6 things. You either want to go back to your original plea
7 deal, is that right?

8 A Yes, sir.

9 Q Or if you can't have that you want a new trial?

10 A Yes.

11 Q Is there anything else you would like to tell the
12 Court about the way you were represented?

13 A Yes. Ms. Nelson, she was, she had been a great
14 lawyer but one time, I didn't never get, she had my
15 original transcript and it showed the fellow I assaulted
16 he gave three different statements saying he assaulted me.
17 If I had of known this before I told the police I would
18 have never took the plea because he admitted to assaulting
19 me. He come to a resident that I was at when I assaulted
20 him because I was feared for my life at that time. I
21 didn't never tell her that but I was in fear for my life
22 so I assaulted him, we got in an altercation at that time.
23 But he gave three different statements how the altercation
24 happened and since I have been locked up and I know it
25 don't have an object to it, he has been locked up eight

1 times for the same thing he had done to me.

2 Q The fact of the matter is is that y'all had had a
3 fight or an altercation about three hours before he came
4 to where you were?

5 A Yes, sir.

6 Q And that was on one side of town?

7 A Right.

8 Q And then he followed you across town?

9 A Right.

10 Q To your residence?

11 A To one of my friend's residence.

12 Q He sought you out and then an altercation ensued?

13 A Right.

14 Q So he had already beat you up once?

15 A Yes sir, him and another person.

16 Q Two people?

17 A Yeah.

18 Q And then he came and wanted some more?

19 A Right.

20 Q About three hours later?

21 A Right.

22 Q And that is when you defended yourself with the--

23 A Box cutter.

24 Q Box cutter. Because you were afraid that you could
25 get hurt worse?

1 A Yes, sir.

2 Q All right. And do you think that that would be, if
3 you could get a new trial you intend to pursue that as a
4 defense?

5 A Right, yes sir.

6 Q Thank you. That is all we have.

7 CROSS-EXAMINATION

8 By Mr. Johnson:

9 Q Mr. Deal, your main contention is that you were high
10 on crack cocaine at the sentencing hearing, correct, and
11 not the guilty plea itself?

12 A Right.

13 Q But Judge Addy gave you an opportunity at the guilty
14 plea hearing to go home, get your stuff in order and he
15 told you if you came back on a certain time, on a Friday
16 and you were clean you would get 15 years, correct?

17 A Yes.

18 Q But if you came back and you failed the urine test,
19 which you did, he would give you the 20 years. Isn't that
20 correct?

21 A I don't know did I fail the urine test or not because
22 I didn't never see the urine test. They just gave me the
23 urine test and left out of the room, they didn't never
24 present the urine test to me, show me that I failed the
25 urine test. Any urine test I have ever took when I was on

1 probation they did the test right in front of me and then
2 showed me I failed. But they did not do that at the court
3 house.

4 Q But Judge Addy gave you a chance to speak to the
5 Court at that sentencing hearing, didn't he?

6 A Yes, I spoke.

7 Q And you never said anything about that, did you?

8 A About what.

9 Q About wanting to see that failed urine test?

10 A No.

11 Q Okay. You also say you were under the influence
12 because you had access to crack cocaine while you were
13 detained in the county jail, isn't that correct?

14 A Right.

15 Q But when the Judge asked you whether or not you had
16 any drugs or alcohol in your system you said no, correct?

17 A Correct. An addict is always going to tell a lie,
18 right.

19 Q So you lied under oath?

20 A Yes.

21 Q But you are telling the truth here today?

22 A Yes, sir. I have been incarcerated for the last two
23 years so I don't have access to crack and I am taking
24 classes for the use of what I had. I am not an addict, I
25 am still an addict but I am on a recovered addict.

- 1 Q But you just lie when it is convenient for you?
- 2 A No, sir.
- 3 Q But you lied at the guilty plea?
- 4 A I lied then.
- 5 Q You also state that one of your issues is that this
- 6 should not be treated as a third or subsequent shoplifting
- 7 offense, correct?
- 8 A Right.
- 9 Q But you actually have a conviction in 1981 for
- 10 shoplifting?
- 11 A I said I hadn't had any since 1989.
- 12 Q But you had one in '81, right?
- 13 A Correct.
- 14 Q You had one in '82?
- 15 A No.
- 16 Q You don't have one in '82?
- 17 A It was in '89.
- 18 Q '85?
- 19 A '89?
- 20 Q Do you have one from '85?
- 21 A No, sir. I was in prison in '85.
- 22 Q So what they read into the record is wrong?
- 23 A I didn't never hear them read that into the record.
- 24 Q At your guilty plea they read all of your prior
- 25 convictions, do you agree with me?

1 A At the guilty plea?

2 Q Yes, sir.

3 A Did they read all of my priors, no.

4 Q Well, on page five, Your Honor, of the guilty plea

5 Solicitor Hodges goes through all of your prior

6 convictions and at least three of those are shoplifting

7 cases. Would you agree with me with that?

8 A I don't remember.

9 Q You don't agree with me. You have not been convicted
10 of shoplifting three times?

11 A This one right here would make my third one.

12 Q So that would be third or subsequence, correct?

13 A Right.

14 Q And they don't ever go away, they add up?

15 A Right.

16 Q So you admit--

17 A I am not saying I don't have my third shoplifting
18 case. I said I didn't have none since 1989. Those are my
19 exact words.

20 Q Okay. But you agree with me that you had more than
21 three convictions for shoplifting in your lifetime?

1 A No. He charged that up to 10 years.

2 Q And you said you understood that, that the assault
3 and battery first degree carried 10 years and the
4 shoplifting carried 10 years?

5 A Yes.

6 Q And then when the Solicitor recited the facts of the
7 case you agreed with those facts, correct?

8 A Yes.

9 Q But you are here saying that the victim of this case,
10 y'all had a prior altercation, you got in a fight with him
11 and then there was a second altercation in which you
12 wanted to go defend yourself with a box cutter, right?

13 A Yes.

14 Q But you agree to the facts as the Solicitor read
15 them, didn't you?

16 A Sir?

17 Q You agree to the facts as the Solicitor read them at
18 the guilty plea?

19 A Right.

20 Q And you also waived your right to present any
21 defenses on your behalf?

22 A Yes, I was just getting the case over with.

23 Q But you also admit that you are guilty of this case,
24 of this crime, correct?

25 A Yes, sir.

1 Q And you had no complaints against Ms. Nelson?

2 A At the time, no, no sir.

3 Q But you have complaints about her now?

4 A The only complaints that I say I have is I didn't
5 know about he had gave his statements. It is three
6 different statements I have on my transcript saying he
7 gave a voluntary statement the way that the incident
8 happened.

9 Q So that is your only gripe here today?

10 A Right.

11 Q Okay. So you were completely satisfied with her at
12 the plea but now you are not, correct?

13 A I am still satisfied with her, I am just, I just
14 didn't, I didn't know about the evidence.

15 Q But you waived the right to present any of that
16 evidence?

17 A Because I was ready to go to prison, I was ready to
18 get the case behind me. My mother just had died.

19 Q Okay.

20 A It really and the part to the point I wasn't even
21 planning on going to prison because I was planning on
22 taking my own life at the time then. I wasn't even
23 planning on doing this time but since I got help with my
24 life I am trying to better myself and get back to my
25 family I have out there.

1 Q And you agree with me that you were originally
2 charged with assault and battery with intent to kill?

3 A Yes, sir.

4 Q That carries a lot more time?

5 A And I don't think it never suppose to have been a
6 assault and battery with intent to kill. All we had was
7 assault and battery. If you go back through the law, by
8 law it is suppose to be assault and battery, not assault
9 and battery with intent to kill.

10 Q But you agree that you cut the man around the neck
11 with a box cutter?

12 A Yes, sir.

13 Q And you plead on your own free will?

14 A Yes, sir.

15 Q It was your choice to plead guilty?

16 A Right. It was my choice, I wrote and told her, told
17 Ms. Nelson I would take a plea because I know I was wrong
18 at the time. I was ready to get it over with.

19 Q So you admit that you are guilty of these crimes?

20 A Yes.

21 Q No further questions.

22 THE COURT: Any redirect?

23 MR. COMPTON: No redirect and that is our case,
24 Judge.

25 THE COURT: You may step down. Mr. Johnson, call

1 your witness.

2 MR. JOHNSON: We call Janna Nelson to the stand,
3 please.

4 JANNA NELSON, being
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Johnson:

8 Q Good morning, Ms. Nelson.

9 A Good morning.

10 Q Please explain how long you have been practicing law?

11 A Almost 11 years.

12 Q And how much of that practice is criminal?

13 A That has been for the past 6 years.

14 Q And you were appointed on Mr. Deal's case?

15 A Yes, sir.

16 Q I guess that would have been as an Assistant Public
17 Defender?

18 A Yes, sir.

19 Q Can you explain to the Court, I guess, your
20 representation of Mr. Deal, what all you may have received
21 from the State, what the facts were and what your
22 communications were with Mr. Deal concerning this case?

23 A Okay. I mean the facts in general were similar to
24 what has already been stated. Mr. Deal gave an audio
25 statement, said he was in a neighborhood where the victim,

1 Mr. Devlin was living at the time over near Independence
2 Way. Mr. Deal told the police officer who interviewed him
3 that he was there looking to buy some crack, he had tried
4 to buy some from somebody else and then he came up to this
5 porch where Mr. Devlin was sitting along with somebody
6 else. And I think the person with Mr. Devlin maybe knew
7 Dennis, Mr. Deal, from before and there was an altercation
8 sort of between the three of them. I think Mr. Devlin hit
9 Mr. Deal at the time, maybe knocked a tooth out, something
10 like that. Mr. Deal left and at some point later, some
11 hours later the two of them ended I think sort of by
12 happened stance at the same house over near, I believe,
13 Sumter Street and I think one or the other of them came
14 out of the house and the other one was on the porch maybe.
15 I think the altercation, the second altercation happened
16 outside. And it sounded like, from what I recall, there
17 were some words exchanged and then that is when Mr. Deal
18 cut Mr. Devlin. And you asked me what discovery I got.
19 There were incident reports from both the, this was
20 originally charged as attempted murder. There were
21 incident reports from that, there was an audio statement
22 of Mr. Deal, an audio statement of Mr. Devlin taken while
23 he was in the hospital. There was an incident report on
24 the shoplifting, there were some photographs of the
25 incident location for the attempted murder location.

1 There were some photographs of the porch and then of Mr.
2 Devlin that showed his injuries. They appeared to be both
3 on the scene and in the hospital. My recollection is that
4 Mr. Deal wanted something worked out on the case pretty
5 much from the outset. There was one point where I
6 actually had a conversation with Mr. Devlin, the victim
7 and Mr. Hodges and when we were trying to get to a number
8 that would work for everybody. And I don't have notes
9 about this but my recollection was that Mr. Devlin wanted
10 Dennis to serve some time and I want to say that he wanted
11 him to serve somewhere in the neighborhood of eight years.
12 So we were able to get it reduced from attempted murder
13 down to A&B first. It was kind of difficult to get Mr.
14 Hodges to get, he essentially reduced it two levels and it
15 was kind of difficult to get him to reduce it to something
16 that got it out of eighty-five percent time. But one of
17 the things that I told him that Dennis wanted was to be
18 able to be eligible for work release. And anybody, my
19 understanding is anybody sentenced to eighty-five percent
20 time in the system, they don't get to do work release. So
21 that was part of the reason we were able to get that down.
22 And then essentially what you read in the transcript, he,
23 we first did a bond hearing and the Judge would not reduce
24 Dennis' bond. The next day we did the plea. We had
25 worked it out for a recommended 15 years and we put it up

1 as a recommendation because Dennis wanted to be able to go
2 home for a few days because like he said his mother had
3 recently died. I believe the jail let him go to her
4 funeral. I made a call to the jail about that and I think
5 it had already even been arranged for them to do that for
6 him before I even called Lonnie Smith. But it was put up
7 as a recommendation because generally our local Judges, if
8 we ever want to ask for somebody to be released to go home
9 and then come back later for sentencing they ask us to do
10 it as a recommendation rather than a negotiation in the
11 circumstance where if somebody doesn't tow the line while
12 they are out then they have the option of going higher on
13 the sentence. And so that is what we did and when Dennis
14 came back a few days later and tested positive then the
15 Judge did not, he did go up from the recommendation and
16 essentially maxed Dennis out.

17 Q Did you ever see, I guess an analysis of the urine
18 test?

19 A I don't remember, probably not.

20 Q Who would have told you about the results?

21 A I think probation performed the test. And my
22 recollection is that after the test that Dennis confirmed
23 it, that he said he wanted to have a good time before he
24 went, something along the lines of I wanted to have a good
25 time before I went to prison.

1 Q So he admitted to you he had used while he was out?

2 A Yes, sir. And because of that, I mean I guess that
3 is part of why I didn't, I may have not questioned the
4 test at the time. He didn't give me any indication that I
5 should.

6 Q Counsel, would you also agree with me that he, Mr.
7 Deal does have enough prior shoplifting offenses to
8 warrant a third or subsequent.

9 MR. COMPTON: That calls for a legal conclusion. I
10 think the Court can make that determination on its own.

11 THE COURT: That is part of what advice she gave him
12 when she was advising during the, prior to the plea. I
13 would like to hear his answer.

14 A My understanding was that there were, you know, at
15 least two prior shoplifting's on his record.

16 Q And if he hadn't would you have challenged that
17 charge?

18 A Yes, sir. Typically what I would do is when the
19 Solicitor is reading the record at sentencing is that I
20 follow along with a copy of it that I have to try to make
21 sure they are not misrepresenting anything.

22 Q So even though, as Mr. Deal claims, his last
23 shoplifting is 1989. The State has factual basis to
24 charge him with third or subsequent offense?

25 A Yes, sir.

1 Q My next question would be, you found no reason to
2 object to that charge in that conviction?

3 A That's right. I mean I agree with Dennis that when
4 your previous shoplifting has been that old you typically
5 wouldn't get that amount of time on a shoplifting. But
6 part of the plea negotiation was tacking some time on with
7 that shoplifting because of the reduction and the other
8 charge. It was a pretty significant reduction.

9 Q Okay. And so he is originally charged, now would be
10 attempted murder or ABWIK and that carries up to 30 years?

11 A It does. I thought he was charged with attempted
12 murder at the time but I could be wrong. But either way,
13 yes sir, it carries up to 30, eighty-five percent time.

14 Q And if he is successful here today he goes back and
15 faces those charges which I guess would be 40 years?

16 A Yes, sir.

17 Q Whose decision was it to accept the plea offer from
18 the State?

19 A It was Dennis' decision based on my advice and the
20 negotiations that I entered into with Mr. Hodges.

21 Q Did you agree with that decision?

22 A Yes, sir. And I believe this happened after the
23 change in the law. I think it was September, it was
24 September of 2011 so it was after they made those changes
25 from ABWIK to attempted murder.

1 Q I think you stated the claim about the State reneging
2 on an initial plea offer. Do you have any recollection of
3 the State reneging on a plea offer?

4 A My assumption, no sir, I don't. We had a
5 recommendation for 15 years and we could have had a
6 negotiated 15 years but like I explained earlier it was
7 recommended so we could ask him to have this time to be
8 released before the sentencing. I assume that what Dennis
9 was talking about was that when it came down to the
10 sentencing he got more than 15 years.

11 Q But Judge Addy sufficiently warned him about that if
12 he did not show up or if he tested positive for any
13 substance?

14 A I mean the transcript says what it says.

15 Q Thank you.

16 CROSS-EXAMINATION

17 By Mr. Compton:

18 Q Did Mr. Deal have a tooth knocked out?

19 A I believe that is what he told me.

20 Q There was no incident report about the victim in his
21 case being charged with assault and battery of a high and
22 aggravated nature for knocking his tooth out?

23 MR. JOHNSON: Objection, anything that the victim was
24 charged with is irrelevant.

25 THE COURT: Let me hear it.

1 A I don't believe so. I think what Dennis told me, if
2 I remember right, what he had told me was that he wanted
3 them to take out a warrant against Mr. Devlin for that
4 previous altercation and that the police wouldn't do it.
5 So I think he asked somebody. I think he reported it and
6 asked them to do something about it and they didn't do it.

7 Q Did they take him to the hospital about it or have
8 him looked at after his tooth?

9 A I don't know. Not that I, I don't remember anything
10 about that but I am not sure.

11 Q That could be a significant mitigating factor if this
12 case went to trial, could it not, or it could be argued as
13 a mitigating factor?

14 A I mean you could, you could put up a self defense
15 claim in this case if that is what you are asking me.
16 Yes, it would be mitigating.

17 Q I am sorry if I was not as elegant in my question.

18 A No, I didn't really answer your question. I am
19 sorry.

20 Q Not at all. A continuance of this case would not
21 have allowed him to go see his family in their
22 bereavement? He was not going to get bond to go out
23 unless he put up a plea?

24 A That is right, the Judge had denied bond the day
25 before the plea or he denied a reduction.

1 Q Why didn't you look at the urine test?

2 A I don't remember whether I did or not. But if I
3 didn't it would have been because what I said about Dennis
4 essentially admitting that it happened and I didn't, I
5 mean I felt like if somebody hadn't used that they would
6 have been kind of jumping up and down saying the test has
7 got to be wrong, get me an independent one.

8 Q And the shoplifting issue was a bargain ship?

9 A I guess you could put it that way. I think if Dennis
10 had had the shoplifting alone, if that had been the only
11 thing we were dealing with I don't think we would have
12 been talking about the kind of time he got on it.

13 Q If that was all the charges it wouldn't have been
14 relevant at that time?

15 A They were have still been relevant but I don't think,
16 if we had only been dealing with the shoplifting of some
17 bars of soap I don't think he would have gotten 10 years.

18 Q They would have still charged him with the third?

19 A Yes, sir. I assume they would have, they could have
20 at least. And those two things were kind of independent
21 of each other. I believe he was out on bond on the
22 shoplifting charge when the attempted murder charge came
23 about.

24 Q The deal on the shoplifting wasn't 5 years?

25 A Yes until he came back with a positive drug test, it

1 was.

2 Q So your testimony is is that they had already
3 received the plea which was agreed to but then the Judge
4 in the later made the decision to bump it up?

5 A That's right.

6 Q I have nothing further.

7 REDIRECT EXAMINATION

8 By Mr. Johnson:

9 Q Ms. Nelson, when Mr. Deal decided to plead guilty
10 didn't he waive the right to present that self defense
11 claim?

12 A Yes, sir.

13 Q Would you agree with me that the Judge was within his
14 discretion, statutorily speaking for bumping him up to
15 give him the full 20?

16 A I didn't want him to do it, I asked him not to do it
17 but he, I mean he maxed him out and gave him the maximum
18 penalty on both charges. I mean, I don't think he did
19 anything illegal.

20 Q It is a legal sentence?

21 A Yes, sir.

22 Q You also agree with me that Mr. Deal's criminal
23 history reveals that he has multiple assault and battery
24 convictions in the past?

25 A I didn't refresh my memory on his, I mean he had just

1 had one unfortunately the June before. I remember that
2 one because I represented him on that too.

3 Q He was on probation on that at the time he was
4 charged with the current charge?

5 A Yes, sir.

6 Q Thank you.

7 RECROSS-EXAMINATION

8 By Mr. Compton:

9 Q You didn't ask for concurrent sentences?

10 A We had an agreement on the recommendation that he
11 would be a consecutive 5 on the shoplifting. And the
12 reason we had that agreement was to get him out of an
13 eighty-five percent charge. So I mean I asked for lots of
14 things. I think I asked for 5 years, I think we started
15 at maybe 5 and it just gradually, both of us sort of
16 worked our way in toward the goal of Mr. Devlin, the
17 victim, was that he serve approximately 8. And so we did,
18 we agree on 15 at non-eighty-five percent time to try to
19 achieve that and to try to get Dennis out of eighty-five
20 percent time.

21 Q Thank you.

22 A I did ask for less at certain points but that was
23 where we ended up.

24 Q Thank you.

25 THE COURT: Anything else?

1 MR. JOHNSON: Nothing from the State, Your Honor.

2 THE COURT: You can step down.

3 MR. JOHNSON: The State has no further witnesses.

4 THE COURT: All right.

5 MR. COMPTON: Your Honor, at this point we just ask
6 the Court to consider the testimony and grant the
7 petition's application.

8 THE COURT: Anything else, Mr. Compton?

9 MR. COMPTON: Nothing further, Judge.

10 THE COURT: I read the transcript during the hearing.
11 Judge Addy asked Mr. Deal at least six times, do you
12 understand I am letting you out and you better not come
13 back under the influence of anything, best not show out,
14 you best not get in trouble. All sort of different things
15 over and over and over he asked. And don't make me give
16 you the full 20, twice, he said that before releasing you
17 to go home. I am going to read it again and let y'all
18 know.

19 MR. JOHNSON: Thank you, Judge.

20 MR. COMPTON: Thank you.

21 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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23

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25

1 CERTIFICATE OF REPORTER

2

3

4 State of South Carolina)
5 County of Newberry)

6

7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina on the 3rd day of June, 2013.

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

17

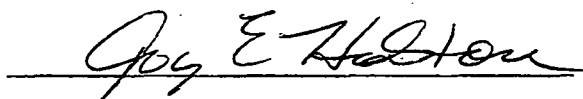
18

November 18, 2013

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21



22

Joy E. Holston, Court Reporter

23

My Commission expires: March 13, 2016

24

25

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Dennis T. Deal, #294446,

2012-CP-24-0837

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

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This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 24, 2012. The Respondent made its Return on November 8, 2012. An evidentiary hearing into the matter was convened on June 3, 2013, at the Laurens County Courthouse. John D. Compton, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Janna Nelson, Esquire also testified. This Court also had before it a copy of the records of the Greenwood County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenwood County Clerk of Court's orders of commitment. The Applicant was indicted by the May 2011 term of the Greenwood County Grand Jury for Assault & Battery 2nd Degree (2011-GS-24-1111) and Criminal Domestic Violence, 2nd Offense (2011-GS-24-1110). The Applicant was represented by Janna A. Nelson, Esquire. On June 16, 2011, the Applicant pled guilty to Assault and

Battery, 2nd degree and Criminal Domestic Violence, Second Offense. The Honorable Frank R. Addy, Jr. sentenced the Applicant to imprisonment for three (3) years, suspended to 179 days and five (5) years' probation for Assault and Battery, 2nd Degree and one (1) year suspended to 179 day and five (5) years' probation.

The Applicant was also charged with Assault and Battery 1st Degree (2011-GS-24-2264) and Shoplifting (2011-GS-24-2265). The Applicant waived presentment to the Grand Jury and pled guilty to both charges. On December 16, 2011, the Honorable Frank R. Addy, Jr. sentenced the Applicant to ten (10) years for Assault and Battery, 1st Degree and ten (10) years for Shoplifting/Enhancement for 3rd or Subsequent Offense, sentences to run consecutively. The Applicant's probation was also revoked for one (1) year for the Criminal Domestic Violence sentence and two (2) years for the Assault and Battery, 2nd Degree sentence, both to run concurrently with the Applicant's ten-year sentence. The Applicant did not appeal his convictions or sentences.

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

1. "Ineffective Assitant [sic] of Counsel"
2. "Coerced Involuntary Plea"
3. "Violation of Applicant Due Process Rights"

At the PCR hearing, the Applicant proceeded on his claim that Counsel was ineffective for not arguing for less than fifteen years' incarceration at the plea hearing.

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

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accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

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

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is

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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).

Plea Offer

At the hearing, the Applicant testified the State reneged on its initial plea offer and that he was under the influence of crack cocaine at the plea hearing. He stated he would have pled to a ten-year or twelve-year, non-violent plea agreement. However, the Applicant pled to a fifteen-year offer, with the caveat that he be able to return home for two days to arrange his affairs before serving his sentence in the department of corrections. During these two days, the Applicant used crack cocaine and failed a urine test upon returning to court. Judge Addy specifically instructed him during the guilty plea that if Applicant used drugs during the two day period, he would sentence Applicant to consecutive sentences, totaling twenty years.

On cross-examination, the Applicant admitted that he lied at the guilty plea hearing when he told Judge Addy that he was not under the influence of any drugs or alcohol. He also admitted that he pled on his own free will and was guilty of the offenses.

Counsel testified this case was originally charged as Attempted Murder but was reduced to Assault and Battery, 1st degree. Counsel stated Applicant always wanted a plea deal, so she negotiated with the solicitor. She testified the Victim wanted Applicant to serve eight years, but the solicitor would recommend fifteen years. She asserted the State did not renege on any plea offer, but only recommended fifteen years. Counsel also stated the plea offer was a recommendation so the plea judge had the option of increasing the sentence if Applicant did not appear two days later for sentencing. Counsel further testified she did not challenge the results of the urine test because

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Applicant admitted he had used crack cocaine during the two-day period.

This Court has reviewed the evidence presented at the hearing as well as the plea transcript and other records. This Court finds Applicant's testimony not credible, especially considering Applicant admitted to lying to the plea court, and finds Counsel's testimony credible.

This Court finds the Applicant has failed to prove the State reneged on an initial plea offer. Counsel testified the State did not renege on any offers, and the offer that Applicant accepted was for a recommendation of fifteen years. Counsel negotiated with the solicitor to get the Attempted Murder charge reduced to Assault and Battery, 1st degree. The Applicant also pled guilty, according to the record, freely and voluntarily. Furthermore, the Applicant specifically stated, under oath, he had not been promised anything besides the State recommending a fifteen-year sentence. The only reason Applicant received twenty years is due to his own actions. Judge Addy made it painfully clear what ramifications would follow if Applicant used drugs in the two-day period between the guilty plea and sentencing. Unfortunately, Applicant chose to break his promise.

Enhancement

Applicant also asserted Counsel was ineffective for not objecting to the enhancement of his shoplifting charge as a third or subsequent offense based convictions which occurred over twenty years ago. On cross-examination, Applicant admitted he has shoplifting convictions from 1981, 1982, and 1985 on his criminal record.

Counsel testified Applicant had at least two prior shoplifting convictions, and the State had a factual basis to charge Applicant with a third or subsequent offense. She also stated she would have challenged the charge if Applicant did not have two prior shoplifting convictions.

This Court finds Counsel was not ineffective for not challenging or objecting to the State's

charge of a third or subsequent shoplifting offense as the State had a factual basis for the charge. Any challenge to this charge would have been frivolous.

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

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED!



Eugene C. Griffith, Jr.
Presiding Circuit Court Judge
Eighth Judicial Circuit

July 1st, 2013
Newberg, South Carolina



WITNESSES

Michael L. Dixon
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

December Term, 2011
Indictment # 116524 - 22164

WARRANT NUMBER

2011GS2402264

THE STATE

vs.

Dennis Thomas Deal

Foreman of the Grand Jury

Date: _____

VERDICT

INDICTMENT FOR

ASSAULT AND BATTERY FIRST DEGREE
16-03-0600

Foreman

THE STATE OF SOUTH CAROLINA

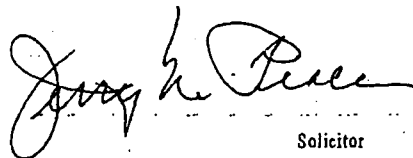
COUNTY OF GREENWOOD

INDICTMENT FOR
ASSAULT AND BATTERY FIRST DEGREE
16-03-0600

At a Court of General Sessions, convened on the 4th day of December, 2011 the Grand Jurors of Greenwood County present upon their oath:

That Dennis Thomas Deal, did in Greenwood County, state aforesaid, on or about the 21st day of September, 2011 willfully and unlawfully injure James Devlin, or did attempt or offer to attempt to injure James Devlin, and had the present ability to do so, and the act was accomplished by means likely to produce death or great bodily injury, or occurred during the commission of a robbery, burglary, kidnapping, or theft, in violation of the provisions of Section 16-3-600 of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Jeremy Adams
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

December Term, 2011
Indictment # 11GS24-2265

WARRANT NUMBER

1829919

THE STATE

vs.

Dennis Thomas Deal

Foreman of the Grand Jury

Date: _____

VERDICT

INDICTMENT FOR

SHOPLIFTING
16-13-0110

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

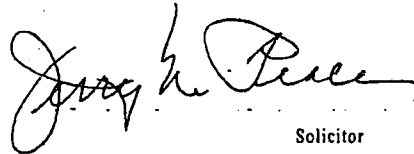
INDICTMENT FOR

SHOPLIFTING
16-13-0110

At a Court of General Sessions, convened on the 5th day of December, 2011 the Grand Jurors of Greenwood County present upon their oath:

That Dennis Thomas Deal, did in Greenwood County, state aforesaid, on or about the 13th day of September, 2011 willfully and unlawfully take possession of three (3) boxes of soap, of the value of less than two thousand and NO/100 (\$2,000.00) dollars, while being offered for sale by Price Wise Food Stores, Inc., a grocery store, with the intention of converting the same to his/her own use without paying the merchant's stated or advertised price of the said merchandise, in violation of Section 16-13-110 of the South Carolina Code of Laws, 1976, as amended.

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



Solicitor