

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Cherokee County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

MAR 28 2014

S.C. Supreme Court

BRANSON JAMAL THOMPSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002471

APPENDIX

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South Carolina Commission on Indigent
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Division of Appellate Defense
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ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
GUILTY PLEA HEARING TRANSCRIPT (DECEMBER 6, 2010)	1
APPLICATION FOR POST-CONVICTION RELIEF	19
AMENDMENT TO PETITIONER'S APPLICATION FOR POST-CONVICTION RELIEF (FILED JANUARY 17, 2013)	29
AMENDMENT TO PETITIONER'S APPLICATION FOR POST-CONVICTION RELIEF (FILED JANUARY 25, 2013)	32
PETITIONER'S MEMORANDUM OF ARGUMENT IN SUPPORT OF HIS POST-CONVICTION RELIEF (FILED APRIL 20, 2012)	35
RETURN	48
POST-CONVICTION RELIEF HEARING TRANSCRIPT (JUNE 24, 2013)	53
PETITIONER'S EXHIBIT #1	98
PETITIONER'S EXHIBIT #2	99
ORDER OF DISMISSAL	100
INDICTMENTS	111

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS
3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2010-GS-11-00135
6 BRANSON THOMPSON,) 2010-GS-11-00136
7 DEFENDANT.) 2010-GS-11-00137
8) 2010-GS-11-00138
9) DECEMBER 6, 2010
10) GAFFNEY, SOUTH CAROLINA

11 B E F O R E:
12 THE HONORABLE J. MARK HAYES, JUDGE.

13
14 A P P E A R A N C E S:
15 MICHAEL MORIN, ASSISTANT SOLICITOR
16 ATTORNEY FOR THE STATE
17 DON THOMPSON, PUBLIC DEFENDER
18 ATTORNEY FOR THE DEFENDANT
19
20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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- 3
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- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

INDEX

WITNESSES

PAGE

(NO WITNESSES CALLED)

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3		(NO EXHIBITS MARKED)		
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1 (PROCEEDINGS, DECEMBER 6, 2010)

2 BRANSON THOMPSON, having been first duly sworn,
3 testified as follows:

4 MR. MORIN: If it please the court, Your Honor,
5 before you is Branson Thompson. He's pleading guilty to
6 four indictments.

7 The lead indictment is 2010-GS-11-136. That's a
8 burglary, first degree. There is a negotiated sentence of
9 20 years on that case.

10 After that is 2010-GS-11-135, criminal domestic
11 violence, high and aggravated.

12 2010-GS-11-137, pointing and presenting a firearm.

13 2010-GS-11-138, pointing and presenting a firearm.

14 The recommendation on those is concurrent with the
15 20 years on the burglary first.

16 THE COURT: You are Mr. Thompson?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Sir, you do intend to enter pleas
19 today to burglary in the first degree, criminal domestic
20 violence of a high and aggravated nature, and to two charges
21 of pointing and presenting a firearm?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right, sir. If ever during this
24 process you wish to speak to your lawyer, you just let me
25 know and I'll allow you to do so in private, okay?

1 THE DEFENDANT: (Shaking head yes).
2 THE COURT: How old are you?
3 THE DEFENDANT: 22.
4 THE COURT: How far did you go in school?
5 THE DEFENDANT: 11th grade.
6 THE COURT: Did you ever obtain a GED?
7 THE DEFENDANT: No, sir.
8 THE COURT: Are you married, single, divorced, or
9 widowed?
10 THE DEFENDANT: Single.
11 THE COURT: Do you have children?
12 THE DEFENDANT: Two daughters.
13 THE COURT: How old are they?
14 THE DEFENDANT: Both of them three years of age.
15 THE COURT: Do you have a job outside the home?
16 THE DEFENDANT: No. No, sir.
17 THE COURT: How do you support yourself
18 financially?
19 THE DEFENDANT: I was out I was just doing certain
20 stuff around.
21 THE COURT: Odd jobs?
22 THE DEFENDANT: Yeah, little odd jobs. Helping
23 out people.
24 MR. THOMPSON: Your Honor, he's been incarcerated
25 since May the 26th of 2009.

1 THE COURT: Thank you.

2 Ever served in the military?

3 THE DEFENDANT: No, sir.

4 THE COURT: Sir, within the last 24 hours have you
5 consumed any type of substance that's adversely affecting
6 your ability to understand what we are doing today?

7 THE DEFENDANT: No. No, sir.

8 THE COURT: Have you ever been treated for any
9 type of substance abuse?

10 THE DEFENDANT: No, sir.

11 THE COURT: Were you satisfied with the work of
12 your lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you made the decision to enter
15 the plea today freely and voluntarily?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Nobody has threatened or promised you
18 anything?

19 THE DEFENDANT: No, sir.

20 THE COURT: Sir, I need for you to understand that
21 under the law you are presumed innocent of these charges.

22 You do have a right to have a jury trial on these
23 charges.

24 At any jury trial that would take place it would
25 be the State that has the burden of proof and the State

1 would have to convince all twelve members of a jury that you
2 are, in fact, guilty beyond a reasonable doubt.

3 Now, do you understand that you have that right to
4 that jury trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you wish to give up your right
7 to that jury trial?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Sir, I need for you to understand that
10 there are other very important Constitutional Rights that
11 you are entitled to, but that you have to give up in order
12 to enter a plea.

13 You have to give up your right to confront and
14 cross-examine the State's witnesses.

15 You also have to give up your right to present
16 evidence that you or your lawyer may feel would establish
17 some type of defense to these charges, and you have to give
18 up your right to subpoena, and you have to give up your
19 right to remain silent.

20 Do you understand all those rights?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you wish to give up all those
23 rights?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Sir, if you would, the gentleman

1 that's standing to your right is a solicitor. Please listen
2 to him. He is going to give us the facts behind these
3 cases.

4 MR. MORIN: Your Honor, this occurred on May 8th,
5 2009, at the apartments at Connecticut Village on 409 East
6 Junior High Road. It occurred about four o'clock in the
7 morning.

8 The victim in the case -- or one of the victims --
9 the victim of the criminal domestic violence was Kiwana
10 Jefferies. She and Mr. Thompson have a child together; was
11 at her sister's apartment, Ashley Smith. And Mr. Thompson
12 went there with a shotgun. He fired the gun twice in the
13 area out front. The shotgun shells were recovered. Ms.
14 Jefferies was on the cell phone -- I mean on a phone to 911
15 at the time.

16 Mr. Thompson kicked in the door, entered with the
17 shotgun, pointed it at Ms. Jefferies, her sister Ashley, and
18 I believe Ashley's brother Antwan. There was a lot of
19 screaming and yelling about "I'm going to kill you," or,
20 "you better not call the police," and that kind of thing.
21 It was on 9-1-1. A copy of it has been provided to the
22 defense. I believe he's heard it.

23 Ms. Jefferies and Ms. Smith are present in the
24 courtroom. They understand what the negotiated sentence is
25 and I believe they are in agreement with it, but I just let

1 the court know that.

2 Mr..Thompson is in jail now, Your Honor, on a
3 probation violation.

4 His record is all from 2008. A burglary third,
5 two counts; habitual traffic offender; pointing a firearm;
6 and a CDV, high and aggravated.

7 As I stated, this happened here in Cherokee in the
8 nighttime and he was armed with a shotgun at the time that
9 it occurred.

10 (Off the record)

11 (Back on the record)

12 MR. THOMPSON: Your Honor, he contests the -- and
13 I realize it shows on the rap sheet, but he contests the
14 burglary third conviction, prior convictions.

15 THE COURT: Okay. Mr. Thompson, were you able to
16 hear the solicitor when he told me the facts?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you believe that as he stated the
19 facts behind these charges that he's substantially correct?

20 THE DEFENDANT: Are they correct? I mean, certain
21 things took place, you know what I'm saying, so basically,
22 yeah, some of it is correct.

23 THE COURT: All right.

24 THE DEFENDANT: But on the -- can I tell you on
25 that? I ain't never been convicted. I ain't never did no

1 burglary. This is my first time of having one of them on my
2 record, ever.

3 THE COURT: All right. All right. I will note
4 that.

5 And Mr. Thompson, I will allow you an opportunity
6 to be able to explain to me, as well as your lawyer, I'll
7 allow him an opportunity to explain to me your version of
8 the facts, but I need to be satisfied that there is a
9 substantial factual basis for the plea.

10 So you believe that the solicitor is substantially
11 correct in what he stated, even though you may disagree with
12 some of the details of it?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. And, sir, do you
15 understand that on the criminal domestic violence of a high
16 and aggravated nature charge that I could sentence you up to
17 10 years on that charge?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Sir, do you understand that that
20 charge is classified as a violent offense under the law?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And have you been able to talk to your
23 lawyer as to the ramifications and consequences of that
24 offense being classified as a violent offense?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you still wish to enter the plea
2 to that charge?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Sir, do you understand that pointing
5 and presenting a firearm at a person, that that charge
6 carries up to five years? That both of those charges carry
7 up to five years?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And with that understanding, do you
10 still wish to enter -- knowing what the sentence could be,
11 do you still wish to enter the plea to those charges.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Sir, do you understand that the
14 burglary in the first charge, do you understand that that's
15 being presented to me as a negotiated plea and that if I
16 accept the plea, I am bound by the negotiations and I will
17 have to impose the 20 year sentence that was announced?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And that's what you want me to do?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Sir, do you understand that the
22 burglary in the first degree charge, you understand that
23 that is classified as both a violent and also a most-serious
24 offense?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And have you been able to talk to your
2 lawyer as to the consequences of that offense being both a
3 violent and most-serious offense?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And you still wish to enter the plea
6 to that charge?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Sir, are you, in fact, guilty of
9 burglary in the first degree?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you also guilty of the two charges
12 of pointing and presenting a firearm at a person?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you also guilty of criminal
15 domestic violence of a high and aggravated nature charge?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you been able to hear all of my
18 questions?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have all your answers been truthful
21 and honest?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The discovery has been shared with the
24 defense?

25 MR. MORIN: Yes, sir.

1 THE COURT: All right. We have -- the State gave
2 me the prior record.

3 Do you have anything from the victim?

4 MR. MORIN: No, sir. They understand what the
5 negotiated sentence means and they are -- as I stated, I
6 believe they are in agreement with that, so they don't have
7 anything further to add.

8 THE COURT: Anything further from the State?

9 MR. MORIN: No, sir.

10 THE COURT: Yes, sir.

11 MR. THOMPSON: Thank you, Your Honor.

12 Judge, Mr. Thompson -- this was a domestic
13 situation, as I'm sure you fully understand.

14 Mr. Thompson and his girlfriend or his child's
15 mother got into an argument. Unfortunately he had a little
16 bit of an anger problem.

17 I have talked with his mother, who was a witness
18 to what happened, and his mother has basically indicated to
19 me that everything happened as the solicitor said, except
20 she said she did not hear two shots. But she does say that
21 when she got into the house, that Mr. Thompson was in there
22 with the shotgun in his hand threatening people. So she
23 didn't hear the two shots outside, but that's really I think
24 the only place that we have room to contest what the State
25 just said, and that really doesn't go to any of the elements

1 of any of the crimes.

2 Judge, when I left the jail Friday Mr. Thompson
3 was going to plead guilty and it was my understanding we
4 were going to plead straight up, because he and I had talked
5 and thought 20 years might be a little bit stiff, but this
6 morning he has told me that he wants to take the offer of 20
7 years that the State has made to him, the negotiated
8 sentence.

9 I have explained to him that that's 20 years, no
10 parole, and he understands that. In fact, when I told him
11 it was 20 years, no parole, he told me, "yeah, I have got to
12 do at least 17 before I can get out." So he had already
13 done the math in his head. So I guess at this point in time
14 you are sort of bound by the recommendation either to accept
15 it or not to -- under the negotiated sentence, either to
16 accept it or not to accept it. So on Mr. Thompson's behalf
17 I would ask that you accept it.

18 He has been in jail since May the 26th of 2009.

19 He was arrested on these charges. He was on
20 probation at the time. A couple months after he was
21 arrested on this the probation people brought him in for a
22 probation violation and he's been in the Department of
23 Corrections since, but he's never made bond on these
24 charges, and I would submit to Your Honor he is entitled to
25 the credit from May 26th of 2009.

1 THE COURT: Were you able to hear what your lawyer
2 just told me?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you agree with what he stated?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Mr. Thompson, is there anything that
7 you have would like to say or would like for me to know or
8 consider?

9 THE DEFENDANT: As far as -- as far as me speaking
10 my mind about the situation?

11 THE COURT: Yes, sir.

12 THE DEFENDANT: I wrote something. Could I read
13 it out?

14 THE COURT: Yes, sir.

15 MR. THOMPSON: I haven't seen it, but --

16 THE DEFENDANT: This right here. I wrote it last
17 night, just something that was on my mind.

18 (Off the record)

19 (Back on the record)

20 THE DEFENDANT: I could read it?

21 MR. THOMPSON: If the judge will let you.

22 THE DEFENDANT: I can read it?

23 THE COURT: Yes, sir, if you want to.

24 THE DEFENDANT: All right. It's about the
25 situation and all. It say "Your Honor, I would like to say

1 I'm not all to blame for the things."

2 It say, "Your Honor, I'm not -- "I would like to
3 say that I'm not all to blame for the way things turned out.
4 It takes two people to make a problem between one another,
5 but still I played my part in the situation at hand. I
6 apologize for my actions. I didn't never want things to get
7 out of hand as it is, but it is, but I'm not a bad guy, Your
8 Honor, and I'm the real guy." I say "I love my daughters
9 mother with all my heart, would have gave here the world, if
10 I could." I say "she knows that I take responsibility for
11 my actions. However, she knows she played a part in what
12 went on too. I just didn't call the police, so I apologize
13 for my actions. That's from the heart. I can't see why
14 she's acting the way she is about the charges." Then I say
15 "I don't see why she's going through all this stuff she is
16 going through with the charges." I say "always treat her
17 with respect. Always have the foundation down also." I say
18 "Your Honor, besides taking me away from" -- I say "besides
19 taking me away because of my feelings and emotions, again
20 took away my girls from my life. Your Honor, I messed up, I
21 did, but please, please spare me so I can make it home back
22 to my girls and see them grow in their life. In the name of
23 Allah. I mean this from the bottom of my heart, I
24 apologize."

25 THE COURT: Thank you, sir.

1 I'll find that there is a substantial factual
2 basis for the plea.

3 I'll find that the defendant's decision to enter
4 the plea has been made freely, voluntarily, knowingly and
5 intellectually by him. I'll find that he has received the
6 services from a very competent and able legal counsel,
7 services he's indicated to the court he's satisfied with and
8 has relied on in reaching the decisions that he's made.

9 Therefore, I will accept the plea.

10 On the burglary in the first degree charge, the
11 sentence of the court is that the defendant would be
12 confined to the State Department of Corrections for a period
13 of 20 years.

14 That will run -- he will receive credit from May
15 the 26th of 2009.

16 It will be a 10 year sentence on the criminal
17 domestic violence of a high and aggravated nature, and five
18 years sentences on the pointing and presenting firearm
19 charges.

20 All of those charges will run concurrent with each
21 other.

22 I have indicated on all of the sentencing sheets
23 he will receive credit since 5-26-09. Good luck to you sir.

24 MR. MORIN: Thank you, Your Honor.

25 (END OF REQUESTED TRANSCRIPT OF RECORD)

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 6th day of December, 2010.

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

September 12, 2011



Michael R. Watts
Circuit Court Reporter

FORM 5

011CP-110324

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

Branson Jamal Thompson

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

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

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 Lieber Correctional Institution
2. Name and location of Court which imposed sentence Cherokee County General Session
125 East Floyd Baker Blvd. Gaffney, S.C. 29342
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Burglary first Degree # 10-GS-11-0136, Criminal Domestic Violence of a
 - (b) High and aggravated # 10-GS-11-0135, Pointing and Presenting a
 - (c) Firearms (2 counts) 10-GS-11-0137, 10-GS-11-0138
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 12-6-10 Burglary first Degree 20yrs Concurrent, 12-6-10 Criminal
 - (b) Domestic Violence of a High and aggravated 10yrs, Pointing and Presenting

Revised 3/2003

30) a firearms 575 Pointing and Presenting a firearm 575

011CP-110324

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I didn't know, I had to appeal because lack of knowledge
- (b) My lawyer also failed to bring it to my Attention
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See attached sheet

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 MAY 23 AM 8:43
GABRIEL W. MOORE

28A) with the law

011CP-110324

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

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

- (a) See Attach sheet
- (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? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____

011CP-110324

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

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?

N/A

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) N/A

(b) _____

(c) _____

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

011CP-110324

- (a) your arraignment and plea? ✓
- (b) your trial, if any? N/A
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
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. Don A. Thompson Public Defender Office, 225 East
- ii. Floyd Baker Blvd, Gaffney, S.C. 29340
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment and Plea
- ii. Sentencing
- iii. _____
19. State clearly the relief you seek in filing this application:
Guilty Plea vacated, or a Time cut.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA

011CP-110324

VERIFICATION

County of Cherokee

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

Branson Thompson

SWORN to and subscribed before me this 4th
day of May, 2011

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 MAY 23 A 6:43
CLERK OF COURT

011CP-110324

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

Branson Jamal Thompson
I, _____, 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.

Branson Thompson
Applicant

SWORN or affirmed to and subscribed before me this

4th day of May, 2011.

Sylvia Jones
Notary Public

My Commission Expires:

1/24/2018

BRANDY W. MCBEE

2011 MAY 23 A 8:43

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CHEROKEE COUNTY, S.C.

011CP-110324

Applicant set forth this Cause of action Pursuant to the jurisdiction set forth in Chapter 17, Section 17-27-10 (1) (b) et. seq. for Collateral attack upon any grounds of alleged error here to fore available under this Uniform Post Conviction Relief Application that are being submitted or amended. Applicant asserts, to make a successful claim of ineffective assistance of Counsel, defendant must show that Counsel's performance was deficient and that deficient performance prejudiced his defense. Due to the lack of records and the assistance of Counsel, Pursuant to the S.C. Civ. P. Rule 11.1 (e) et. seq., state that the burden of proof is on the applicant to show his entitlement for relief by a preponderance of the evidence, and for the appointment of Counsel to insure that all available grounds for relief are included in the application. The Applicant request that this Court forward the above mention records to Applicant and to appoint Counsel to assist in this present Application. Applicant, further moves this Honorable Court Pursuant to S.C. Code of laws 17-27-90 to grant leave to file an amendment to this cause of action, Due to the lack of records there of, Applicant seeks this Court approval due to the fact Applicant has only one year to file this application from the Date of his Conviction and or appeal.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHEROKEE	)	C/A NO: 11-CP-11- 0324
Branson Jamal Thompson	)	
	)	
Applicant	)	Amendment to Petitioner's Application
	)	for Post Conviction Relief
v.	)	
	)	
The State of South Carolina	)	
	)	
Respondent	)	

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JAN 17 AM 11 00
RANDY W. MCBEE

Petitioner amends the Application for Post Conviction Relief to include the following issues:

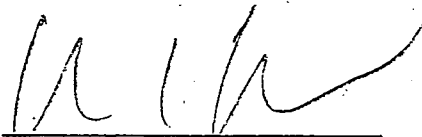
As to Ineffective Assistance of Counsel:

- a. Failure to advise as to right to an appeal.
- b. Failure to advise that a jury trial could have considered a lesser charge to the Burglary First Degree, and absent this advice from his trial lawyer entered into the negotiated plea.
- c. Failure to explain that aggravating circumstances as an element is duplicative of intent element, and not challenging the State' duplicative reliance on the same of facts to prove different elements and charges..
- d. Failure to advise that the negotiated Plea for 20 years also included community supervision requirements. Jackson v State holds that CSP disclosure is not required of trial counsel. However, when considered in conjunction with (b), the totality of the circumstance resulted in an uninformed basis for plea negotiation..
- e. Failure to review and explain Rule 5 discovery, investigate potential state witnesses or other possible witnesses, alternate defenses, and elements of the charges prejudiced Petitioner by having inadequate information for electing the negotiated plea.
- f. Failure to raise consent for entry as a defense, or to investigate potential witnesses.
- g. Failure to investigate whether any State's witness was subject to intimidation.
- h. Failure to conduct a mental evaluation as to petitioner's mental condition, i.e. hearing voices, delusional thoughts.

As to the Grand Jury,

- i. Prosecutor misled the Grand Jury by misstating the crime was at night, and as to prior convictions by Petitioner.
- j. African Americans are systematically excluded from the selection process.

DAVID C. ALFORD, P.C.

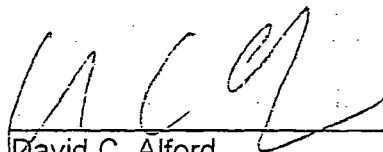


David C. Alford
P.O. Box 6326
Spartanburg, South Carolina 29304
(864) 574-0870
Attorney for Applicant

Spartanburg, South Carolina
January 15, 2013.

The undersigned certifies he has mailed, first class, postage prepaid,
Petitioner's Second Amended PCR Application.

Office of the Attorney General
PCR
P.O. Box 11549
Columbia, SC 29211-11549



David C. Alford
P.O. Box 6326
Spartanburg, South Carolina 29304
(864) 574-0870
Attorney for Applicant

Spartanburg, South Carolina
January 15, 2013

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JAN 17 AM 11 00
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
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Branson Jamal Thompson	)	
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The State of South Carolina	)	
	)	
Respondent	)	

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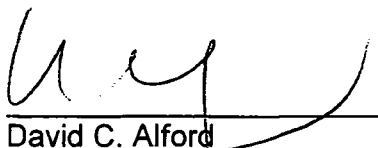
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FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JAN 25 AM 11:30
BRANDY W. MCBETH

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- j. African Americans are systematically excluded from the selection process.

DAVID C. ALFORD, P.C.



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Spartanburg, South Carolina
January 23, 2013

The undersigned certifies he has mailed, first class, postage prepaid,
Petitioner's Second Amended PCR Application.

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PCR
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Columbia, SC 29211-11549



David C. Alford
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Spartanburg, South Carolina
January 18, 2013

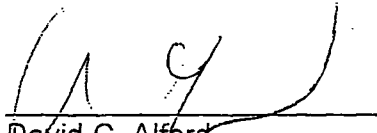
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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JAN 25 PM 11 30
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHEROKEE	)	C/A NO: 11-CP-11- 0324
	)	
Branson Jamal Thompson	)	
	)	
Applicant	)	Petitioner's Memorandum
	)	of Argument
v.	)	in support of his Post Conviction Relief
	)	
The State of South Carolina	)	
	)	
Respondent	)	

The attached memorandum of Argument is submitted in support of
Petitioner's PCR filing.

DAVID C. ALFORD, P.C.



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Spartanburg, South Carolina
April 17, 2012 *LA*

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2012 APR 20 AM 10 54
BRANDY W. MCBEE

ARGUMENT

The Grand Jury which acted upon Indictments NO. 10-GS-11-0136-10-GS-11-0135-10-GS-11-0137-10-GS-11-0138 was not a properly established and legally constituted Grand Jury.

The Indictments on its face states that the Grand Jurors of Cherokee County met, and convened at a Court of General Sessions on Jan 21, 2010, and on the back of the Indictments it is True-Billed, and signed by the Grand Jury foreman and Date Jan 21, 2010.

The Dates goes forth as Proof on the appellants behalf that this Grand Jury which returned the True-Billed did so outside of the Courts Jurisdiction because as the enclosed exhibit plainly displays there was no General Sessions Court in session on Jan 21, 2010.

"No Indictment may be True-Billed by a Grand Jury when Circuit Court Jurisdiction since Grand Jury's Jurisdiction is co-extensive with Criminal Jurisdiction of the Court in which it is impaneled and for which it is to make Indictment".

The Appellant on his owns and the Lawyer failed to Object to the Defects Apparent on the face on the Indictments; and failed to Challenges to the sufficiency and Legality of the ~~Indictments~~ Indictments during his Guilty Plea made before the Honorable Hayes, Dec 6, 2010.

There was No motion Done at No time before the Guilty Plea and the Judge Proceeded with the Plea, and the Judge Deemed the Indictments a Good and sufficient Indictments under the Presumption that the Grand Jury acted during a regular term of General Sessions Court, Also that it was kept and maintained by the Clerk of Court, and that the Indictments did not have to be filed with the Clerk of Court.

The following Statutes, Court Order, Circuit, Court Calendar, and Correspondences shows: 1) an abuse of Discretion, 2) that the Appellant's S.C. Constitutional Right to Demand that his case be considered by a Grand Jury which is properly established and legally constituted under the law has been grossly violated; and Prosecutorial Misconduct on the Solicitor by committing a fraud upon the Courts.

§ 14-5-310 Rules of Court.

The Circuit Courts may make and establish all necessary rules for the order conducting of Business in said Courts, provided such rules are not repugnant to the laws of the State or the rules prescribed by the Justice of the Supreme Court, and Circuit Judges.

§ 14-1-170 Filing of Undertakings.

The various undertakings required to be given by this title must be filed with the clerk of Court, unless the Court expressly provides for a different Disposition thereof.

§ 14-9-80 Clerk of Circuit Court shall be ex-officio Clerk of the County Court and Duties Compensation.

The Clerk of the Circuit Court shall be ex-officio Clerk of the County Court and shall keep such Calendars, minutes and records of the County Court and the cases therein pending, and attend and perform such Duties as the Clerk thereof, as is required by law as Clerk of the Circuit Court. For services performed as Clerk of the Circuit Court he shall receive the same Compensation as if performed by him as Clerk of the Circuit Court.

§ 14-9-210 Indictments for Court Cases by Grand Jury of Court of Court of General Sessions.

The County Solicitor shall prepare and through the Presiding Judge of the Court of General Sessions, submit to the Grand Jury, while in Attendance upon the Court of General Sessions, Bills of Indictment in all cases pending in the County Court in which the ~~maximum~~ Punishment may exceed a fine of one hundred Dollars or Imprisonment for thirty Days, when such cases have not been previously acted on by the Grand Jury. The Grand Jury shall act thereon and report its action to the Presiding Judge of the Court of General Sessions, and said Judge shall direct the Clerk of the Court of General Sessions to report the same to the Presiding Judge of the County Court at its next ensuing term. All cases in which bills of Indictments are so found shall stand for Trial by the General sessions Court as though found by the Grand Jury while in Attendance upon the County Court.

§ 14-5-180 Terms of Court in Seventh Circuit, Cherokee County.

The Court of General Sessions for Cherokee County shall be held at Cherokee on the Third Monday of March for one week, on the second Monday of September for two weeks, and on the Third Monday of November for two weeks.

14-9-170 Grand Jury.

The Grand Jury as Drawn in accordance with law for service upon the Court of General Sessions in each of the counties shall constitute the Grand Jury for the County Court at each of its terms, except the term next succeeding each session of the Circuit Court at which term the Grand Jury need not meet with the County Court...

The Supreme Court of South Carolina.

Re: Filing Indictments with the Clerk of Court.

Order

Rule 3(c), S.C. Crim. P. requires Solicitors to file Indictments with the Clerk of Court. In some Counties Solicitors are retaining the original Indictments which have been returned by the Grand Jury until the Proceedings are concluded. This local practice leads to problems and confusion in some cases. Accordingly effective the date of this order, all original Indictments which have been returned by the Grand Jury shall immediately be filed with the Clerk of Court. It is so ordered.

Columbia, S.C.
Oct. 23, 2002

S/ Jean Hofer Toal
Jean Hofer Toal,
Chief Justice.

The appellant contends that his Indictment is not valid, and the Trial Court abused its discretion by denying his motion to Quash the Indictment in the presence of evidence showing that his Indictment had not been ascertained in the manner prescribed by law.

Essentially the appellant objected to the Indictment because of (3) three apparent defects upon the face of the Indictment: 1) It was not obtained within 90 days; 2) The date were contradicting when the Grand Jury convened Jan. and when it acted on the Indictment Jan; 3) The fact that it was not filed nor published with the Clerk of Court...

Being that the Trial Court based his decision to Dismiss on the presumption that that Grand Jury met and convened at a regular term of Court and that the Indictment did not have to be filed with the Clerk of Court, and that it was kept and maintained with the Clerk of Court. The appellant offers his Statutes, Court Order, Calendar and Correspondences as exhibits to show that the Trial Courts Dismissal of the Appellant's motion to Quash been based upon errors of law which lack evidentiary support. Furthermore, being that no General Sessions Court was in session on the dates which the Grand Jury met, and acted it shows that the Appellant's Constitutional rights to have his case heard by a properly established and legally constituted Grand Jury been violated pursuant to S.C. Code Ann. § 16-17-735

ADDITIONALLY, the Solicitor committed prosecutorial misconduct 39
by Deceiving the Court and its Jury with a fraud upon the
Court because it Presented to the Courts a fraudulent Indictments

The Appellant moves this Court to vacate his Sentence and
release him upon its finding that the Indictments was a
sham legal process orchestrate to Deprive the Appellant of life
and liberty without Due Process of law in accordance to S.C.
Const. Art. I, § 3.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHEROKEE	)	C/A NO: 11-CP-11- 0324
	)	
Branson Jamal Thompson	)	
	)	
Applicant	)	Petitioner's Memorandum
	)	in support of his Post Conviction Relief
v.	)	
	)	
The State of South Carolina	)	
	)	
Respondent	)	

The attached memorandum is submitted in support of Petitioner's PCR filing.

DAVID C. ALFORD, P.C.



David C. Alford
P.O. Box 6326
Spartanburg, South Carolina 29304
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Attorney for Applicant

Spartanburg, South Carolina
October 6, 2011

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2011 OCT -7 A 11:10
JULIUS W. MCBEE

State of South Carolina
County of Cherokee

Branson Jamal Thompson
#326685 APPLICANT,

VS.

State of South Carolina,
Respondent.

In the Court of Common Pleas

C/A No: 10-GS-11-0135, 0136, 0137, 0138

Memorandum of Law in Support
Application for Post-Conviction
Relief

In Support of the Application for Post-Conviction Relief (PCR), the Applicant (hereinafter Mr. Thompson) hereby submit this Memorandum of Law in Support of Application for PCR and therefore, Mr. Thompson would Plead and show unto the Court.

I.

Applicants Guilty Plea was involuntary Due to his Lack of Knowledge of the Mandatory Post-Release Supervision Concomitant to the Sentence.

In December 6, 2010 Mr. Thompson Plead Guilty to Several Criminal Charges including Burglary First Degree, CDV Non Agg, Pointing and Presenting a firearm (2 counts) for which He received a Twenty (20) Year Sentence; His Conviction was Subject to S.C. Code § 24-21-560 (S.C. Code 2003) which imposes Mandatory Post-Release Supervision Titled "Community Supervision Program" (CSP), for A Period not to exceed Two (2) Years. The Judge Presiding over Mr. Thompson Guilty Plea Hearing failed to Inform Mr. Thompson of the Afore-said Mandatory Requirement at the time He accepted the Plea and Imposed Sentence, and Mr. Thompson was otherwise unaware of the relevant Requirement.

Legal Analysis

Constitutional Protections of Due Process Mandate that an accused's Guilty Plea Be Voluntary and Intelligent. Boykin v. Alabama, 395 U.S. 238, 242, 89 S. CT. 1709, 1711-12, 23 L. Ed. 2d 274 (1969). Because a Guilty Plea waives the Rights Against Self-Incrimination, To Trial by Jury, and to Confront one's accusers, its acceptance requires the "utmost solicitude of which Courts are Capable in canvassing the Matter with the accused to Make sure He has a full understanding of what the Plea Connects and of its consequence." Id. At 243-44, 89 S. CT. At 1712.

Determining the voluntariness of a Plea Involves a review of all the relevant circumstances surrounding it. Brady v. United States, 397 U.S. 742, 744, 90 S. CT. 1463, 1469, 25 L. Ed. 2d 747 (1970). Among other circumstances, a Plea of Guilty can be voluntary only if it is "entered by one fully aware of the direct consequences" of his Plea. Id. At 755, 90 S. CT. At 1472 (emphasis supplied). Thus, The proper initial Inquiry in this case is whether a mandatory Post-Release Supervision, LSP Term is a direct consequence of a Guilty Plea, or Merely a collateral one. Carter v. McArthur, 806 F.2d 1373 (9th Cir. 1986). If a mandatory Post-Release Supervision / LSP Term is a direct consequence, it must then be Determined whether Mr. Thompson was fully aware that he was subject to that Additional Penalty. Id.

The South Carolina Supreme Court, in Jackson v. State, 349 S.C. 62, 64, 562 S.E. 2d 475, 475 (2002), has held that the LSP Requirement is Merely a collateral consequence of sentencing. In reaching its Holding, The Jackson Court stated that in its view the LSP serves essentially the same function for Persons convicted of "No Parole Offenses" as Parole does for other inmates and that, whereas Parole eligibility is a collateral consequence of sentencing, it follows that LSP is a collateral consequence of sentencing. Id. at 476, 562 S.E. 2d 475 (2002). [FNI]

The Proper Test, However, for Determining And Distinguishing Direct Consequences from Collateral Ones Has Been Established By The Fourth Circuit Court of Appeals in Luthell v. Director, Patuxent Inst. 475 F.2D 1364, 1366 (4th Cir. 1972)

The Luthell Court Distinguished Direct from Collateral Consequences By "whether the Result Represents A Definite, Immediate and Largely Automatic Effect on the Range of the Defendants Punishment.") Id.; U.S. v. Kikuyama, 109 F.3D 536 ("Consequence of Guilty Plea is Direct, where it Presents Definite, Immediate and Largely Automatic Effect on Defendants Range of Punishment But A Consequence is "collateral" where it lies within Discretion of Whether to Impose it.") Indeed, the "Effect" of CSP on Mr. Thompson's Range of Sentence is Definite Immediate and Largely Automatic As it - CSP - is A Mandatory Requirement. See 24-21-560 (The CSP is A Mandatory Precedu isite to lawful Discharge from Sentence); Latter v. McCarthy, 806 F.2D 1373 (9th Cir. 1986) ("where A Statute Imposes A Mandatory [Post-Release Supervision] Term to be served following completion of the Period of Confinement, the [Post-Release Supervision] Necessarily is A Direct Consequence of the Guilty Plea.") State v. Ross, 916 P.2D 405, 1996 Wash. Lexis 284 ("The Community [Supervision] Requirement of [Statute] which Mandates 12-Month Community [Supervision] in Sentence for Specified Crimes, is A Direct Consequence of Pleading Guilty to those Crimes."); People v. Lator, 4 NY 3D 242 (2005) ("Post Release Supervision is A Direct Consequence of A Conviction [because] Imposition of Supervision is Mandatory and Thus has a Definite, Immediate, And Largely Automatic effect on Defendants Punishment."); In re Carabaz, 100 Cal App 2D 977, 931-31, 193 Cal. Rptr. 65 (1983)

44 [Holding That A Mandatory [Post-Release Supervision] Term Is A Inevitable Penal Consequence Of A Guilty Plea.]; And Palmer v. State, 118 Nev. ADV. OP. NO. 81 (Dec. 19, 2002) ("we conclude that [Post Release] Supervision is a Direct Consequence of A Guilty Plea.") The Relevant Post-Release Supervision Requirement of Mr. Thompson's Sentence (i.e., the CSP) is A Direct Consequence of His Guilty Plea. Under Brady v. United States, *supra*, it Need to be Determined Whether Mr. Thompson was "fully Aware" of the Relevant Direct Consequence Prior to Pleading Guilty. See Carter v. McCarthy, *supra*. According to the PCA Application by Mr. Thompson as well as this Memorandum in Support thereof and the Transcript of Mr. Thompson's Guilty Plea, the Judge failed to Inform Mr. Thompson of the CSP Requirement and Mr. Thompson was otherwise Unaware of the CSP Requirement. Inasmuch As Mr. Thompson was not fully aware of the Direct Consequences of His Guilty Plea, The Plea was not Voluntary and Intelligent; Acceptance of the Plea in these Circumstances was a Violation of Mr. Thompson's Constitutional Right of Due Process. (FN 2) See Carter v. McCarthy, *supra*.

Mr. Thompson would Not Have Plead Guilty But would Proceeded To Trial Had He Known and Understood that He would have to Serve an Additional Adverse Penalty After His Release. FN 1

Foot Notes

If Appropriate and / or Necessary Mr. Thompson will Move to ARGUE Against Precedent Regarding the S.C. Supreme Court's Decision in Jackson v. State, 562 S.E. 2D (S.C. 2002) FN 2. McCarthy v. United States, 394 U.S. 459, 89 S.Ct. 1166 (1969) ("If A Defendant's Guilty Plea is not Equally Voluntary and Knowing, it has Been Obtained

in violation of Due Process and is therefore void.") (Guilty Plea cannot be truly voluntary unless Defendant possesses an understanding of law in relation to the facts.). Hill v. Lockhart, 474 U.S. 52, 56 (1985) ("The long-standing test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant."). People v. Latis, 4 NY 3D 242 (2005) (A Defendant pleading guilty to a determinate sentence must be aware of the post-release supervision component of that sentence in order to knowingly, voluntarily and intelligently choose among alternative courses of action. The failure of a court to advise of post-release supervision requires reversal of the conviction.) People v. Van Deusen, 7 NY 3D 144 (2006) ("At the time Defendant pleaded guilty, she did not possess all the information necessary for an informed choice among different possible courses of action because she was not told that she would be subject to mandatory post-release supervision as a consequence of her guilty plea. Accordingly, the defendant's decision to plead guilty cannot be said to have been knowing, voluntary and intelligent.") (Note: The Van Deusen court explained that the trial court violated the defendant's due process rights - not the defendant's sentencing expectations.). People v. Hill, 9 NY 3D 189 (2007) (stating that the constitutional defect lies in the plea itself and not the resulting sentence" when a trial court fails to inform defendant of mandatory post-release supervision prior to accepting that defendant's plea.). Cortez v. McArthur, 806 F.2d 1373 (9th Cir. 1986) (when a statute imposes mandatory [post-release] term to be served following completion of period of confinement, such supervision term is a direct

Consequence of A Guilty Plea To Comport with Due Process.) (The Carter Court Explained That for Purposes of Determining whether A Plea is voluntary and Intelligently Made, The Critical Fact Is... That the [Post-Release Supervision] Term is To be Served In Addition To The Term of Confinement under The Sentence. In These Circumstances, The Judge Handling The Criminal Proceedings Must Advise The Defendant, Inter Alia, of The Maximum Period His Liberty May Be Restricted Both by Way of Imprisonment and [Post-Release Supervision]. Switzer State v. Neely, 38 F.3d 458 (for Guilty Plea To be Valid, It Must be Voluntary which Requires That Defendant be Informed of Direct Consequence of Plea.)

BRANSON JAMAL THOMPSON

Mr. Branson Jamal Thompson #326685

L.I.I

P.O. BOX 205

RIDGEVILLE, S.C. 29472

MAY 20, 2011

RIDGEVILLE, SOUTH CAROLINA

Sworn To Before Me

This 29th Day of August 2011

Lauchean Bryant

Notary Public for South Carolina

My Commission Expires: May 26, 2020

Branson Jamal Thompson
Branson Thompson #326685

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
Branson Jamal Thompson, #326685,	)	2011-CP-11-0324
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 23, 2011¹, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted at the August 2010 term of the Cherokee County Grand Jury for burglary – 1st degree (10-GS-11-0136), criminal domestic violence of a high and aggravated nature (10-GS-11-0135), and two counts of pointing and presenting a firearm (10-GS-11-0137, -0138). He was represented by Don A. Thompson, Esquire. On December 6, 2010, the Applicant pled guilty as indicted. He was sentenced by the Honorable J. Mark Hayes to confinement for concurrent terms of twenty years on burglary – 1st degree, ten years for criminal domestic violence of a high and aggravated nature, and five years for each count of pointing and presenting a firearm, pursuant to a negotiated sentence. The Applicant did not appeal his conviction or sentence.

¹ Applicant also included a document captioned "Notice of Motion and Motion to Produce Documents Pursuant to Rule 34 and Rule 26: Because there is no discovery in non-capital post-conviction relief cases without an Order from the Court based upon good cause shown, Respondent does not intend to respond to the document, which it interprets as a Motion to Compel Production.

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

II.

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

1. Ineffective assistance of counsel.

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under

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

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: *Immedulite*
ATTORNEYS FOR RESPONDENT

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

May 2, 2012.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Branson Jamal Thompson,

2011-CP-11-0324

Applicant,

V.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE BY MAIL

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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

David C. Alford, Esquire
David C. Alford, PC
P.O. Box 6326
Spartanburg, South Carolina 29304

Anne Mueller
Anne A. Mueller
Legal Assistant for the Respondent

DATED this 2nd day of May, 2012.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 Branson Jamal Thompson,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2011-CP-0324
7 The State,)
8 Respondent.) June 24, 2013
9) Spartanburg, South Carolina
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B E F O R E:

HONORABLE R. LAWTON MCINTOSH, JUDGE

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

DAVID C. ALFORD, ESQUIRE
Attorney for the Applicant

SUZANNE H. WHITE, ESQUIRE
Attorney for the Respondent

Margaret A. Woods
Circuit Court Reporter

ORIGINAL

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	BRANSON JAMAL THOMPSON	
4	Direct examination by Mr. Alford	7
5	Cross-examination by Ms. White	13
6	Redirect examination by Mr. Alford	24
7	DON A. THOMPSON	
8	Direct examination by Mr. Alford	33
9	Cross-examination by Ms. White	38
10	Certificate of reporter	45

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
P-1	Letter dated 5/20/13	26	
P-2	January 2010 circuit and family court terms of court calendar	26	

MOTIONS AND MATTERS

1 MS. WHITE: Thank Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. WHITE: This is the case of Branson Jamal Thompson
4 vs. the State, it's Case Number 2011-CP-11-0324, he's
5 represented today by Mr. David Alford. The, uh, applicant was
6 indicted January of 2010 for burglary first degree, CDV of a
7 high and aggravated nature and two counts of pointing and
8 presenting a firearm. He was represented by Don Thompson,
9 pled guilty as indicted with a 20-year, uh, concurrent I
10 believe recommendation and received that 20-year sentence for
11 burg first, 10 years for the CDVHAN and 5 years for each of
12 the pointing and presenting but all charges run, all sentences
13 are running concurrent and this application was filed on May
14 23rd 2011. He's raised various allegations, Your Honor, and
15 they should be in the packet, I know you've had a couple of
16 amendments that have been raised, um, and in in the interim
17 so there were various allegations dealing with ineffective
18 assistance of counsel but I'll turn it over to Mr. Alford for
19 this, uh, at this time.

20 MR. ALFORD: Thank you, Your Honor.

21 THE COURT: Mr. Alford.

22 MR. ALFORD: The, uh, the amendment to petitioner's
23 application for PCR which sets out the, I guess the issues, if
24 the Court doesn't have it, I have some extras.

25 THE COURT: Let me ask ya this: What I have is a one page

MOTIONS AND MATTERS

1 document has, uh, as to ineffective assistance A through H,
2 then on the ---

3 MR. ALFORD: I and J ---

4 THE COURT: --- and then on the back as to grand jury I
5 and J, is that what the grounds ---

6 MR. ALFORD: That's ---

7 THE COURT: --- you ---

8 MR. ALFORD: --- correct, Your Honor.

9 THE COURT: Okay.

10 MR. ALFORD: Uh, ---

11 THE COURT: Any other grounds other than those stated in
12 the amended application?

13 MR. ALFORD: Well we were, uh, we were here in January
14 because the case was so old and issues kept bein' raised that
15 Judge Couch had given us I think to February 5 ---

16 THE COURT: Okay.

17 MR. ALFORD: --- this was the the final amendment ---

18 THE COURT: Got ya.

19 MR. ALFORD: --- so, uh, there may be other issues but I
20 don't believe I can raise those at this point. Uh, these are
21 the issues that I think we we have, we have raised. Now I
22 would like to address before I call Mr. Thompson the the issue
23 of the grand jury that we had we got, we did receive a copy of
24 the grand jury list from the clerk of court a Cherokee County
25 under the *Evans v. State* standard, I know my client has raised

MOTIONS AND MATTERS

1 that as an issue, I don't think, uh, as an officer of the
2 court I can go forward with it on any basis that the, on a
3 *prima facie* case that there are any irregularities in the
4 grand jury.

5 THE COURT: Okay, sir.

6 THE ALFORD: And I I realize that my client on the record
7 probably disagrees with that.

8 THE APPLICANT: Yeah, I do, I disagree with that.

9 THE COURT: I'll hear from you. Let me tell you
10 this, ---

11 THE APPLICANT: Ut-oh.

12 THE COURT: --- let me tell you again if you speak out
13 again without bein' asked to, I'm gonna hold you in contempt
14 and I will sentence you on top of your other sentence even if
15 I grant the PCR, you understand?

16 THE APPLICANT: Oh, my bad, pologize.

17 THE COURT: Okay, you'll behave in this courtroom.

18 THE APPLICANT: I I apologize..

19 THE COURT: Alright.

20 MR. ALFORD: Uh, Your Honor, I'd like to call
21 Mr. Thompson if I could. Take the witness stand over there,
22 please.

23 THE COURT: Do you swear the witness, Mr. Bailiff?

24 THE BAILIFF: I will, sir.

25 (Whereupon, the applicant came forward.)

BRANSON JAMAL THOMPSON - DIRECT EXAMINATION BY MR. ALFORD

1 BRANSON JAMAL THOMPSON, having
2 been first duly sworn, testified as follows:

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

4 DIRECT EXAMINATION BY MR. ALFORD:

5 Q. Mr. Thompson, I'd like to take you through the issues
6 that you've raised and if you could explain to the Court why
7 you feel that Court oughta take it under consideration. We've
8 raised the the issue when you're represented by, uh, counsel
9 at the trial level that you were not properly advised as to a
10 right to an appeal, can you tell us what basis that is.

11 A. Doing what issue now?

12 Q. The the right to appeal the sentence that you received.
13 Were were you advised about an appeal after ---

14 A. No.

15 Q. --- your your plea and sentencing at the trial court
16 level?

17 A. No, I wasn't even advised of no, uh, appeal, I wasn't
18 advised of nuttin', I mean, my lawyer he had me go into the
19 courtroom, before I went into the courtroom he seen me maybe
20 two or three minutes prior to my goin' to trial 'cause I was
21 on a fast and speedy trial so prior to the trial, prior to me
22 waitin' to go in there to present ---

23 Q. Okay, ---

24 A. --- you know.

25 Q. --- prior prior to seein' him on the day of trial how

BRANSON JAMAL THOMPSON - DIRECT EXAMINATION BY MR. ALFORD

1 many times had you met with him previously?

2 A. Only three times outta two weeks, ---

3 Q. Okay.

4 A. --- only met with him two times. Each time that I met
5 with him he didn't have nuttin' to tell me, no type a defend,
6 no type a nuttin' that he wanted presentin' me far as what he
7 came up with a strategy, defense or anything.

8 Q. Uh,, what did you understand as the charges you were
9 facing?

10 A. I didn't have no understandin', all he told me I was
11 charged with first degree burglary, told me I was charged with
12 two point and presentin' and high aggravated nature criminal
13 domestic violence, he didn't give no understandin' of what it
14 consist of, the mandatory minimum or the max to each charge
15 period, he didn't give me no type a understanding or nothin',
16 all he told me was either I could plea to 20 years, go to
17 court, get life plus 20. The three times he came to see me he
18 told me that the solicitor told him if I go to trial the State
19 witnesses gonna talk against me, I'm gonna get a life sentence
20 plus 20 years so when he told me that, it scared me up, that's
21 the only reason I was told him that I was gonna take the plea
22 bargain 'cause a what he told me, I didn't have no
23 understandin'.

24 Q. In in those, uh, how many meetings did you say you had
25 prior to the date of the trial?

1 A. Only three.

2 Q. Okay. How long were each a those meetings approximately?

3 A. No more, no more than 20 minutes if that.

4 Q. Okay. Did you have a chance to review the we'll call the
5 Rule 5 discovery documents that the State had against you?

6 A. No, only thing he did was bring me my motion a discovery.
7 Within the process of bringin' me my motion discovery he tell
8 me to sign on it, after I signed on it he told me to take it
9 back to my cell and look over it myself, when he come back he
10 was gonna present everything to me and show me what was goin'
11 on with inside the motion. I didn't have no knowledge of what
12 it was. He told me it was a Rule 5, I signed on it, after
13 that he didn't never come back even talk to me about what what
14 the mater -- evidence in there that he coulda used on my
15 behalf or what the State had against me, he never present
16 anything to me, he left me in the blind the whole time.

17 Q. Were all the possible witnesses you were aware of were
18 they listed though in those documents provided you?

19 A. Far as, far as the victims, he told me each victim that
20 showed up, two showed up: Pasquana Jefferies and Ashley Smith
21 showed up, that was the two victim that showed up outta three
22 victims.

23 Q. Okay. One of your issues you have raised is is that you
24 had consent for the entry, how was that investigated or how
25 was that?

BRANSON JAMAL THOMPSON - DIRECT EXAMINATION BY MR. ALFORD

1 A. That was never investigated, my lawyer never even sat
2 down told me he investigated it. He never told me anything
3 about the consent. He didn't ask me did I have consent, he
4 didn't ask me did I commit the burglary or was I let into the
5 dwellin', only thing he told me what was against me, what I
6 was lookin' at, that was it, he didn't present nuttin' to me
7 for no type a defense, no type a strategy period.

8 Q. Okay. Now you raise an issue about your mental state at
9 that time about conducting an evaluation, can you explain to
10 the Court what basis you may have.

11 A. Far as with the issues dealin' with the mental
12 evaluation?

13 Q. Yes, yes.

14 A. Alright. At the time I was goin' through a lotta stuff,
15 you know, I was on them drugs real bad, everything, I was
16 goin' through a mental breakdown at the time, I had a lot
17 goin' on mentally so I wasn't even focused at the time that
18 me, my baby mother, her sister them had fell out at the time a
19 me goin' into the dwellin'. I didn't never went to dwellin'
20 without consent, you know, and I didn't even have time to
21 explain that, then I was goin' through stuff, hearin' stuff
22 just basically delusional, you know what I'm sayin', that he
23 didn't even come to me to ask me none a this. He didn't ask
24 me what did he need to do for me, what it was that he could do
25 for me or anything in time me pleading guilty, I'm talkin'

BRANSON JAMAL THOMPSON - DIRECT EXAMINATION BY MR. ALFORD

1 about all this prejudice me right here. Had he came to me,
2 gave me a full understandin' what I was pleadin' to or what
3 charge consist of, each and every charge the minimum and max I
4 woulda never pled guilty, I woulda proceed to trial 'cause I
5 wasn't even never guilty of first degree burglary, period. I
6 I had consent, I was let into the dwellin'.

7 (Pause.)

8 Q. How much investigation or discussion did ya have with,
9 uh, Mr. Thompson on your prior record?

10 A. What type a discussion did I have with him on my prior
11 record?

12 Q. Okay.

13 A. I have, uh, there really enough time to bring up issues
14 dealin' with my prior record but I did state on the transcript
15 to the judge at the time that I didn't have a prior record a
16 two or more burglaries or a home invasion, that was one a the
17 reason why the solicitor charged me with first degree burg
18 'cause he said I had a prior record a two or more or a house
19 breakin' and that I committed the crime at nighttime and
20 without consent but I never had time to go over wit -- over
21 this with my lawyer, he never even sat down to ask me did I
22 have a prior record a two or more burglaries, he never even
23 sat down to give me a understandin' a what a burg consist of,
24 I had found this out since I been down the road studyin' the
25 law.

BRANSON JAMAL THOMPSON - DIRECT EXAMINATION BY MR. ALFORD

1 Q. Okay. And you raised that at the trial or at ---

2 A. Yeah, I ---

3 Q. --- the plea?

4 A. --- raised it at tri -- it's it's on the tr -- it's on my
5 transcript that I I doesn't have a prior record and if I can,
6 if I can ask the judge, if I could ask the judge right here I
7 have sumtin' from, that I have sumtin' from Internal Affairs,
8 I have sumtin' from Internal Affairs my background for 2008
9 February the 14th when they said I committed the two
10 burglaries or the home invasion. I have it right now on my,
11 right now with me as evidence or exhibit to show the judge
12 that I never even committed a first two third degree
13 burglaries at the time 'cause I was down the road sentenced to
14 three other charges at the time they say I committed these
15 tw -- them two third degree burglaries.

16 Q. But you raise it at your plea sentencing, you objected to
17 the fact of the priors.

18 A. Yeah, I objected to it.

19 Q. Okay, did, and did anybody follow up with that?

20 A. No, didn't nobody follow up with that, that prejudiced me
21 too 'cause I went, that was the reason why the solicitor
22 convicted me of a first degree burglary because a the two
23 priors ---

24 Q. Okay.

25 A. --- and that prejudiced me. Had my lawyer gave me

BRANSON JAMAL THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 understandin' of that I wouldn'ta never pled guilty. I
2 proceeded to trial because that was a part a the element of a
3 first degree burglary, I never committed a third degree burg a
4 day in my life, never.

5 Q. Please answer any questions of Ms. White.

6 MS. WHITE: Thank you.

7 CROSS-EXAMINATION BY MS. WHITE:

8 Q. Mr. Thompson, uh, you contested the two burglary thirds
9 but you were in jail on a probation violation at the time of
10 the plea, is that right?

11 A. Yeah, I was on, yeah, I was on, I was on violation a
12 probation.

13 Q. And although you contest the burglary third you had a a
14 prior CDV high and aggravated nature and a pointing a firearm?

15 A. And a resisting arrest, I have it on record right here
16 right now.

17 Q. Okay, so you were serving time, you had been through the
18 Court system a little bit prior and had a prior record before
19 these charges.

20 A. Yeah, I had a prior record at that.

21 Q. Okay. Now you said that you only were able to see your
22 attorney a couple a times in the weeks before trial but you
23 were aware 'cause you stated you knew what charges you were
24 facing at trial, is that right?

25 A. Yeah, I knew 'cause he t -- he -- I mean, I had an

BRANSON JAMAL THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 understanding because a him givin' my motion a discovery and
2 with him tellin' me when he came to see me out of the three
3 times. See, I had understandin' that I was pleadin' guilty to
4 a burglary, two pointin' and presentin' and a high aggravated
5 nature criminal domestic violence, I had plenty understandin'
6 a that what ---

7 Q. Okay, and in fact two a those charges you had been found
8 guilty of prior to, right, that's ---

9 A. Far as, ---

10 Q. --- why you were ---

11 A. --- far as ---

12 Q. --- the ---

13 A. --- what?

14 Q. --- CDVHAN and pointing and presenting, so you would have
15 a little bit of experience with those charges prior?

16 A. Mean, in the past yeah, but it still the same time I pled
17 guilty then without understandin'.

18 Q. Okay, and the Court went over with you a lotta things
19 during the plea, did they not, about whether or not you were
20 aware this was a negotiated plea for 20 years ---

21 A. Yeah, they told ---

22 Q. --- on all charges?

23 A. Okay, they told me it was negotiated plea but o -- when
24 they told me it was negotiated plea, the the judge didn't give
25 me a full understandin' of the critical elements pertainin' to

1 a first degree burglary or anything that I was bein' charged
2 with. I didn't have a understandin' with nuttin' I was bein'
3 charged with when it came down to, uh, judge gave me a full
4 understandin' far as critical elements and the nature of each
5 charge, I didn't have full understanding, it's on my
6 transcript, my plea wasn't knowing and voluntarily entered
7 'cause I didn't have a full understandin' of nuttin' I was
8 pleading guilty to. The judge ---

9 Q. Mr. Thompson, when they read the facts of the case, the
10 burglary in this situation involved you four o'clock in the
11 morning with a shotgun outside your girlfriend's sister's
12 house, is that right?

13 A. No.

14 Q. Okay, so the case when they read the facts in the case
15 and they said do you believe that the facts are correct, you
16 said yeah, basically they're correct, some of it's correct?

17 A. I said some of it was correct 'cause some of it was far
18 as with me havin' altercation with my baby mother, her sister
19 and them but it didn't never happen at no four o'clock in the
20 mornin', it happened around four o'clock in the afternoon
21 and ---

22 Q. Okay.

23 A. --- I did not force myself into the dwelling, period.

24 Q. Okay, my question also was a shotgun. Is it not true
25 that you also went with a shotgun and fired the weapon prior

BRANSON JAMAL THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 to entry in the home?

2 A. No.

3 Q. So you disagree with all this but yet on the record you
4 stated you agree with most of it.

5 A. I agree with most of it the stuff that I did do, that's
6 why I said I agree to some of it, some of it wasn't true on
7 the record.

8 Q. But you didn't, you didn't specify anything that you
9 thought that was incorrect.

10 A. Only reason I didn't specify because my lawyer Don
11 Thompson right there told me and when I sat down with him only
12 only way that my plea was gonna go through if I agree to
13 everything. No matter what I don't wanna agree to agree to it
14 in order for the plea to go through, that's what he told me,
15 that's the understandin' he gave to me in order for my plea to
16 go through so I wouldn't have to get a life sentence plus 20
17 years and he told me in the court in the county if I go to
18 trial the solicitor said I'm gonna get life plus 20 like he
19 already knew my outcome before I even was gonna go to trial.

20 Q. And, Mr. Thompson, wasn't that clear to you when they
21 advised you of the potential sentences that you could face a
22 sentence of life?

23 A. The the -- hold -- I don't understand that.

24 Q. They -- the Court advised you that had you gone to trial
25 you could've been sentenced up to life for burg first, is that

1 correct?

2 A. I don't, I don't remember. I can't even tell you if he,
3 if he did, I can't even tell you that. All I know is far as
4 what I know and understand about my case the judge didn't give
5 me a full understandin' of nothing. He didn't give me the
6 minimum or the max to each charge, period, he didn't tell me
7 nuttin', that's part a my, that's a part a my rights to know
8 and understand the critical elements of each charge what I was
9 gonna be pleading to, ---

10 Q. Okay, ---

11 A. --- that's ---

12 Q. --- and ---

13 A. --- the, that's a ---

14 Q. --- they didn't ---

15 A. --- that's that's ---

16 Q. Mr. Thompson, just let me go ahead and ask the question.
17 You did know that it was a negotiated plea on that day, did
18 you not?

19 A. He told me that, he told me that before I ---

20 Q. Okay.

21 A. --- he told me that before I signed on it.

22 Q. Okay, and you didn't wanna face life so in your mind the
23 20-year plea was a better offer?

24 A. Only reason -- it wasn't that I didn't wanna face life, I
25 woulda proceeded to trial, I wanted to go to trial. My lawyer

BRANSON JAMAL THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 told me that the solice [sic] said if I went to trial I'm
2 gonna get a life sentence plus 20 years, that scared me. How
3 can he tell me I'm get a life sentence plus 20 years without
4 bein' a judge or the jury? How could he ---

5 Q. But yet you decided today take the 20-year plea instead
6 of the life so clearly you were aware that was an option.

7 A. Okay, it was a option. After he ---

8 Q. Okay, ---

9 A. --- after I ---

10 Q. --- thank you.

11 A. --- got in, after I got in the courtroom.

12 Q. Mr. Thompson, that's alright, ---

13 THE COURT: No, just one second.

14 Q. --- that's enough.

15 THE COURT: If he wants to explain his answer he can ----

16 MS. WHITE: Okay.

17 THE COURT: --- go ahead but let me tell ya if you want
18 to explain your ---

19 THE APPLICANT: Yes.

20 THE COURT: --- answer, it has to be in response to the
21 question bein' asked. You can't just get up there
22 editorialize, say anything you want, okay?

23 THE APPLICANT: Okay.

24 THE COURT: So if you wanna explain your response to her
25 you may do so, alright?

BRANSON JAMAL THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 THE APPLICANT: Alright.

2 THE COURT: Okay.

3 THE APPLICANT: Far as ---

4 BY MS. WHITE:

5 Q. Do you have sumtin' you wanna finish with?

6 A. Yeah, far as, far as with the, with the negotiated plea,
7 I didn't have understandin' that until I sat down with him.
8 He didn't give me no understandin' of that at the time of me
9 sittin' in the county for two weeks. I didn't know nuttin'
10 about negotiated plea until I got in the courtroom with him.
11 He didn't even sit down with me to give me a understandin',
12 all he told me was that when I sat down with him that I could
13 plead to this right here. If I wanna plea to this, sign for
14 this and that'd be the best thing 'cause if I go to trial I'm
15 gonna get a life sentence plus 20 years, it scared me, that
16 prejudiced me. He told me that right there, I didn't have no
17 choice. A got a family and kids and I, and and and and that's
18 only thing I was thinkin' 'bout at the time ---

19 Q. Okay.

20 A. --- so I did what I thought was best for me.

21 Q. Okay, so you made the decision at the time that you
22 thought was the best decision.

23 A. Yeah, what I thought was best, ---

24 Q. Okay.

25 A. --- that I couldn't see myself gettin' a life sentence

BRANSON JAMAL THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 plus 20 years and he told me I was gonna get one so I ---

2 Q. And when the Court asked you if you're satisfied with the
3 work of your attorney and you were entering this freely,
4 voluntarily and you acknowledged that you were, ---

5 A. But I wasn't.

6 Q. So you were sworn that day to tell the truth, is that
7 correct?

8 A. I was sworn to tell the truth. My lawyer told me to
9 agree to everything regardless if I don't. He said if I don't
10 agree to it my plea wouldn't go through.

11 Q. Okay.

12 A. He said agree to everything. The judge supposed to gave
13 me a understanding of critical elements and he supposed to
14 give me a a understandin' of the nature of each charge before
15 I pled guilty so he could know that my plea was gonna be
16 knowingly, voluntarily enter under *Boykin* and under *State vs.*
17 *Patterson*.

18 Q. And, Mr. Thompson, you said that you were told to agree
19 to everything and you just did that whether it was truth or
20 not but you did speak up a couple times to the Court outside
21 of just answering yes, is that right?

22 A. I made a statement. He asked me did I have anything to
23 say at the time of me gettin' ready for I guess for him to
24 accept my plea and I read out sumtin' to him that I had wrote
25 pertainin' to the situation, it was a statement basically I

1 wrote it, I have ---

2 Q. And ---

3 A. --- a copy of it.

4 Q. Okay, and when he asked you about the facts being
5 substantially correct, you spoke out about that, you also
6 spoke out about whether or not you were convicted on your
7 prior charges, is that correct?

8 A. I spoke out about what?

9 Q. About whether or not you had these burglaries on your
10 prior record.

11 A. The two, the two burglaries? The two, the two burglaries
12 that they ---

13 Q. My question was did you speak out to the Court at those
14 times other than agreeing or saying yes?

15 A. Only thing I did besides agree I told the judge that I
16 didn't have a prior burglary record a two or more burglaries.
17 I got, I got stuff right here right now pertainin' to that to
18 show that I don't have a prior burglary, prior two burglaries
19 or not, that's sumtin' my lawyer failed to do to investigate
20 my case, he failed to do that. He failed to come up with a
21 defense in order to represent me. How could he tell me to
22 plead guilty to 20 years or go to trial, I'm gonna get life
23 plus 20 years, he never did in a proper investigation or
24 interview with the State witness determine if I entered the
25 crib without consent, if I had a shotgun, if I had a prior

BRANSON JAMAL THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 record. He did -- he he wanted me to plea without even havin'
2 a full understandin' of nothin' that was dealin' with my case.

3 Q. And you were aware you stated that there were two of the
4 victims that were present and prepared to testify against you
5 if you had gone to trial?

6 A. Yeah, I stated he -- far as what that I stated when?

7 Q. You stated earlier today ---

8 A. They was ---

9 Q. --- that he ---

10 A. --- in, they was in the courtroom.

11 Q. --- informed you ---

12 THE COURT: Just one second. You do not interrupt. Let
13 her finish her question, okay, sir ---

14 THE APPLICANT: Well ---

15 THE COURT: --- before you begin to answer.

16 THE APPLICANT: Oh, I apologize.

17 THE COURT: Okay.

18 THE APPLICANT: I apologize. I speakin' too fast,
19 apologize.

20 BY MS. WHITE:

21 Q. My question was you stated early earlier today that
22 Mr. Thompson informed you that there were two of the three
23 victims present and ready to testify had you gone to trial?

24 A. Yeah, he to -- yeah, he told me that. He told me the
25 solice [sic] said if I proceed to trial I'm get a life

1 sentence plus 20 years.

2 Q. Okay, and I think we've got that information so I will
3 turn it over at this time back to Mr. Alford.

4 THE COURT: Mr. Alford, anything in re -- in redirect?

5 MR. ALFORD: No, Your Honor.

6 THE COURT: Alright, Mr., uh, ---

7 MR. ALFORD: Excuse me.

8 THE COURT: --- Thompson, you mentioned, uh, two other
9 grounds that your attorney did not wish to pursue as to the
10 grand jury, do you have any evidence whatsoever as to those
11 allegations contained in your amended ---

12 THE APPLICANT: I ---

13 THE COURT: --- application?

14 THE APPLICANT: --- I got this right here (indicating),
15 Your Honor. I'm gonna ---

16 THE COURT: I'm gonna ask you to have a seat and,
17 Mr. Alford, I know ---

18 THE APPLICANT: Oh, ---

19 THE COURT: --- you're not offering as officer of the
20 Court, I'm askin' for him to see it, could you step up there
21 with him and get it for me please, sir.

22 THE APPLICANT: Oh, apologize.

23 THE COURT: That's, alright, that's alright.

24 THE APPLICANT: This right here? Hold on, gotta get
25 right there. This right here. This right here pertainin' to.

BRANSON JAMAL THOMPSON - REDIRECT EXAMINATION BY MR. ALFORD

1 That right there pertainin' to the grand jury bein' not
2 legally sworn, all that, ---

3 MR. ALFORD: Okay.

4 THE APPLICANT: --- me be indicted ---

5 MR. ALFORD: Uh, ---

6 THE APPLICANT: --- and that's the, uh, term sheet stuff
7 right there.

8 MR. ALFORD: Your Honor, if I can I can ask him about
9 these documents if the Court ---

10 THE COURT: Sure, ---

11 MR. ALFORD: --- would like.

12 THE COURT: --- and I understand you represented there
13 there there's, uh, no basis for these allegations ---

14 MR. ALFORD: Right.

15 THE COURT: --- so go ---

16 MR. ALFORD: Thank ---

17 THE COURT: --- right ahead, please.

18 MR. ALFORD: --- thank you, Your Honor.

19 REDIRECT EXAMINATION BY MR. ALFORD:

20 Q. Mr. Thompson, I have three documents in my hand, uh, if
21 you could, uh, just identify them then we'll talk about 'em in
22 a minute. The first one I have is it's is a letter to me?

23 A. Yeah, it's, uh, it's ---

24 Q. Okay.

25 A. --- it's a notice.

1 Q. Alright, now you realize you put it, you put in it's it's
2 attorney/client privilege normally, you're gonna waive that
3 for this letter.

4 A. It's a motion ---

5 Q. Right, ---

6 A. --- to amend to my PCR.

7 Q. --- but it's communication to me, I ---

8 A. Yeah.

9 Q. --- wanna make sure ---

10 A. Okay, true, yeah, yes, it is.

11 Q. We'll call that Defendant's or or Plaintiff's --

12 Petitioner's 1, P-1. Uh, the second one is an arrest warrant
13 M131 ---

14 A. That's that's the wrong, that's the wrong one. That's
15 the wrong -- yeah, okay, that's that's pertainin' to
16 burglary.

17 Q. That's that's the two or more.

18 A. Yeah, that's the two or more but I had indictment too but
19 it's over there inside my, uh, paperwork, ---

20 Q. Okay, ---

21 A. --- I had the indictment I wanna present it to to the,
22 uh, judge too.

23 Q. I I think indictment's part a the record, we can pull
24 that. Uh, I don't know that we need to mark it but it's part
25 a the record. What what is this other document I have here

BRANSON JAMAL THOMPSON - REDIRECT EXAMINATION BY MR. ALFORD

1 (indicating)?

2 A. That's the Court term for Seventh Circuit courts
3 pertainin' to when general sessions in and when common pleas
4 in 'cause on my indictment that's why I need my indictment to
5 present ---

6 Q. Okay, ---

7 A. --- it to show that ---

8 Q. --- and we'll mark that as Petitioner's 2.

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

10 (Letter dated 5/20/13 marked Petitioner's Exhibit No. 1
11 and January 2010 Circuit and Family Court terms of court
12 calendar marked Petitioner's Exhibit No. 2 for
13 identification.)

14 Q. Let me, if I indulge the Court. Is this the
15 indictment ---

16 A. For the first degree burglary?

17 Q. Let me look. It's, uh, that's high and aggravated, this
18 is burglary first degree, that's the one you wanted?

19 A. Yeah, that's the one I wanted.

20 MR. ALFORD: Okay, Your Your Honor, this is the
21 Indictment 10-GS-11-0136, there's a front and back to it and
22 I'd mark that. Do we need to mark it or is that a court
23 record?

24 MS. WHITE: It should be a part a the record, we
25 have ---

1 THE APPLICANT: Can I, ---

2 MS. WHITE: --- all the indictments ---

3 THE APPLICANT: --- can I use this?

4 THE COURT: Okay.

5 THE APPLICANT: Can I use this?

6 MR. ALFORD: Yes.

7 MS. WHITE: --- already in the record.

8 MR. ALFORD: Okay, so it's already in the record, that's
9 why it's not marked.

10 BY MR. ALFORD:

11 Q. Okay, now you have before you Petitioner's 1 document,
12 Petitioner's 2 and the indictment for burglary first offense,
13 if you could explain to the Court why you believe there's a
14 grand jury issue.

15 A. Alright. When it, when it come down to my indictment, my
16 indictment is, my indictment is defective. On the face of the
17 indictment and on the back of the indictment they say I
18 committed a first degree burglary when inside the elements of
19 the first degree burglary and it tells me what I did went
20 inside, when it tells me what I did was enterin' the crib
21 without consent, it doesn't specify if I burglarized the home
22 or not. It supposed to gave me a full understandin' of the
23 critical elements against me. I cannot commit a first degree
24 burglary without enterin' a crib without consent and with
25 intent to commit a crime therein. My indictment doesn't even

BRANSON JAMAL THOMPSON - REDIRECT EXAMINATION BY MR. ALFORD

1 specify what crime that was intended to commit inside the
2 dwellin' ---

3 Q. Okay.

4 A. --- and on on the back, on on the back when it come down
5 to the grand jury convenin' on the indictment on 123-2010, I
6 have a term sheet that I got from the, got from the Supreme
7 Court and it states right here on term sheet that general
8 session was in and common pleas was in at the time of my
9 indictment supposed to been convened on so it was illegal,
10 it -- my indictment wasn't never used and convened on, the
11 solicitor committed fraud on the courts in order to have me
12 convicted, I, my indictment wasn't never one time even true
13 billed. I have indictment over there that doesn't have the
14 true bill on there, then on the indictment on the face of it
15 it just gives you the South Carolina Codes of Law on what a
16 first degree burg consists of but on the front of indictments
17 too also as I said before it doesn't even specify what a first
18 degree burglary consist of and grand jury was never convened
19 on my indictment, the dates on my indictment is contradictin'
20 and all and that's a major defect and that goes down to Sharp
21 with *Sharp Sharp vs. Johnson*, that's a case right there
22 pertainin' to the indictment issue. I feel that ---

23 THE COURT: Let let me stop you right there. You, uh,
24 uh, with regard to the grand jury, your claim is that State
25 mislead the grand jury and that there was improper racial, uh,

MOTIONS AND MATTERS

1 uh, mix of the grand jury and that's what you're limited to
2 bringin' up at this hearing, okay, sir, The the effectiveness
3 of the grand, uh, of the indictment was not raised by you nor
4 has it been considered by the Court.

5 THE APPLICANT: That's right here. That's that's what
6 the *Evans vs.*, that's what the *Evans vs.*, that's what this
7 *Evan's vs. State* is pertainin' to illegal illegal grand
8 jury.

9 THE COURT: Mr., uh, Thompson, ---

10 THE APPLICANT: Sir?

11 THE COURT: --- grounds as to grand jury or the the
12 prosecutor misled the grand jury and African-Americans are
13 systematically excre -- excrude -- excluded from the selection
14 process, do you have any evidence whatsoever as to either one
15 of those grounds?

16 THE APPLICANT: As a, okay, I I'm tryin' to explain that
17 wasn't even a ground. I I had gave this to my lawyer to amend
18 for me. He didn't never amend it, that's why I brung it here
19 today to amend it to you, to give it to you to amend to my
20 PCR ---

21 THE COURT: I'm ---

22 THE APPLICANT: --- hearin'.

23 THE COURT: --- not gonna let you amend it at the
24 hearing.

25 THE APPLICANT: You said what?

MOTIONS AND MATTERS

1 THE COURT: And and I'm not allowing you to amend your
2 petition at the hearing, it's been amended several times is
3 that correct, Mr. Alford?

4 MR. ALFORD: That's correct, Your Honor.

5 THE COURT: Okay, no further amendments. Now any other
6 evidence to to presented as to the grand jury makeup or the
7 conduct at the grand grand jury hearing whatsoever?

8 THE APPLICANT: Far as with the grand jury, wasn't never
9 a grand jury. They never convened on my indictment, it was a,
10 it was illegal process.

11 THE COURT: Do you have any evidence of that?

12 THE APPLICANT: Yes, right here (indicating.) I I was
13 just explaining it to you right here. It's right here when it
14 come down to the term, the Seventh Circuit, right here ---

15 THE COURT: Okay.

16 THE APPLICANT: --- in yellow.

17 THE COURT: Okay.

18 THE APPLICANT: General sessions and common pleas was in
19 at the time that the grand jury suppose to convened on my
20 indictment to true bill it. General session, common pleas was
21 in, how could there, the grand jury convene when Court was in
22 session? It's not possible. This is a closed session grand
23 jury. My indictment's supposed to been convened on in a
24 private session with the jurors and with the solicitor and
25 they supposed to came to a understanding of the the evidence

MOTIONS AND MATTERS

1 in order for me to be true billed or no bill and I got, I got,
2 that's why I got the term sheet right ---

3 THE COURT: Okay, ---

4 THE APPLICANT: --- here for you.

5 THE COURT: --- those those are marked exhibits, correct?

6 MR. ALFORD: That is correct, Your Honor.

7 THE COURT: Alright, any other evidence?

8 THE APPLICANT: I got, excuse me, I had, I had dropped
9 sumtin' right here. I got sumtin' right here I had ---

10 THE COURT: Okay.

11 THE APPLICANT: --- dropped. It's my, uh, it's it's more
12 stuff pertainin' to the indictment, dealin' with the grand
13 jury.

14 POLICE OFFICER: I'll get it.

15 THE APPLICANT: Alright.

16 MR. ALFORD: Thank you.

17 THE APPLICANT: There's some, there's some stuff right
18 here that I I had right here ---

19 THE COURT: I'm not gonna hear anymore motions if they're
20 not included in ---

21 THE APPLICANT: Oh, no, it's it's not ---

22 THE COURT: Listen to me, do not interrupt me again. I'm
23 not gonna let you entertain anymore motions, no more
24 amendments to the hearing so had multiple opportunities,
25 nothin's gonna be filed at this hearing. I'm gonna take the

MOTIONS AND MATTERS

1 evidence as to what's the allegations are in this hearing, ---

2 THE APPLICANT: Yeah.

3 THE COURT: --- no other evidence, do you understand?

4 THE APPLICANT: Yes, sir.

5 THE COURT: Okay. Now do you have any other evidence
6 besides exhibits marked by Mr. Alford?

7 THE APPLICANT: I just had this right here (indicating)
8 just pertainin' to what I was wantin' to speak on just dealin'
9 with the grand jury not bein' properly convened on, not bein'
10 properly and ---

11 THE COURT: Alright, those those are those documents you
12 just showed me?

13 THE APPLICANT: No, this was a a a letter that I had
14 wrote out, it was pertain, it was pertainin' to my facts, my
15 issues of the grand jury not convenin' on my indictment, it
16 was just facts pertainin' to the indictment, the grand jury
17 not convenin' on.

18 THE COURT: Let me see it.

19 (Whereupon, the document was handed to the Court.)

20 THE COURT: I'm not gonna allow that, that would be
21 directed towards the issues in this case.

22 THE APPLICANT: Judge, ---

23 THE COURT: --- I am allowing the other documents in,
24 okay, ---

25 MR. ALFORD: If I could that he wanted me to...

DON A. THOMPSON - DIRECT EXAMINATION BY MR. ALFORD

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

2 THE COURT: Are you finished with your questions?

3 MR. ALFORD: I am, Your Honor.

4 THE COURT: Okay, any questions as result of that,

5 Ms. White?

6 MS. WHITE: Nothing, Your Honor.

7 THE COURT: Okay. Mr. Thompson, you may step down.

8 THE APPLICANT: Step down?

9 (Whereupon, the applicant left the stand.)

10 MR. ALFORD: Call Mr. Don Thompson.

11 (Whereupon, the witness came forward.)

12 DON A. THOMPSON, having been first
13 duly sworn, testified as follows:

14 THE BAILIFF: If you will have a -- there's a seat here,
15 sir.

16 DIRECT EXAMINATION BY MR. ALFORD:

17 Q Mr. Thompson, can you walk us through on this case how
18 you worked up the charges and what investigation you did.

19 A. I'll try to. Uh, I was assigned to represent
20 Mr. Thompson on these charges earlier that year, I also had
21 him on a probation violation if I remember correctly. The --
22 I met with him, we discussed the case, um, he was sent to the
23 Department a Corrections on the probation violation. Towards
24 the end of the year, and I wanna say it was in November of
25 that year, he was brought back from the Department a

DON A. THOMPSON - DIRECT EXAMINATION BY MR. ALFORD

1 Corrections, he finished his time on the probation violation,
2 he was brought back, placed in the jail and we had filed a
3 speedy trial motion, well it was time if, basically time for
4 the speedy trial to to be up. Uh, his case was put on the
5 trial docket waiting to be called for trial. I met with
6 Mr. Thompson, I don't remember the exact date, if it's, if
7 it's important I'll look it up but if it's not I met with
8 Mr. Thompson, we discussed his case again. At that time I had
9 complete discovery, I gave a copy of it to him, told him to go
10 over it, that I'd be back in a couple days and we would sit
11 down and and go over it in detail. Uh, I went back in a
12 couple days, we did sit down, we did go over it. Uh, uh, I
13 don't remember if it was that day or or a few days later, it
14 was the Friday of the week and we were up for trial the
15 following Monday, I met with him in the jail, uh, to get ready
16 final preparation for trial, now in the meantime he had wanted
17 me to talk to his mother who he said was a witness and I had
18 tried to talk to the witnesses in the house, the three people
19 in the house, I located two of 'em, I couldn't locate the
20 third one if I remember correctly, they'd moved outta town or
21 somethin' like that. Uh, I did talk with his mother. The
22 only, his mother's story was basically the same as the people
23 in the house except for one point and that one point was the
24 mother said she did not hear the gunfire. Uh, there was an
25 allegation that he fired two shots outside the house before he

DON A. THOMPSON - DIRECT EXAMINATION BY MR. ALFORD

1 went in from a shotgun, uh, the mother said she did not hear
2 two shots, uh, but there were two empty shotgun shells
3 retrieved, uh, just outside the door. Uh, he told me at that
4 point in time that we we talked about it, I felt like he
5 needed to plead guilty, uh, he told me he was gonna plead
6 guilty. The State had never offered anything less than
7 20 years, that was their offer on the case. I felt like that
8 was too much time for this case and I told him so. I told him
9 this was before the case law came down that said you could not
10 suspend burglary first below 15 years, some judges would, some
11 judges wouldn't, the judge that was gonna be there the next
12 week was one of those judges that would suspend it below that.
13 Um, I told him I felt like our best interest and his best
14 interest was plead guilty straight up, take what the judge
15 gave him. When I left the jail that day that's what I thought
16 we were gonna do Monday mornin'. When we got back to court
17 the next week, he told me that no he had decided he wanted to
18 take the 20 years, uh, as a negotiated plea, uh, again I told
19 him that I felt like that was too much time but that was his
20 call. He was afraid that since it did have a potential of a
21 life sentence he might get the life sentence, that like I say
22 that was his call, uh, not mine and, uh, I think even if you
23 look at the transcript I think I told the judge I wasn't quite
24 in agreement with with his taking a negotiated sentence but,
25 uh, basically that's the extent of of what we did.

DON A. THOMPSON - DIRECT EXAMINATION BY MR. ALFORD

1 Q. Did you review the the, uh, ---

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

3 Q. --- on on the, on the charges in terms of if there was
4 any lesser included or any, uh, leeway to have as far as the
5 to negotiate down if you will?

6 A. We tried, uh, the State would not negotiate the charges
7 down. Uh, the, I mean, the facts were basically that as
8 alleged and as supported by his mother except for the firing
9 of the shotgun was that he went to, he and his child's mother
10 got into an argument, he went to the house, fired the shotgun
11 at the back door, kicked the door in, went in and pointed the
12 gun at the two two women in the house, uh, made threats to
13 'em. We tried to negotiate with the State, uh, negotiate
14 lesser charges, they just wouldn't do it and I'll be honest
15 with ya had we gone to trial I don't think we woulda been
16 successful in getting a burglary second as opposed to a
17 burglary first or a CDV as opposed to a CDV high and
18 aggravated.

19 Q. How do you, uh, how'd you explain, Mr. Thompson, the
20 issues with let's say respect to an appeal? What what what
21 happened in this case after you go to court take the
22 negotiated plea?

23 A. On a guilty plea I never go explain the right to appeal
24 unless I think there's been a problem with the plea after the
25 plea. Now, you know, during the course of representation

1 prior to goin' to court, uh, and when we're signin' up I
2 usually explain appeal and and PCR and then basically the way
3 I explain it is, you know, if I s -- if I screw up, you've got
4 a right to a PCR and you've got a, you got a year to file it,
5 if the Court screws up and I bring it to their attention, uh,
6 and they they don't change it then we got ten days to file an
7 appeal, you know, you can't file an appeal just 'cause you're
8 not happy with the outcome, that's not necessarily grounds for
9 an appeal, you can file it but it's not grounds, and, uh,
10 that's the way I explain it early in the representation,
11 how -- however, after the plea when it's a plea situation, I
12 don't go back and explain appeal or to see if they want to or
13 anything if I don't see a problem.

14 Q. This issue about his prior record if there hadn't been
15 the burglary issue would that have influenced your negotiating
16 position or the State's position?

17 A. No, not at all, in fact, I don't, you can get Mr. Morin
18 in here but I don't think he considered it at all. His his
19 consideration was there was a weapon involved and it was
20 durin' the nighttime.

21 Q. Was there any questions in terms of the, uh, petitioner's
22 mental state at that time?

23 A. No, sir.

24 Q. Nothin' in your record that you know of that brought to
25 your attention?

DON A. THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 A. No, sir.

2 Q. You were able to talk to two of the, I guess two out of
3 the three victims inside the house?

4 A. Well there wasn't but two victims inside the house.

5 There was a a third party that one of the ladies in the house
6 went down to say somethin' to if I remember it correctly and
7 and and he wasn't really in there I don't think when the door
8 was kicked in, uh, maybe he was, I'm just, I'm not sure about
9 him, I was able to talk with him and one a the girls, one a
10 the girls had disappeared.

11 Q. Please answer any questions of Ms. White.

12 MS. WHITE: Thank you.

13 CROSS-EXAMINATION BY MS. WHITE:

14 Q. Mr. Thompson, just, uh, a few quick questions. When you
15 said you had been assigned earlier to represent Mr. Thompson,
16 uh, on these charges and on a probation revocation, had you
17 been involved with him in any of his other prior cases?

18 A. I believe that I had. I don't, I don't have any other
19 files with me and I don't but I, but I knew Mr. Thompson so
20 only way I would know him, I don't live in Gaffney so the only
21 way I would know him is if I had represented him.

22 Q. And in what capacity did you represent him?

23 A. I would assume I was his attorney on a criminal charge.

24 Q. And who did you work for at the time?

25 A. I was the chief public defender over there.

1 Q. And that's in Cherokee County?

2 A. In Cherokee County, yeah.

3 Q. How long, at the time you represented him, how long had
4 you been practicin' law?

5 A. How long had I been practicin' law? I was admitted
6 November a 1980.

7 Q. And at that point how long had you been I guess criminal
8 defense work?

9 A. I started, well I started doin' solely criminal work in
10 January of '90, I was in the solicitor's office for two years.
11 Uh, I left there, went to the Public Defender's Office in '92
12 and, uh, I was in the Spartanburg Public Defender's Office
13 until August a '99 and I became the chief public defender in
14 Cherokee County in August a '99.

15 Q. Okay. Uh, in regards to the appeal issue, did
16 Mr. Thompson ask you to file an appeal followin' his guilty
17 plea?

18 A. No.

19 Q. And had he asked you to file an appeal would you have
20 filed one on his behalf?

21 A. Had he asked me within the time period, uh, I would have
22 filed an appeal and sent the letter to the the Court of
23 Appeals that, you know, I I knew of no issues but I was bein'
24 instruct to do so by my client.

25 Q. Okay, and in regards to the facts of the case at this

DON A. THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 point, had you talked with him, you you obviously had talked
2 with him about proceeding to trial because the trial was
3 scheduled and set for Monday, ---

4 A. Yes.

5 Q. --- is it correct that he said that there were a couple
6 of the witnesses available and ready to testify had the case
7 gone to trial?

8 A. I don't remember that, uh, but I do remember I talked to
9 two of 'em so I would assume they were probably there.

10 Q. And just to clarify the the burglary first, the
11 enhancement to a burglary first, your impression is not that
12 it was related to these prior convictions they alleged he had
13 but it was related to the the weapon that was included and ---

14 A. The weapon ---

15 Q. --- the nighttime element.

16 A. --- and the nighttime.

17 Q. And on the indictment it includes all of the possible
18 elements that could enhance, is that correct?

19 THE COURT: The indictment's not a issue in this
20 matter, ---

21 MS. WHITE: Okay.

22 THE COURT: --- go ahead.

23 BY MS. WHITE:

24 Q. In regards to the mental state, he never mentioned
25 anything to you or his mother about issues of hearing voices

DON A. THOMPSON - CROSS-EXAMINATION BY MS. WHITE

1 or anything at the time?

2 A. No, the only thing I was aware of is that he had,
3 according to his mother and him, he had anger problems.

4 Q. Okay, and were you able to sufficiently communicate with
5 him, uh, that you thought to clarify and have him understand
6 what was goin' on?

7 A. I had no, there was no doubt in my mind ---

8 Q. O ---

9 A. --- that he understood what was goin' on.

10 Q. --- okay. Thank you, that's all I have, Mr. Thompson.

11 THE COURT: Any redirect, Mr. Alford?

12 MR. ALFORD: No, sir.

13 THE COURT: Alright, thank you, sir, you may ---

14 THE WITNESS: Thank you, sir.

15 THE COURT: --- step down. May this witness be excused?

16 MS. WHITE: Yes, Your Honor.

17 MR. ALFORD: No no objection, Your Honor.

18 THE COURT: Thank you, sir, you may be excused.

19 THE WITNESS: Thank you. I'll remain if you don't mind,
20 Judge.

21 THE COURT: That's fine.

22 (Whereupon, the witness left the stand.)

23 THE COURT: Alright, any further witnesses?

24 MR. ALFORD: No, sir.

25 MS. WHITE: And the State has no witnesses, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Okay. I've reviewed the transcript, I've
2 looked at the indictment, I've listened to the testimony, uh,
3 this is gonna be the Court's ruling, uh, Ms. White, I'm gonna
4 ask you prepare prepare an order: Number 1, any
5 post-conviction relief that the plaintiff has the burd -- the
6 plaintiff or applicant rather has the burden of proof to show,
7 uh, uh, deficient performance by counsel and resulting
8 prejudice when you, uh, raise the issue of ineffective
9 assistance of counsel Number 1, uh, defendant raised that he
10 was not advised his right to appeal, even in his direct
11 testimony he never said, I asked my lawyer to appeal, he
12 didn't do it, that in in a plea situation counsel is not
13 required to advise, uh, uh, uh, somebody who pleads guilty of
14 their right to appeal. Under the circumstances of this case
15 there was none required, that ground is denied. Uh, Number 2,
16 failure to advise that a jury trial could consider the less
17 included, uh, lesser included charge of, uh, to burglary first
18 degree, uh, first I read through the pea -- plea colloquy
19 between Judge Hayes and the defendant and Judge Haye Judge
20 Hayes properly went through all the, uh, required elements of
21 a to have a valid plea with, uh, Mr. Thompson which would
22 including giving up your right to present any defenses, uh,
23 and quite frankly to get a lesser included charge you'd have
24 to have some evidence of it that would be available for you at
25 trial. Uh, the defendant admitted apparently his mother

MOTIONS AND MATTERS

1 admitted 'cause that's in the record and is testified by, uh,
2 counsel that this event took place at four o'clock in the
3 mornin' and defendant was armed with a shotgun, uh, under
4 those facts how he could get a lesser included charge I would
5 not be able to understand but notwithstanding he waived his
6 right to present a defense when he pled guilty. Uh, Number C
7 is just denied, it's nonsensical but it's just denied, uh,
8 there's no evidence of it regardless. Uh, Number D failure to
9 advise the negotiated plea also included community supervision
10 requirements, uh, that's not required, uh, however the Court
11 did go over with him, uh, the the the the nature of his plea
12 and properly and therefore that ground is denied. Uh, failure
13 to review discovery with this case, there's been no showing by
14 the defen -- in the applicant his case what the result
15 allegedly was from failure to, uh, investigate or explain, uh,
16 the potential witnesses or other witnesses and alternative
17 defenses, he has the burden of showin' that, he has not,
18 further I find his his testimony to be not credible, uh, and I
19 find that the, uh, uh, Mr. Thompson's testimony was in fact
20 credible during this hearing. He said there was, the
21 discovery was reviewed with him, they were gettin' ready to go
22 to trial preceding Monday and, uh, then defendant fearing that
23 he may have or by his own words receive a life sentence went
24 ahead and took a negotiated sentence which was explained to
25 him by by Judge Judge Hayes. Uh, failure to raise consent as

MOTIONS AND MATTERS

1 to under F, uh, there's no evidence that presented at this
2 hearing, that way is denied, there's no burden met on that.
3 Failure to investigate whether the State witness is subject to
4 intimidation there's no evidence presented on that and that is
5 denied as having met the burden of proof and also and the
6 final one failure to conduct a mental evaluation there's no
7 evidence presented that at the time of the plea or at the time
8 of this crime there is any McNaughton issues or that he was
9 unable to assist his, uh, pre -- his attorney in the
10 preparation this matter so, uh, Items A through H are denied,
11 uh, items as to the grand jury are just manifestly without
12 merit and they are denied then furthermore there's been
13 absolutely zero evidence presented by the defendant, I mean,
14 the applicant regard to those issues. Uh, Ms. White, I'm
15 gonna ask you to draft me a order consistent with this ruling,
16 provide it to Mr. Alford a ahead a time before you send it to
17 me.

18 MS. WHITE: Okay.

19 THE COURT: Uh, Mr. Alford, uh, you know how it is, if
20 you can't agree with it, just send me your disagreement with
21 it or send it to her, Ms. White, she'll send it to me.

22 MR. ALFORD: Thank you, Your Honor.

23 THE COURT: Thank the attorneys for your preparation.

24 MS. WHITE: Thank Your Honor.
25

1 CERTIFICATE OF REPORTER
2

3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on June 24, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 4 through 44, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

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

13 February 13, 2014

14 Margaret A. Woods

15 Margaret A. Woods, Court Reporter

16 in and for the State of South Carolina at Large.
17
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25

5-20-13

State of South Carolina
County of Cherokee

Branson J. Thompson
Applicant

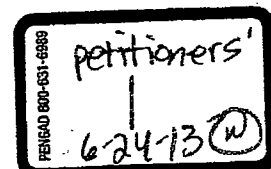
v.

State of South Carolina
Respondant

Dear, Mr. David C. Alford

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JUN 26 AM 11 20
BRANDY W. MCBEE

In requesting threw Evans v. State, 611 S.E.2d 510 (S.C. 2005)
A Defendant is entitled to receive Grand Jury Impeachment Documents in order to determine, by a timely motion to Quash an Indictment made before the Jury renders its Verdict, whether the State Grand Jury which Indicted him was legally established or suffered from any lesser irregularity which implicates the Defendants constitutional right to have his case considered by a Grand Jury which is properly constituted under the law.



Terms of Circuit and Family Court January 2010

Holidays:

Fri Jan 01 - New Year's Day
Mon Jan 18 - Martin Luther King, Jr. Day

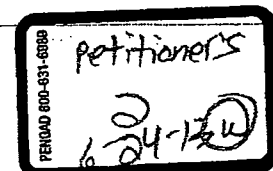
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CHEROKEE COUNTY, GA
2013 JUN 28 AM 11:28
BRANDY W. MOFFITT

Circuit Number	1/4/2010	1/11/2010	1/18/2010	1/25/2010
7	Administrative Week Cole, J. MOFFITT General Sessions Spartanburg Couch, Roger FAUCETTE 4, 5 GREEN 6, 7, 8 General Sessions 4, 5 Spartanburg Hayes, J. Mark WOODS 4, 5, 6 NO CR NEEDED 7, 8 General Sessions 8 Spartanburg Cooper, Gordon G. HUDGINS 8	Common Pleas Spartanburg Cole, J. MOFFITT Common Pleas Non- Jury/PCR Couch, Roger GREEN General Sessions Cherokee Hayes, J. Mark WATTS General Sessions 15 Spartanburg Cooper, Gordon G. DIGIROLAMO 15	General Sessions Spartanburg Cole, J. MOFFITT 18, 19, 20, 21 NO CR NEEDED 22 General Sessions Spartanburg Couch, Roger GREEN Common Pleas Non- Jury Hayes, J. Mark WOODS 18, 19 NO CR NEEDED 20 WOODS 21 NO CR NEEDED 22	Common Pleas Non- Jury Cole, J. MOFFITT Common Pleas Spartanburg Couch, Roger GREEN Common Pleas Cherokee Hayes, J. Mark WATTS 25, 26, 27, 28 am NO CR NEEDED 28 pm, 29 General Sessions 29 Spartanburg Cooper, Gordon G. FAUCETTE 29

CERTIFIED TRUE COPY

By

South Carolina Court Administration



STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
Branson Jamal Thompson; #326685,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2011-CP-11-0324

ORDER OF DISMISSAL

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 NOV 4 PM 8 35
BRIAN W. MSBEE

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 23, 2011, and amendments filed June 4, 2012, and February 13, 2013. The

Respondent made its Return on or about May 2, 2012. An evidentiary hearing into the matter was convened on June 24, 2013, at the Spartanburg County Courthouse. The Applicant was present and represented by David S. Alford Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

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

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Applicant was indicted at the August 2010 term of the Cherokee County Grand Jury for burglary – 1st degree (10-GS-11-0136), criminal domestic violence of a high and aggravated nature (10-GS-11-0135), and two counts of pointing and presenting a firearm (10-GS-11-0137, -0138). He was repre-

sented by Don A. Thompson, Esquire. On December 6, 2010, the Applicant pled guilty as indicted. He was sentenced by the Honorable J. Mark Hayes to confinement for concurrent terms of twenty years on burglary - 1st degree, ten years for criminal domestic violence of a high and aggravated nature, and five years for each count of pointing and presenting a firearm, pursuant to a negotiated sentence. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

In the current application and amendments, the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to advise as to right to appeal
 - b. Counsel failed to advise that a jury could have considered a lesser charge from burglary - 1st degree before pleading,
 - c. Counsel failed to explain elements of charges and not challenging State's duplicative reliance on same facts to prove different elements and charges,
 - d. Counsel failed to advise that the negotiated plea for twenty years--also included community supervision requirements;
 - e. Counsel failed to review and explain discovery materials, failed to investigate potential witnesses, alternate defenses and elements of charges,
 - f. Counsel failed to raise defense of consent for entry or investigate witnesses,
 - g. Counsel failed to investigate whether any State's witness was subject to intimidation,
 - h. Counsel failed to conduct a mental evaluation as to Applicant's mental condition,
2. Violations relating to Grand Jury, in that;
 - a. Prosecutor misled the grand jury by misstating the crime was at night and as to prior convictions of Applicant,
 - b. African Americans are systematically excluded from the selection process.

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BRANDY W. MOBBEE

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

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

Failed to advise as to right to appeal

~~The Applicant has alleged that he is entitled to a review of direct appeal issues pursuant~~
to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (U.S.).

This Court finds that the Applicant failed to meet his burden of proof as to this claim. The Applicant never presented any testimony that he asked Counsel to file an appeal on his behalf. Based upon the standard set forth in Roe v. Flores-Ortega, this Court finds that Counsel was not required to advise Applicant as to the right to appeal, in particular because the Applicant pled to an agreed upon negotiated sentence. This claim is denied and dismissed.

Failed to advise that a jury could have considered a lesser charge from burglary - 1st degree

This Court finds that the plea court reviewed all the necessary elements of a voluntary plea with Applicant, including giving up the right to present a defense to the charges.

Furthermore, Applicant's mother was prepared to testify and the Applicant acknowledged that the crime was committed at 4:00 am and that a shotgun was involved, which led to the burglary – 1st degree charge. Therefore, this Court finds that the Applicant failed to meet his burden of proof as to this claim and it is denied and dismissed.

Failed to explain elements of charges and failed to challenge State's duplicative reliance on same facts to prove different elements and charges

The only testimony presented in support of this claim was the assertion that Applicant would have proceeded to trial if Counsel had fully explained all of the elements of the charges. This Court does not find Applicant's testimony credible. As discussed previously, this Court finds that the plea colloquy was very thorough and the Applicant indicated that he understood his charges and the consequences of pleading to each of them. This Court finds that the Applicant has failed to meet his burden of proof as to this claim. Therefore, this claim is denied and dismissed.

Failed to advise that the negotiated plea also included community supervision requirements

This Court also finds that this claim should be denied because it lacks merit. The Supreme Court has addressed the issue of whether counsel was under a duty to advise his client of a community supervision program, made a condition of release after serving eighty-five percent of a "no-parole offense." Jackson v. State, 349 S.C. 62, 562 S.E.2d 475 (2002). The Supreme Court found the program was the functional equivalent of parole for other inmates. Applying Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983) and Knox v. State, 340 S.C. 81, 530 S.E.2d 887 (2000), the Supreme Court found that counsel is under no duty to advise a defendant about the community supervision program. Id.

This Court finds that Counsel is not required to advise the Applicant as to the community supervision requirements. However, even in light of no requirement of advisement, this Court

also finds that the plea court gave a complete plea colloquy, where all potential sentences and consequences regarding violent and most-serious charges were discussed. Therefore, this claim is denied and dismissed.

Failed to review and explain discovery materials, failed to investigate potential witnesses, alternate defenses and elements of charges

This Court finds that the Applicant's testimony as to these allegations was not credible, while Counsel's testimony was credible. Applicant testified that he only met with Counsel two or three times in the week prior to trial. Applicant testified that Counsel brought him a copy of his discovery materials and Rule 5 materials, to which Applicant signed an acknowledgement of receipt, but claimed that Counsel never reviewed the materials with him. Applicant testified that he and Counsel never discussed any possible trial strategy.

Counsel testified that he represented the Applicant on these charges and on a probation violation charge. Counsel testified that he met with the Applicant to discuss the case, and then the Applicant was sent to SCDC for the probation revocation. Counsel testified that Applicant was brought back to Cherokee County in November based upon a speedy trial motion that Applicant filed. Counsel testified that he met with the Applicant at that time and discussed the case and charges, at which time he provided Applicant with a complete set of discovery materials. Counsel then testified that he went back to review discovery materials with the Applicant a couple of days later. Counsel testified that he attempted to talk with three witnesses and was able to locate two of the three. Counsel testified that one of the three was a third party, but that witness was not a witness to the events inside the apartment. Counsel also testified that he spoke with Applicant's mother, who provided the same story that she had given police.

Although Applicant's mother claimed to not have heard any gun shots, two empty shells were retrieved from the apartment.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980).

When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Gronie, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

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COUNTY, S.C.
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BRANDY W. MOBEE

The Applicant failed to produce any witnesses or evidence that would support his claims. Applicant failed to demonstrate that there was anything that could have been discovered had Counsel done additional investigation. Applicant also failed to prove that there was any helpful testimony that could have been developed had Counsel spoken to all of the potential witnesses. Without any credible testimony or evidence to support his claims, this Court would have to engage in speculation to find that there was anything that Counsel failed to explain or investigate. Therefore, this Court finds that these claims are denied and dismissed.

Failed to raise defense of consent for entry or investigate witnesses

Again, as this Court noted earlier, the plea court reviewed with the Applicant all of his constitutional rights, including the right to a jury trial where Applicant could present a defense, and Applicant voluntarily waived all of those rights. Further, Applicant failed to offer any evidence to support a possible defense of consent, in light of the established facts of the case. Also, as indicated in the previous section, the Applicant failed to produce the testimony of any witnesses that he alleged Counsel failed to investigate to support that those witnesses would have offered any beneficial testimony. Therefore, these claims are denied and dismissed.

Failed to investigate whether any State's witness was subject to intimidation

As to this allegation, this Court finds that it lacks merit. There is absolutely no evidence in the record, or was there any evidence presented at the hearing to support any allegations of intimidation of witnesses. Therefore, this Court finds that this claim is denied and dismissed based on the Applicant's failure to meet his burden of proof.

Failed to have a mental evaluation of Applicant obtained

This Court also finds that the Applicant has failed to meet his burden of proof as to this claim. A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient

capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596, (1992). An Applicant challenging his competency to plead must prove this allegation by a preponderance of the evidence. Id.

An Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong."

~~This Court finds that the Applicant produced no evidence or testimony to support his~~
claim that Counsel should have obtained an evaluation of Applicant. The Applicant testified that he was not focused at the time of the plea and had been on drugs previously. Applicant also testified that he was going through a lot of stuff and was "hearing" stuff. However, Counsel testified that Applicant never indicated to him that there were any issues with his mental state. The Applicant offered no testimony or medical records to support a claim that he had ever or currently suffered from any mental incapacity. This Court finds that because there was no evidence or credible testimony to support any claims related to Applicant's mental competence, this claim is denied and dismissed.

Violations Regarding Grand Jury

This Court finds that this claim is manifestly without merit. As noted at the beginning of the hearing, PCR Counsel expressed his concern as an officer of the court on proceeding on this meritless claim and indicated that he could not proceed. Therefore, the Applicant presented two documents in support of this claim, a letter to PCR Counsel requesting information regarding the

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grand jury and a print out of the court terms. Applicant testified that his indictment for burglary – 1st degree did not specify what crime he intended to commit within.

A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). The Applicant offered no credible evidence in support of this claim and no testimony which supported his claim. Therefore, this claim is denied and dismissed.

Summary

This Court finds that Counsel is an experienced attorney who was prepared for and ~~effectively represented Applicant at his plea. This Court finds counsel adequately conferred with~~ the Applicant, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

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

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. ~~There is no evidence that the outcome of the trial would have changed based upon any of the allegations of deficiency. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.~~

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CONCLUSION

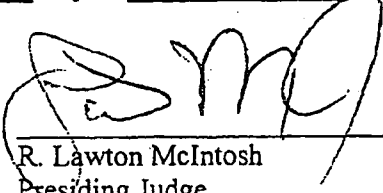
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. ~~Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate~~ review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures 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 this 31 day of Oct, 2013.


 R. Lawton McIntosh
 Presiding Judge
 Seventh Judicial Circuit

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 CHEROKEE COUNTY, S.C.
 2013 NOV 4 AM 8 35
 BRANDY W. MBBEE

WITNESSES

Cherokee County Sheriff's Office

Pat Clall

ARREST WARRANT NUMBER

M125205

ACTION OF GRAND JURY

ROBERT

Julie W Foster
Foreperson of Grand Jury
Date: 1-21-10

VERDICT

Foreperson of Petit Jury

Date:

0-65-11 0135

The State of South Carolina

County of Cherokee

TREY GOWDY, SOLICITOR

COURT OF GENERAL SESSIONS

JAN 21 2010

TERM

THE STATE
vs.

Branson J. Thompson

Indictment for

CRIMINAL DOMESTIC VIOLENCE OF
A HIGH AND AGGRAVATED NATURE

SC Code: 16-25-65
CDR Code: 2390
Class FEL/UNIC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)

At a Court of General Sessions, convened on JAN 21 2010, the
 Grand Jurors of Cherokee County present upon their oath:

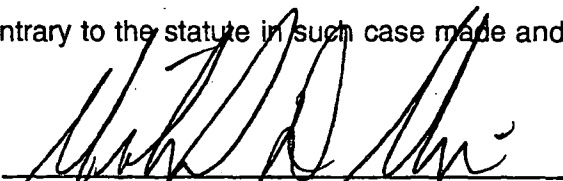
**CRIMINAL DOMESTIC VIOLENCE OF A
 HIGH AND AGGRAVATED NATURE**

That Branson J. Thompson, did in Cherokee County on or about May 8, 2009,
 intentionally commit an assault and battery upon the victim, Pasquana Jefferies,
 a household member or former household member, which included either:

- 1) an assault and battery which involves the use of a deadly weapon or
 results in serious bodily injury to the victim; or
- 2) an assault, with or without an accompanying battery, which would
 reasonably cause a person to fear imminent serious bodily injury or
 death;

to wit: by kicking in the front door to her residence and point a weapon, causing
 the victim to fear for her safety, all in violation of Section 16-25-65, *THE CODE OF
 LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


 ASSISTANT SOLICITOR

113
WITNESSES

Cherokee County Sheriff's Office

Paul Clark

ARREST WARRANT NUMBER

M131290

ACTION OF GRAND JURY

RETURN

Julie W. Foster

Foreperson of Grand Jury

Date: 1-21-10

VERDICT

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 21 2010

TERM

THE STATE

vs.

Branson J. Thompson

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on JAN 21 2010, the Grand Jurors of Cherokee County present upon their oath:

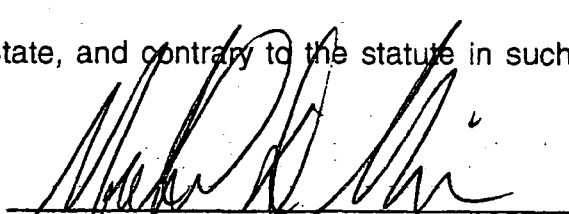
BURGLARY, FIRST DEGREE**(DWELLING)**

That the Defendant, Branson J. Thompson, did in Cherokee County, on or about May 8, 2009, willfully and intentionally enter the dwelling belonging to Ashley Juana Smith located at
 without consent and with the intent to
 commit a crime therein, and either:

- (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
 - (a) was armed with a deadly weapon or explosive; or
 - (b) caused physical injury to any person who was not a participant in the crime; or
 - (c) used or threatened the use of a dangerous instrument; or
 - (d) displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
- (2) the burglary was committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
- (3) the entering or remaining occurred in the nighttime,

in violation of §16-11-311, Code of Laws of South Carolina (1976) as amended.

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


 ASSISTANT SOLICITOR

Cherokee County Sheriff's Office

Eric Clark

ARREST WARRANT NUMBER

0131291

ACTION OF GRAND JURY

TUE BILL

Julie W Foster
Deperson of Grand Jury
ate: 1-21-10

VERDICT

Deperson of Petit Jury
ate:

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 21 2010

TERM

THE STATE

VS.

Branson J. Thompson

Indictment for

WEAPONS/POINT AND/OR PRESENT
FIREARMS AT PERSONS

SC Code: 16-23-410
CDR Code: 122
Class FEL-F

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

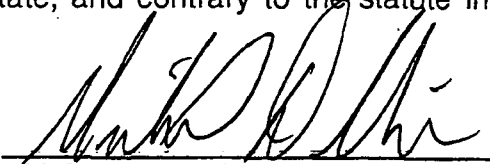
At a Court of General Sessions, convened on JAN 21 2010, the

Grand Jurors of Cherokee County present upon their oath:

WEAPONS/POINT AND/OR PRES FIREARMS AT PERSON

That Branson J. Thompson, did in Cherokee County on or about May 8, 2009, unlawfully and not in self defense present or point a loaded or unloaded firearm, to wit: point a shotgun at one Ashley Smith, all in violation of §16-23-410, of *THE CODE OF LAWS OF SOUTH CAROLINA* (1976, as amended).

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



ASSISTANT SOLICITOR

117

Cherokee County Sheriff's Office

Carla

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 21 2010

TERM

ARREST WARRANT NUMBER

1131292

THE STATE

VS.

ACTION OF GRAND JURY

FILED

Branson J. Thompson

Julie W. Soth
Representative of Grand Jury
Date: 1-21-10

VERDICT

Indictment for

WEAPONS/POINT AND/OR PRESENT
FIREARMS AT PERSONS

SC Code: 16-23-410

CDR Code: 122

Class FEL-F

Representative of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

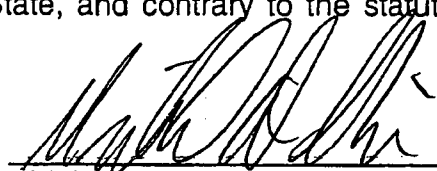
JAN 21 2010

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

WEAPONS/POINT AND/OR PRES FIREARMS AT PERSON

That Branson J. Thompson, did in Cherokee County on or about May 8, 2009, unlawfully and not in self defense present or point a loaded or unloaded firearm, to wit: point a shotgun at one Pasquana Jefferies, all in violation of §16-23-410, of *THE CODE OF LAWS OF SOUTH CAROLINA* (1976, as amended).

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



ASSISTANT SOLICITOR