

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

ANDRE LEE REED,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 ANDRE REED,)
)
 DEFENDANT.)
 _____)

2008-GS-42-6036 & 6038

TRANSCRIPT OF RECORD

JUNE 8, 2009
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MARK HAYES

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

ZACHARY ELLIS, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JAMES CHEEK, ESQUIRE

SUSAN W HUDGINS
CIRCUIT COURT REPORTER

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WITNESS

PAGE NO.

CERTIFICATE OF REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(NO EXHIBITS WERE PRESENTED DURING THIS HEARING)

1 THE COURT: GENTLEMEN, I HAVE BEEN INFORMED THAT EACH
2 ONE OF YOU HAS EXPRESSED A DESIRE OR AN INTENT TO PLEAD TO A
3 MATTER IN THE COURT OF GENERAL SESSIONS. NOW I NEED TO LET
4 YOU KNOW THAT AS PART OF EVERY PLEA THAT IS TAKEN IN FRONT
5 OF ME OR ANY OTHER JUDGE, WE MAKE A RECORDING. THE LADY
6 SITTING ON THE OTHER SIDE OF THE ROOM IS THE COURT REPORTER.

7 IF EVER DURING THE PROCESS TODAY OF ENTERING THE PLEA
8 YOU HAVE TO OR WISH TO TALK TO ME, PLEASE SPEAK UP LOUD
9 ENOUGH SO THAT BOTH SHE AND I CAN HEAR YOU. AND IF EVER
10 DURING THIS PROCESS IF EVER YOU CAN'T HEAR ME, LET ME KNOW
11 AND I WILL SPEAK UP AS WELL.

12 ALSO, IF EVER DURING THIS PROCESS TODAY YOU FEEL THE
13 NEED OR HAVE THE DESIRE ---

14 MR. CHEEK: MAY I APPROACH, YOUR HONOR?

15 THE COURT: UM-HUM (AFFIRMATIVE).

16 (WHEREUPON A BENCH CONFERENCE WAS HELD OFF THE RECORD)

17 THE COURT: AND SO, MA'AM, I APOLOGIZE. I MISSED YOUR
18 NAME. BUT IF EVER YOU OR ANY OF THE GENTLEMEN WISH TO SPEAK
19 TO YOUR LAWYER, JUST LET ME KNOW, AND I WILL ALLOW YOU TO
20 SPEAK TO YOUR LAWYER IN PRIVATE.

21 NOW IN JUST A MOMENT I'M GOING TO CALL YOUR NAME. WHEN
22 I CALL YOUR NAME I NEED YOU TO STAND AND REMAIN STANDING.
23 ONCE EVERYONE'S NAME IS CALLED THE CLERK OF COURT IS GOING
24 TO SWEAR YOU IN.

25 AFTER THE CLERK OF COURT SWEARS YOU IN I AM THEN GOING

1 TO ASK YOU A SERIES OF QUESTIONS. I'M GOING TO ASK YOU
2 THESE QUESTIONS AS A GROUP. BUT SIMPLY BECAUSE I'M ASKING
3 YOU THESE QUESTIONS AS 'A GROUP DOES NOT MEAN THAT THESE
4 QUESTIONS ARE NOT IMPORTANT. THESE QUESTIONS ARE VERY
5 IMPORTANT. SO I NEED YOU TO PLEASE LISTEN TO THE QUESTIONS.

6 AND IF YOU NEED TO RESPOND I WILL ASK THAT YOU STAND.
7 DON'T SPEAK OUT. JUST STAND WHEN I ASK YOU TO DO SO. I
8 THEN WILL ALLOW YOU AN OPPORTUNITY TO SPEAK TO ME
9 INDIVIDUALLY AFTER I CALL YOUR NAME. PLEASE LISTEN TO THE
10 QUESTIONS.

11 NOW I'M NOW GOING TO CALL THE NAME. AND AGAIN, WHEN I
12 CALL YOUR NAME, PLEASE STAND. WE HAVE JEFFREY WHITING,
13 KRYSTAL TRENTON, HENRY JACKSON, HENRY JACKSON.

14 MR. CHEEK: HE'S IN THE JAIL ROOM, YOUR HONOR.

15 THE COURT: ALL RIGHT. WE HAVE ANTHONY FOWLER. WE
16 HAVE LUCIEN CATO, ALL RIGHT. AND THE OTHER TWO GENTLEMEN
17 ARE NOT GOING TO PLEA?

18 MR. CHEEK: DERRICK JOHANSON AND ANDRE REED.

19 THE COURT: ALL RIGHT. YOU'RE MR. JOHANSON?

20 MR. JOHANSON: YES, SIR.

21 THE COURT: WHAT'S YOUR FIRST NAME?

22 MR. JOHANSON: DERRICK.

23 THE COURT: DERRICK? AND YOU'RE MR. REED?

24 MR. REED: YES, SIR.

25 THE COURT: WHAT'S YOUR FIRST NAME?

1 MR. REED: ANDRE.

2 THE COURT: ALL RIGHT. MA'AM AND GENTLEMEN, IF YOU
3 WOULD, PLEASE RAISE YOUR RIGHT HAND AND LET THE CLERK OF
4 COURT SWEAR YOU IN.

5 (WHEREUPON ALL THE DEFENDANTS WERE DULY SWORN)

6 THE COURT: THANK YOU. YOU MAY BE SEATED. WITHIN THE
7 LAST TWENTY-FOUR HOURS HAVE ANY OF YOU CONSUMED ANY TYPE OF
8 SUBSTANCE THAT IS ADVERSELY OR NEGATIVELY AFFECTING YOUR
9 ABILITY TO UNDERSTAND WHAT WE'RE DOING TODAY? IF YOU HAVE,
10 PLEASE STAND AT THIS TIME.

11 (NO RESPONSE)

12 THE COURT: IF YOU HAVE EVER BEEN TREATED FOR ANY TYPE
13 OF DRUG OR ALCOHOL ABUSE IN THE PAST I NEED FOR YOU TO
14 PLEASE STAND AT THIS TIME. ALL RIGHT. YOU ARE MR.
15 JOHANSON?

16 MR. JOHANSON: YES, YOUR HONOR.

17 THE COURT: AND, SIR, WHERE DID YOU RECEIVE THAT
18 TREATMENT?

19 MR. JOHANSON: I PLACED MYSELF IN THE INPATIENT REHAB
20 IN MINNESOTA.

21 THE COURT: FOR DRUGS, ALCOHOL OR BOTH?

22 MR. JOHANSON: DRUGS.

23 THE COURT: ABOUT HOW LONG AGO WAS THAT TREATMENT?

24 MR. JOHANSON: EIGHT YEARS. AND I'VE BEEN CLEAN SINCE
25 THEN.

1 THE COURT: SO IT WAS SUCCESSFUL?

2 MR. JOHANSON: YES, YOUR HONOR.

3 THE COURT: THANK YOU, SIR. YOU MAY BE SEATED. IF YOU
4 ARE SATISFIED WITH THE WORK THAT YOUR LAWYER HAS DONE FOR
5 YOU, I NEED FOR YOU TO PLEASE STAND AT THIS TIME IF YOU ARE
6 SATISFIED WITH THE WORK THAT YOUR LAWYER HAS DONE FOR YOU.
7 LET THE RECORD REFLECT THAT EVERYONE STOOD. THANK YOU VERY
8 MUCH. YOU MAY BE SEATED.

9 IF ANYBODY HAS THREATENED YOU OR IF THEY HAVE PROMISED
10 YOU ANYTHING IN ORDER TO GET YOU TO ENTER THE PLEA TODAY, I
11 NEED FOR YOU TO PLEASE STAND AT THIS TIME IF YOU HAVE BEEN
12 THREATENED OR PROMISED ANYTHING IN ORDER TO ENTER THE PLEA.

13 (NO RESPONSE)

14 THE COURT: IF YOU HAVE MADE THE DECISION TO ENTER THE
15 PLEA TODAY FREELY AND VOLUNTARILY, I NEED FOR YOU TO PLEASE
16 STAND AT THIS TIME. LET THE RECORD REFLECT THAT EVERYONE
17 STOOD. THANK YOU VERY MUCH. YOU MAY BE SEATED.

18 I NEED FOR YOU TO UNDERSTAND THAT UNDER THE LAW YOU ARE
19 PRESUMED INNOCENT OF THE CHARGE OR CHARGES THAT ARE
20 PRESENTLY AGAINST YOU. AND YOU DO HAVE A RIGHT TO HAVE A
21 JURY TRIAL ON ANY OF THE CHARGES THAT ARE AGAINST YOU

22 AT ANY JURY TRIAL THAT WOULD TAKE PLACE IT WOULD BE THE
23 STATE THAT HAS THE BURDEN OF PROOF. AND THE STATE WOULD
24 HAVE TO CONVINCE ALL TWELVE MEMBERS OF A JURY THAT YOU ARE,
25 IN FACT, GUILTY BEYOND A REASONABLE DOUBT OF THOSE CHARGES.

1 HOWEVER, IN ORDER TO ENTER A PLEA YOU HAVE TO GIVE UP
2 YOUR RIGHT TO THAT JURY TRIAL. BUT IF YOU WISH TO HAVE A
3 TRIAL ON ANY OF THE CHARGES AGAINST YOU, THAT IS FINE. WE
4 WILL SCHEDULE A TRIAL FOR YOU. BUT AGAIN, IN ORDER TO ENTER
5 A PLEA YOU HAVE TO GIVE UP YOUR RIGHT TO THAT JURY TRIAL.

6 NOW IF YOU WISH TO HAVE A TRIAL ON ANY OF -- JURY
7 TRIAL, EXCUSE ME, IF YOU WISH TO HAVE A JURY TRIAL ON ANY OF
8 THE CHARGES AGAINST YOU I NEED FOR YOU TO PLEASE STAND AT
9 THIS TIME.

10 (NO RESPONSE)

11 **THE COURT:** IN ADDITION TO GIVING UP YOUR RIGHT TO THAT
12 JURY TRIAL THERE ARE OTHER VERY IMPORTANT CONSTITUTIONAL
13 RIGHTS THAT YOU HAVE TO GIVE UP IN ORDER TO ENTER A PLEA.
14 YOU HAVE TO GIVE UP YOUR RIGHT TO CONFRONT AND CROSS EXAMINE
15 THE STATE'S WITNESSES. YOU ALSO HAVE TO GIVE UP YOUR RIGHT
16 TO PRESENT EVIDENCE WHICH YOU OR YOUR LAWYER MIGHT FEEL
17 WOULD ESTABLISH A DEFENSE TO THE CHARGE OR CHARGES AGAINST
18 YOU. AND YOU HAVE TO GIVE UP YOUR RIGHT OF SUBPOENA. AND
19 YOU HAVE TO GIVE UP YOUR RIGHT TO REMAIN SILENT.

20 NOW IF YOU WISH TO GIVE UP ALL OF YOUR CONSTITUTIONAL
21 RIGHTS INCLUDING YOUR RIGHT TO A JURY TRIAL AND YOU WISH TO
22 PROCEED WITH ENTERING THE PLEA, THEN I NEED FOR YOU TO
23 PLEASE STAND AT THIS TIME. LET THE RECORD REFLECT THAT
24 EVERYONE STOOD. THANK YOU VERY MUCH. YOU MAY BE SEATED.

25 AGAIN, MA'AM AND GENTLEMEN, IF ANY OF YOU WISH TO SPEAK

1 WITH YOUR LAWYER AT ANY POINT DURING THIS PROCESS JUST LET
2 ME KNOW AND I'LL ALLOW YOU TO SPEAK TO YOUR LAWYER IN
3 PRIVATE.

4 (WHEREUPON GROUP HEARING ENDED AT 11:43 AM)

5 MR. ELLIS: MAY IT PLEASE THE COURT, YOUR HONOR? THE
6 STATE CALLS ANDRE REED, INDICTMENT 2008-GS-42-6036 INITIALLY
7 INDICTED, YOUR HONOR, FOR BURGLARY IN THE FIRST DEGREE,
8 PLEADING GUILTY TO THE LESSER INCLUDED CHARGE OF BURGLARY IN
9 THE SECOND DEGREE, VIOLENT, YOUR HONOR.

10 ALSO INDICTMENT 2008-GS-42-6038, INITIALLY INDICTED FOR
11 ARMED ROBBERY, PLEADING GUILTY TO THE LESSER INCLUDED CHARGE
12 OF COMMON LAW ROBBERY.

13 YOUR HONOR, HE'S PLEADING GUILTY TO BOTH CHARGES
14 WITHOUT NEGOTIATION OR RECOMMENDATION. MR. JAMES CHEEK
15 REPRESENTS HIM.

16 THE COURT: YOU ARE MR. REED?

17 MR. REED: YES, SIR, YOUR HONOR.

18 THE COURT: AND, SIR, YOU DO INTEND TO PLEAD TO
19 BURGLARY IN THE SECOND DEGREE, VIOLENT, AND ALSO TO COMMON
20 LAW ROBBERY?

21 MR. REED: YES, SIR, YOUR HONOR.

22 THE COURT: HOW OLD ARE YOU, SIR?

23 MR. REED: THIRTY-FOUR.

24 THE COURT: AND, SIR, I'LL REMIND YOU THAT YOU REMAIN
25 UNDER OATH YOU UNDERSTAND THAT?

1 MR. REED: YES, SIR.

2 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

3 MR. REED: WELL, I DROPPED OUT. AND I GOT A GED. AND
4 I DID CORRESPONDENCE THROUGH INSTRUCTION MATERIALS IN
5 GREENVILLE. AND DID REFERRAL WORK PROGRAM, BUSINESS
6 MANAGEMENT, BUSINESS LAW, COMMUNICATION OUT OF RICHLAND
7 COUNTY, AUTOMOTIVE, BASIC AUTOMOTIVE REPAIR, VOCATION AT
8 TYGER RIVER CORRECTIONAL INSTITUTION, WORKED ON KEYBOARDING.
9 AND I WAS DOING CORPORATE LAW ONLINE AT CLAFLIN UNIVERSITY,
10 ILLINOIS COURSE.

11 THE COURT: MARRIED, SINGLE, DIVORCED OR WIDOWED?

12 MR. REED: MARRIED, THREE CHILDREN AND THREE STEP-
13 CHILDREN, SIX TOTAL.

14 THE COURT: HOW OLD ARE YOUR BIOLOGICAL CHILDREN?

15 MR. REED: BIOLOGICAL CHILDREN IS FOURTEEN, EIGHTEEN
16 AND THIRTEEN.

17 THE COURT: PRIOR TO YOUR ARREST WHAT TYPE OF WORK WERE
18 YOU DOING?

19 MR. REED: I OPERATED A MOBILE CONVENIENCE STORE ON
20 LEASE. AND I STOPPED THE MOBILE CONVENIENCE STORE I
21 MEDIATED THROUGH A DATING SERVICE. AND I DID SCRAPPING.
22 MIKE WARNERBURG WITH SPARTANBURG AUTO AUCTION, I BOUGHT
23 BROKE DOWN CARS THEY CALL PEAK CARS. AND I SEPARATED
24 INDIVIDUAL METALS AND SCRAPPED THEM.

25 THE COURT: EVER SERVE IN THE MILITARY?

1 MR. REED: NO, SIR, YOUR HONOR.

2 THE COURT: ON THESE PARTICULAR CHARGES, HOW LONG HAVE
3 YOU BEEN IN JAIL?

4 MR. REED: JUNE OF '08 -- NO.

5 MR. CHEEK: HE'S CURRENTLY IN THE DEPARTMENT OF
6 CORRECTIONS, YOUR HONOR.

7 THE COURT: ALL RIGHT, SIR, IF YOU WOULD, THIS
8 GENTLEMAN STANDING RIGHT HERE IS A SOLICITOR. HE'S GOING TO
9 GIVE US THE FACTS. I NEED YOU TO PLEASE LISTEN TO HIM.

10 MR. ELLIS: THANK YOU, YOUR HONOR. THIS OCCURRED ON
11 JANUARY 13TH, 2008. ON THAT NIGHT, YOUR HONOR, THE STATE
12 ALLEGES THAT THIS DEFENDANT AS WELL AS ANOTHER INDIVIDUAL
13 NAMED KELVIN FOSTER BROKE INTO THE HOME OF MR. VIC MORGAN,
14 WHICH IS LOCATED ON ROAD IN CAMPOBELLO,
15 YOUR HONOR.

16 THEY ENTERED THAT HOME, YOUR HONOR, AT NIGHTTIME
17 WEARING MASKS, YOUR HONOR, AND CARRYING GUNS. THEY CAME IN
18 THE HOUSE, YOUR HONOR, STRUCK MR. MORGAN IN THE HEAD AND
19 DEMANDED TO KNOW WHERE THE MONEY WAS IN HIS HOUSE. THEY
20 TIED HIM UP ON THE FLOOR, YOUR HONOR, WITH ZIP TIES AND LEFT
21 HIM THERE FOR AN EXTENDED PERIOD OF TIME WHILE THEY
22 RANSACKED THE HOUSE. AFTER FINDING WHAT THEY CAME TO LOOK
23 FOR, YOUR HONOR, THEY THEN LEFT THE HOUSE WITH MR. MORGAN'S
24 MONEY AND SOME OTHER OBJECTS AS WELL, YOUR HONOR.

25 YOUR HONOR, HE IS PLEADING GUILTY TO THESE CHARGES.

1 BASICALLY THE STATE WOULD ASK THAT THE COURT WITHHOLD
2 SENTENCING AT THIS TIME. MR. REED WILL BE ASKED TO TESTIFY
3 LATER AT THE TRIAL OF MR. FOSTER IF THAT BECOMES NECESSARY.
4 AND ALSO, YOUR HONOR, THE STATE WOULD ASK AT THE APPROPRIATE
5 TIME TO VOIR DIRE MR. REED REGARDING HIS INVOLVEMENT IN THIS
6 CASE.

7 MR. CHEEK: MAY IT PLEASE THE COURT, YOUR HONOR? I
8 ALSO NEED TO DISCUSS ONE MATTER WITH THE SOLICITOR THAT I
9 NEGLECTED TO DISCUSS.

10 (PAUSE)

11 MR. CHEEK: WE'RE READY TO MOVE FORWARD, YOUR HONOR.

12 THE COURT: ALL RIGHT.

13 (PAUSE)

14 MR. CHEEK: WE'RE READY TO MOVE FORWARD, YOUR HONOR.
15 THANK YOU.

16 THE COURT: MR. REED, YOU WERE ABLE TO HEAR THE
17 SOLICITOR WHEN HE GAVE ME THE FACTS THAT ARE BEHIND THESE
18 CASES?

19 MR. REED: YES, SIR, YOUR HONOR.

20 THE COURT: NOW THE MANNER IN WHICH HE STATED THE FACTS
21 TO ME, IS THAT -- DO YOU BELIEVE THAT HE IS SUBSTANTIALLY
22 CORRECT IN WHAT HE STATED?

23 MR. REED: MAY I ASK MY ATTORNEY A QUESTION?

24 THE COURT: YES, SIR.

25 (PAUSE)

1 MR. REED: YES, SIR, YOUR HONOR.

2 THE COURT: ALL RIGHT. AND, SIR, YOU DO UNDERSTAND
3 THAT ON THESE CHARGES ON THE COMMON LAW ROBBERY CHARGE THAT
4 YOU COULD RECEIVE A SENTENCE UP TO FIFTEEN YEARS ON THAT
5 CHARGE?

6 MR. REED: YES, SIR, YOUR HONOR.

7 THE COURT: AND, SIR, YOU DO UNDERSTAND THAT ON THE
8 BURGLARY IN THE SECOND DEGREE, VIOLENT CHARGE, THAT YOU
9 COULD RECEIVE AN ADDITIONAL FIFTEEN -- UP TO AN ADDITIONAL
10 FIFTEEN YEAR SENTENCE ON THAT PARTICULAR CHARGE?

11 MR. REED: YES, SIR, YOUR HONOR.

12 THE COURT: AND, SIR, YOU DO UNDERSTAND THAT THE
13 BURGLARY, SECOND DEGREE, VIOLENT CHARGE IS CLASSIFIED AS A
14 VIOLENT OFFENSE UNDER THE LAW AND ALSO CLASSIFIED AS A
15 SERIOUS OFFENSE UNDER THE LAW?

16 MR. REED: YES, SIR, YOUR HONOR.

17 THE COURT: AND YOU'VE BEEN ABLE TO TALK TO YOUR LAWYER
18 AS TO THE CONSEQUENCES AND RAMIFICATIONS OF THAT OFFENSE
19 BEING CLASSIFIED AS A VIOLENT OFFENSE AND CLASSIFIED AS A
20 SERIOUS OFFENSE?

21 MR. REED: YES, SIR, YOUR HONOR.

22 THE COURT: UNDERSTANDING THOSE CLASSIFICATIONS AND THE
23 RAMIFICATIONS OF THOSE CLASSIFICATIONS AS WELL AS THE
24 SENTENCES THAT COULD BE IMPOSED AGAINST YOU ON THE BURGLARY,
25 SECOND DEGREE, VIOLENT, AND ALSO THE COMMON LAW ROBBERY

1 CHARGE, DO YOU STILL WISH TO ENTER THESE PLEAS?

2 MR. REED: YES, SIR, YOUR HONOR.

3 THE COURT: SIR, ARE YOU, IN FACT, GUILTY OF BURGLARY
4 IN THE SECOND DEGREE, VIOLENT?

5 MR. REED: YES, SIR, YOUR HONOR.

6 THE COURT: ARE YOU ALSO GUILTY OF COMMON LAW ROBBERY?

7 MR. REED: YES, SIR.

8 THE COURT: HAVE YOU BEEN ABLE TO HEAR ALL OF MY
9 QUESTIONS?

10 MR. REED: YES, SIR.

11 THE COURT: HAVE ALL OF YOUR ANSWERS BEEN TRUTHFUL AND
12 HONEST?

13 MR. REED: YES, SIR.

14 THE COURT: DISCOVERY'S BEEN SHARED WITH THE DEFENSE?

15 MR. ELLIS: YES, SIR.

16 THE COURT: DO YOU WISH TO AT THIS TIME ASK THE -- ASK
17 MR. REED QUESTIONS?

18 MR. ELLIS: YES, SIR, YOUR HONOR.

19 THE COURT: YES, SIR. MR. REED, PLEASE LISTEN TO THE
20 SOLICITOR.

21 MR. ELLIS: MR. REED, DID YOU GO TO THE HOME OF VIC

22 MORGAN A AD IN CAMPOBELLO ON OR ABOUT

23 9:00 ON JANUARY 13TH, 2008?

24 MR. REED: YES, SIR.

25 MR. ELLIS: AND WHO DID YOU GO WITH?

1 MR. REED: MYSELF -- MYSELF, STEPHANIE WILSON, BRANDY
2 LANE AND KELVIN FOSTER.

3 MR. ELLIS: OKAY. WHO WENT IN THE RESIDENCE FIRST?

4 MR. REED: STEPHANIE AND BRANDY WAS -- AND THEN ME AND
5 KELVIN.

6 MR. ELLIS: YOU AND MR. FOSTER ENTERED LATER?

7 MR. REED: YES, SIR.

8 MR. ELLIS: WERE YOU WEARING MASKS WHEN YOU ENTERED?

9 MR. REED: TRUTHFULLY, YES, SIR.

10 MR. ELLIS: AND WHEN YOU CAME IN DID YOU -- YOU OR MR.
11 FOSTER TIE MR. MORGAN UP WITH ZIP TIES OR SOME OTHER KIND OF
12 DEVICE?

13 MR. REED: NOT, I MEAN, I CAN'T -- WELL, YES, SIR.

14 MR. ELLIS: DID YOU TIE MS. LANE OR MS. WILSON UP?

15 MR. REED: YES, SIR.

16 MR. ELLIS: AND DID ANYONE EVER STRIKE MR. MORGAN, HIT
17 HIM IN ANY WAY, PUSH HIM, ANYTHING LIKE THAT?

18 MR. REED: NO, SIR, NOT THAT I KNOW OF

19 MR. ELLIS: OKAY. ONCE EVERYBODY WAS TIED UP DID YOU
20 OR MR. FOSTER THEN ROB THE HOUSE?

21 MR. REED: YES, SIR.

22 THE COURT: WHAT DID YOU TAKE FROM THE HOUSE?

23 MR. REED: TOOK SOME -- SOME GOODS, JEWELRY GOODS AND
24 MONETARY, CASH, AND JEWELRY AND MONETARY VALUE.

25 MR. ELLIS: WHEN YOU CAME INTO THE HOUSE DID YOU HAVE

1 ANY KIND OF WEAPONS WITH YOU OR THINGS YOU REPRESENTED TO BE
2 WEAPONS?

3 MR. REED: NO, SIR.

4 MR. CHEEK: JUST A MOMENT.

5 (PAUSE)

6 MR. REED: OH, ---

7 MR. CHEEK: JUST A MOMENT.

8 (PAUSE)

9 MR. REED: I BELIEVE SO. YES, SIR.

10 MR. ELLIS: SO YOU DID HAVE SOMETHING THAT WAS A WEAPON
11 OF SOME KIND OR THAT ---

12 MR. REED: YES, SIR.

13 MR. ELLIS: --- OR APPEARED TO BE A WEAPON?

14 MR. REED: YES, SIR.

15 MR. ELLIS: WHAT WAS THAT?

16 MR. REED: I DON'T KNOW WHAT INSTRUMENT IT WAS. IT WAS
17 SOMETHING GRABBED OFF THE TABLE FROM THE HOUSE.

18 MR. ELLIS: OKAY.

19 MR. REED: THE LIVINGROOM TABLE OR DININGROOM TABLE,
20 USED AS A THREAT TACTIC.

21 MR. ELLIS: AFTER YOU TOOK THE ITEMS OUT OF MR
22 MORGAN'S HOUSE WHAT DID YOU DO WITH THEM?

23 MR. REED: WELL, ME, KEVIN AND THE GIRLS SPLIT THEM UP.

24 MR. ELLIS: OKAY. DID YOU TAKE THEM TO VARIOUS PAWN
25 SHOPS, VIRGINIA BEACH AND ALSO LOCALLY?

1 MR. REED: WELL, I DON'T KNOW WHAT THEY DID WITH THEY
2 PART, BUT THEY SPLIT THEM UP AND WHATEVER THEY PASSED THEM
3 OFF TO.

4 MR. ELLIS: WHAT ITEMS DID YOU KEEP?

5 MR. REED: I KEPT SOME JEWELRY AND A COUPLE OF THOUSAND
6 DOLLARS. WELL, ABOUT FIFTEEN HUNDRED DOLLARS AND SOME
7 JEWELRY.

8 MR. ELLIS: DO YOU KNOW WHAT MR. FOSTER HAD?

9 MR. REED: NO, SIR. I'M PRETTY SURE SOME JEWELRY AND
10 SOME MONEY TOO AND SOME ITEMS.

11 MR. ELLIS: OKAY. I HAVE NOTHING FURTHER, YOUR HONOR,
12 AT THIS TIME.

13 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE STATE OR
14 THE DEFENSE BEFORE I ACCEPT THE PLEA?

15 MR. ELLIS: NOT FROM THE STATE, YOUR HONOR.

16 MR. CHEEK: YOUR HONOR, NOTHING AT THIS TIME. WE
17 RESERVE THE OPPORTUNITY TO SPEAK LATER ON.

18 THE COURT: ALL RIGHT. I'LL FIND THAT THERE IS A
19 SUBSTANTIAL FACTUAL BASIS FOR THE PLEA. I'LL FIND THAT THE
20 DEFENDANT'S DECISION TO ENTER THE PLEA HAS BEEN MADE FREELY,
21 VOLUNTARILY, KNOWINGLY AND INTELLECTUALLY BY HIM. I'LL FIND
22 THAT HE HAS RECEIVED THE SERVICES FROM VERY COMPETENT AND
23 ABLE LEGAL COUNSEL, SERVICES HE HAS INDICATED TO THE COURT
24 HE'S SATISFIED WITH AND HAS RELIED ON IN REACHING THE
25 DECISIONS THAT HE'S MADE. THEREFORE, I WILL ACCEPT THE

1 PLEA.

2 MR. CHEEK: THANK YOU, YOUR HONOR.

3 THE COURT: THANK YOU.

4 MR. ELLIS: THANK YOU, YOUR HONOR.

5 (HEARING ENDED AT 12:01 PM)

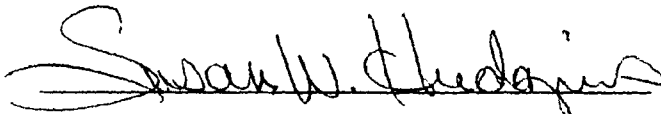
6 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE OF REPORTER

2 I, THE UNDERSIGNED, SUSAN W. HUDGINS, OFFICIAL COURT
3 REPORTER FOR THE SEVENTH JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING
7 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT
8 COURT FOR SPARTANBURG COUNTY, SOUTH CAROLINA, ON THE 8TH DAY
9 OF JUNE 2009.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST TO ANY PARTY HERETO.

12 JULY 13, 2009

13 
14

15 CIRCUIT COURT REPORTER

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 André Lee Reed,) 2008-GS-42-6036;-6037
7) August 26, 2009
8) Spartanburg, South Carolina
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B E F O R E:

HONORABLE J. MARK HAYES, II, JUDGE

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

ZACHARY D. ELLIS, ESQ.
Attorney for the State

JAMES A. CHEEK, ESQ.
Attorney for the Defendant

Margaret A. Woods
Circuit Court Reporter

INDEXPAGE

Guilty plea

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Certificate of reporter

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NO EXHIBITS INTRODUCED

1 MR. ELLIS: Please the Court, Your Honor. State calls
2 André Lee Reed, Indictment 2008-GS-42-6036 initially indicted,
3 Your Honor, for burglary in the first degree but pleading
4 guilty to the lesser included charge burglary second degree
5 violent, also Indictment 2008-GS-42-6038 initially indicted
6 for armed robbery pleading guilty to the lesser included
7 charge of common robbery. Your Honor, he's pleading guilty to
8 both charges or actually, You Honor, he has plead guilty to
9 both charges without negotiation or recommendation. Mr. James
10 Cheek represents him. Your Honor, may may recall he pled
11 guilty a couple of months ago and is now here for sentencing.

12 THE COURT: All right, Mr. Reed, I remind you that you
13 remain under oath. Do you understand that?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: And, sir, since since you entered this plea a
16 while back has anybody since that time come to you and
17 threatened you in any way or made you any promises in order to
18 get you to proceed further?

19 THE DEFENDANT: No, sir, Your Honor.

20 THE COURT: All right. And in the last twenty-four hours
21 you consumed any type of substance that's interfering with
22 your ability to understand what we're doing?

23 THE DEFENDANT: No, sir, Your Honor.

24 THE COURT: All right. Let me ask you some questions and
25 I apologize that I've already asked these questions but this

1 will help refresh my memory. How old are you?

2 THE DEFENDANT: Thirty-four.

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

4 THE DEFENDANT: I got a GED in '95, 1995 then I took
5 correspondence for construction materials. Oh, I -- GED.

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

7 THE DEFENDANT: Oh, ninth grade and a GED.

8 THE COURT: Are you married? single? divorced? widowed?

9 THE DEFENDANT: Married.

10 THE COURT: Children?

11 THE DEFENDANT: Six: three and three step kids.

12 THE COURT: How old are your children?

13 THE DEFENDANT: My daughter's 18, my like youngest
14 daughter is 12, my son is 14.

15 THE COURT: And what type of work did you do before you
16 got arrested?

17 THE DEFENDANT: I worked for Upstate Investment probly my
18 last job. I'm a home re -- a renovative surgeon home rehab
19 and I worked a little bit with West Construction Company
20 basically a residential, uh, before them mob -- I operate a
21 mobile convenience store actually.

22 THE COURT: So you're in the home renovation industry?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How long have you been doing that kinda work?

25 THE DEFENDANT: Oh, since 199 -- I meant '07 -- well,

1 back in the nineties before I served a prison sentence in 0 --
2 on that -- in 2007.

3 THE COURT: Ever serve in the military?

4 THE DEFENDANT: No, sir.

5 THE COURT: How long have you been in jail on this
6 charge?

7 THE DEFENDANT: Since May 23rd 2008, five hundred
8 and ---

9 MR. CHEEK: Five hundred twenty-two (522) days, Your
10 Honor.

11 THE COURT: All right. I'm going to ask the solicitor to
12 refresh my memory as far as the facts are concerned.

13 MR. ELLIS: Thank you, Your Honor. Please the Court.
14 This defendant plead guilty before Your Honor on June 8th
15 2009. The facts of this case, Your Honor, are that again on
16 January 13th, 2008 at 1340 North Pacolet Road in Campobello,
17 South Carolina which is in Spartanburg County that is the home
18 of Mr. Vic Morgan, Your Honor, the victim standing here with
19 me today. Mr. Morgan was at his residence accompanied by
20 Ms. Lane and Ms. Wilson. At some point that night, Your
21 Honor, the door was forced open and two men entered the
22 residence, Your Honor, carrying weapons. Mr. Kelvin Foster is
23 one of those individuals, Your Honor, and this defendant André
24 Reed was the other. Those two men, Your Honor, were wearing
25 masks, they were wearing fully body length basically Dickies

1 or kind of workmans' suits, Your Honor, they had scr --
2 basically hospital scrubs on their shoes, they were wearing
3 gloves and again they did, they did have weapons. They
4 entered the residence, Your Honor, they began to threaten
5 Mr. Morgan. They struck him several times, pushed him to the
6 floor, tied him up and left him in the kitchen, Your Honor.
7 They threatened to kill him on numerous occasions, they also
8 demanded to know where basically anything of value in the home
9 was. They then ransacked his house, took everything of value
10 they could find including weapons and jewelry and money and
11 other items, Your Honor, they then left the residence.
12 Mr. Morgan once he was able to be freed from his his bind,
13 Your Honor, did call police and investigation began.
14 Basically again, Your Honor, the police initially tracked that
15 somebody sold items to various pawn shops in the area, that
16 led them to Ms. Wilson and Ms. Lane. Those two individuals,
17 Your Honor, provided the identities of Mr. Reed and Mr. Foster
18 and at that point those individuals were also charged.
19 Initially, Your Honor, they were charged both of them with
20 armed robbery, kidnapping, burglary first and grand larceny,
21 Your Honor. Mr. Reed is being allowed to plead to common law
22 robbery and burglary second violent, Your Honor, and the other
23 two charges will be dismissed following the plea. Your Honor,
24 may recall also that his plea in June
25 Mr. Foster did give some statements during the plea as proffer

1 testimony basically implicating Mr. Foster, uh, ---

2 THE COURT: You mean Mr. Reed gave it?

3 MR. ELLIS: Yes, sir, gave gave some statements
4 implicating Mr. Foster as the second individual who entered
5 the residence. Mr. Reed did indicate at that time that he was
6 willing to testify against Mr. Foster at trial if needed.

7 THE COURT: All right. Thank you. Prior record?

8 MR. ELLIS: Yes, sir, Your Honor. In two thou -- I'm
9 sorry, 1992 rather, unlawful carrying of a weapon; 1995
10 possession of stolen property, a simple assault and a separate
11 charge of carrying a pistol unlawfully; 1997 armed robbery,
12 attempted armed robbery and like again a second armed robbery
13 and -- I'm sorry, Your Honor, let me rephrase that. One armed
14 robbery conviction and three attempted armed robbery
15 convictions, Your Honor, and as well as one possession of a
16 knife or firearm during a violent act, Your Honor. It's my
17 understanding, Your Honor, right now he is currently in the
18 department of corrections, it appears to be on a probation
19 revocation on the attempted armed robbery charge, Your Honor.
20 He's serving a 5-year sentence. Projected release date
21 appears to be December 9th 2010 according to the DOC web site.
22 Your Honor, I will also tell you that Mr. Foster pled guilty
23 before Judge Couch on August 7th 2009. He received a sentence
24 on the burglary second violent of fifteen (15) years and on
25 the common law robbery of five (5) years consecutive for a

1 total of twenty (20) years, Your Honor. I I will advise the
2 Court that his record was substantially different than
3 Mr. Foster's -- rather than Mr. Reeds. I'm sorry.
4 Mr. Foster's record consisted of a multiple possession of
5 cocaine charge and then three driving convictions, Your Honor,
6 the most recent being in 1996.

7 THE COURT: And did Mr. Morgan wish to address the Court?

8 MR. ELLIS: Yes, sir, he does.

9 THE COURT: Yes, sir, be more than happy to hear ~~from ya..~~

10 MR. MORGAN: Yes, sir. Mr. André Reed entered my home
11 and I was tied up. The solicitor told you I was beat, robbed
12 and I think he needs the maximum jail time 'cause he has
13 wrecked my life forever. My life will never be the same and
14 my family's life won't be the same. That's about all I got to
15 say but I think he needs the maximum term.

16 THE COURT: Thank you, sir.

17 MR. MORGAN: Yes.

18 THE COURT: Anything else from the State on Mr. Reed?

19 MR. ELLIS: No, sir.

20 THE COURT: Yes, sir, Mr. Cheek.

21 MR. CHEEK: Your Honor, as we stand here today the only,
22 the only thing we can do where my client is concerned is to
23 try to deal with the situation as it truthfully stands and
24 hope that the Court might show some mercy and leniency in the
25 sentencing on Mr. Reed for the following reasons, Your Honor:

1 He has a lovely wife back there (indicating) who is not in a
2 position at this time 'cause she's too emotionally upset to
3 address the Court, she hoped she would be able to address the
4 Court but what she's told me is that she has struggled to
5 maintain and keep the family together in hopes that André
6 would be able to come back and help them with his children.
7 He -- actually there's six children involved all together,
8 Your Honor. André was helping provide for these children
9 working. He's told the Court that he has tried to address his
10 education to do some things in order to better himself and get
11 himself working out on just not just one job but two jobs,
12 Your Honor. He made some mistakes and his record reflects
13 what sounds like, when it was presented to the Court, there
14 was several convictions for armed robbery. There are
15 convictions for one armed robbery, three attempted armed
16 robberies all arising out of the same incident, Your Honor.

17 Back in 1995 when André was about 20-years-old he and his
18 friends were all at a what we refer to as a "house party" here
19 in Spartanburg. All of these young men knew one another, they
20 were all schoolmates, all attended the school together, all
21 knew each other in the community and sixty dollars (\$60) got
22 taken from one of their friends and at trial the victim
23 actually came to trial and tried to testify in order to assist
24 André cause André was the only one who went to trial, the
25 other guys pled guilty because they were the two people

1 referred to as "the two assailants" in that robbery and
2 somehow Andre's name came up 'cause he's at the party and the
3 State insisted on prosecuting him for an armed robbery and he
4 went to trial on it, the victim actually came and tried to
5 testify on his behalf to help him out, but he was convicted of
6 that charge and received a 5-year sentence which he's now
7 serving in the department of correction. Sometimes later
8 there, Your Honor, he got those five ye -- he got to finish
9 that sentence out but when the Court hears "armed robbery" I
10 know that has to concern the Court when the Court hears "armed
11 robbery." I want to very clearly establish what this -- that
12 armed robbery was about to what -- whatever extent I could
13 clarify all of that because that has been used today as a
14 distinguishing point between his record and that of the
15 co-defendant Mr. Kelvin Foster.

16 Curiously enough, Your Honor, when you read the reports
17 in these cases, it's very clear that the two young ladies who
18 were just before the Court presented themselves as having
19 college educations and good jobs and roles. The Court should
20 also be appreciative that these two young ladies were guests
21 in the home of not only Mr. Morgan but other people in this
22 community on a regular basis most times on the weekends and
23 staying in and out several days and they received remuneration
24 and an increased and enhanced lifestyle because of the
25 services they provided in homes of various individuals in

1 these communities so, Your Honor, their their jobs were more
2 than just just working at Knights Apparel or working at Pizza
3 Hut. They enjoyed lavish lifestyles due to the way they
4 presented themselves and being as beautiful as they are and as
5 meaningful as they are in providing entertainment in the homes
6 of of members of our community.

7 Mr. Reed comes before the Court today acknowledging that
8 he had a lot to do in these young ladies as being welcomed in
9 the homes of people that's including the home of the victim in
10 this case. Your Honor, no doubt he's known the victim in this
11 case for some period of time and has always previously, to my
12 knowledge, been a person welcome in and about the home there
13 in Campobello. The problem with Ms. Lane who has appeared
14 just before the Court was a person who was most frequently in
15 that home, had been in that home for about six months on a
16 regular basis most weekends prior to this incident occurring.
17 As the Court looks at Mr. Reed's background and the kinda work
18 he did and the lack of any supervisory role he had in any of
19 those jobs because while he stands before today and tells the
20 Court it was a mobile convenience store, the truth of the
21 matter, Your Honor, is that André Ru -- Reed drove a ice cream
22 truck where he sold additional items outta the ice cream truck
23 and he has a tendency to enhance his role which I think is a
24 mistake on his part, Your Honor, because the brains behind
25 this whole operation was Brandy Lane who just walked outta

1 here with a 30-month sentence. No doubt about it she was the
2 brains behind the situation. She's the one that had the
3 money, she's the one that got caught with the guns, she's the
4 one that went out the State, they went to to Virginia to try
5 to cover their tracks and they left Mr. Reed here in
6 Spartanburg County with a little cash that she paid him for
7 what he did. What he did was wrong, he shouldn'ta listened to
8 her. As his wife said, he shoulda been home with his family
9 takin' care of his family 'cause she's a loving, hard-working
10 person. He shoulda never been around Brandy Lane and
11 Stephanie Wilson, shoulda never followed their directions in
12 where to come into the house and what do do. Your Honor, no
13 one saw any guns. Mr. Morgan's situation would have been that
14 his back was turned when people came in the house. There was
15 no evidence the door was forced open or anything like that and
16 these gentlemen did go in. Mr. Reed did not have very much
17 when they all got caught. Ms. Ms. Wilson and Ms. Lane pawned
18 everything, got the money, got the items and knew where to go
19 in Virginia to try to get rid of those items. My client was
20 the biggest fool you could ever think about in the situation.
21 He oughta be embarrassed by what he did but he did come
22 forward and did what he could do in order to try to make it
23 right and offered to go before the State in order to testify
24 against Mr. Foster. We had no earthly idea that Mr. Foster
25 was gonna wind up with twenty (20) years in prison, we had no

1 earthly idea of that as well we had no earthly idea that the
2 maximum was gonna be sought against Mr. Reed because of the
3 way Mr. Reed has in previously when things got missing in
4 Mr. Morgan's home Mr. Reed helped recover some item previously
5 and actually met Mr. Morgan up here offa Howard Street near
6 the apartment building, it's Old Fremont School, to make sure
7 that Mr. Morgan was able to recover some things that were
8 stolen from his home previously. He reminds me of a person at
9 least in the Scripture's name: Judas. He did just what Judas
10 did by a person, intelligent person, hard-working person, a
11 trusted person that's what Judas was. He was a good man who
12 had a bad day. Mr. Reed's a good man. He's had two bad days:
13 one when he stood around the house party laughin' and talk
14 while his friends took six dollars (\$60) from his school
15 buddy. Now he's before the Court now because similar
16 situation: drinking, drugs, partying, listenin' to some woman
17 who he had no business listenin' to that had access to the
18 house, they went in, pretended to tie up the two women. They
19 miraculously got themselves loose and freed Mr. Morgan and
20 then they immediately left the residence. It is what it is,
21 Your Honor. All we can do is come in here and tell the truth
22 about the situation. As I told Mr. Reed earlier, there's
23 misconception in the Scriptures when you say, Ye shall tell
24 the truth and the truth shall set you free. That is not what
25 the Scripture's saying. The Scripture say, Ye shall know the

1 truth and the truth shall set you free. He's not expecting to
2 go here free today, we're just asking for the Court to look at
3 the situation for what it is, asking the Court to look at what
4 the State offered for those two women who did no more than get
5 caught with everything and then tell. We just asking the
6 Court to look at what Mr. Reed offered to do which is just as
7 much as what they offered to do is to testify at trial and he
8 put on the record he would do that after he pled guilty and
9 all we're asking for is mercy and to asking the Court to do
10 whatever the Court can do in order to fashion a sentence. I
11 hope that there would not be a request today of maximum
12 sentencing in this case because everybody involved in this
13 knows Mr. Reed to be a good person who did a bad thing. It
14 was not funny. It musta scared Mr. Morgan to death. It's
15 been a situation where Mr. Morgan's home has been violated,
16 his trust has been violated, but they were greedy, greed
17 brought them where they are today. We're asking that mercy
18 not to take him away from those six children forever, Your
19 Honor. We know it's a bad thing, we know it's a big burden on
20 the Court, we're just asking the Court to look at what it was:
21 partying, drugs, prostitution, greed, foolishness brought us
22 here. We're just asking for mercy, that's all we can do, Your
23 Honor. Thank you.

24 THE COURT: You able to hear what your lawyer stated to
25 me?

1 THE DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: You agree with what he stated?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Is there anything that you want to say to me
5 or want me to know or consider?

6 THE DEFENDANT: Yes, sir. I gotta tell the truth. Um,
7 we go out, we go out to Mr. Morgan' house every Saturday, take
8 the girls out there, he pay me to trans -- to drive 'cause a
9 driver's license and this particular Saturday it was, you
10 know, that Ms. -- they was needin' the money to get off -- pay
11 off their PTUP probation and one wanted to go to California,
12 one wanted to go back to Florida or something. Like he said I
13 went along with it. I mean, I've been a guest in Mr. Morgan'
14 house, you know, numerous those Saturday nights and he was
15 tellin' the truth on entertainment, you know, for Mr. Morgan.
16 Like I say, I've turned a lotta things, took a lot of
17 different girls out there and they have always taken things
18 from him but it -- not like this. I try to, you know, I try
19 to get it back best I could and I never charged him anything
20 to get it back and me and, uh, me and Mr. Morgan we talk on
21 the phone all the time, I I got him on video on the phone, you
22 know, doin' things, weren't supposed to not talk bad about him
23 but 'cause he didn't do anything wrong but we pulled a scheme
24 to try to like I say that one girl needed fifteen thousand
25 (15,000) to get off probation, one needed about four (4) or

1 five thousand (5,000) I figure well, they would get the stuff
2 and get a little cash, we'll get all the stuff, we, you know,
3 then go pay and get the -- get offa probation, get the money.
4 Like I say, there's no excuse for it but I wanna say that
5 wasn't wea -- no weapons involved. Them doors open. You
6 know, we got access in and outta the house but on this
7 particular night, not me, just only the girls and so they
8 opened the door and we was already in the little sally port of
9 the house when we got him over by the kitchen with his back
10 turned and that's when Kelvin grabbed him. His, there wasn't
11 any weapons, his back was turned but Kelvin was big enough to
12 hold him down and there wasn't no he didn't fight, no
13 bruisin', he he -- we we're callin' that or they called that
14 night. He didn't even wanna call the police that night he
15 just, you know, said he gonna wait to see what he gonna do
16 about it 'cause he knew, he knew it was us, you know, he he
17 can tell the voices and all. He knew like was apologizin'
18 like, Just get outta my house, you know, and to my knowledge
19 was he called the insurance company and told him he needed a
20 police report so he fabricated a little bitta the story and
21 and he just looked so -- too bad, you know, so I just couldn't
22 go talk to the detective about it. But it it wasn't, I mean,
23 like never went to the house. He never got hit and the
24 weapons, I mean, maybe some weapons was taken from his house.
25 I know I had seven hun -- I got a couple dollars, about I'll

1 say about seven hundred dollars (\$700) from him, you know, the
2 whole incident. He knew everybody split the money and they
3 they took all the goods and all and that was basically my
4 part, okay, five hundred dollars (\$500) but I can't lie he
5 didn't know it was us 'cause I didn't wanna lose my friendship
6 with Vic anyway and it was a couple weeks, they wanted to do
7 it earlier but I was like no the first couple times but then
8 this time I just fell on into, you know, the scheme, went
9 along with it, you know, hold him down, Kelvin hold him down
10 and we steal the stuff out. Me and the girls actually the
11 ones goin' around the house lookin' for the stuff, they knew
12 it was there, you know, and Kelvin basically held him down,
13 you know, big guy sat on his back, didn't beat him, there
14 wasn't any weapons involved. Mr. Morgan really didn't even
15 see us till we was leavin' out but he knew who it was. We
16 called him directly after that it occurred. Like I say he, Not
17 tonight, I'm not gonna bother tonight, said maybe I'll just
18 come clean the house up tomorrow, help clean the house up
19 tomorrow and we try to -- of course and I felt bad about it
20 right then it ever happened. I couldn't, couldn't take it
21 back and say, you know, just tried to hide from it after that.

22 Now Vic spoke to my wife. He said he was gonna come in
23 and talk for my behalf but -- well, he said he wanted me to
24 get some time but he said he'll, you know, I thought he was
25 gonna tell some truth, you know, just the consequence you get

1 yourself into with the Court. The situation you get yourself
2 into carry the consequences sometimes the way it turn but and
3 I really lost a good friend Vic but at this point my tears are
4 felt. Thanks. All I can say it was wrong. I can't take it
5 back. I just want some help from it rather not the
6 punishment. I asked my wife to ask Vic got paid back
7 restitution maybe a thousand dollars or more but I haven't
8 heard anything in about it till today.

9 THE COURT: Thank you, sir.

10 MR. ELLIS: Your Honor, if I may, Mr. Morgan doesn't
11 disagree with everything that the defendant just said and and
12 for the Court's information when Mr. Augusta was sitting here
13 earlier before this jail chain was brought in, Mr. Morgan
14 asked if that was Mr. Reed, was not -- I informed him that was
15 not Mr. Reed, Mr. Reed was not even in the room yet and that
16 that tells you how much or how little actually Mr. Morgan
17 actually recognized Mr. Reed. Mr. Reed claims they're such
18 good friends just for the Court's information.

19 (Pause.)

20 THE COURT: I'll find that there's a substantial factual
21 basis for the plea. I'll find that the defendant's decision
22 to enter the plea has been made freely, voluntarily, knowingly
23 and intellectually by him. I'll find that he has received the
24 services from a very competent and able legal counsel,
25 services he's indicated to the Court he's satisfied with and

1 has relied on in reaching the decisions that he's made. I
2 know that I previously accepted the plea but I felt the need
3 to go ahead and recite that for purposes of the record again.

4 (Pause.)

5 THE COURT: Indictment 2008-GS-42-6036 the sentence of
6 the Court is that the defendant will be confined to the State
7 Department of Corrections for a period of fifteen (15) years.
8 He will receive credit for the five hundred and twenty-two
9 (522) days or since May the 23rd 2008. On 2008-GS-42-6038,
10 the sentence of the Court is that the defendant will be
11 confined to the State Department of Corrections for a period
12 of five (5) years. That will run consecutive to the other
13 charge. He'll get credit for the same time. Good luck to ya,
14 sir.

15 MR. ELLIS: Thank you, Your Honor

16 MR. CHEEK: Thank, Your Honor.

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1
2
3 CERTIFICATE OF REPORTER
4

5 I, Margaret A. Woods, Court Reporter in and for the State
6 of South Carolina at Large, hereby certify that I reported the
7 preceding case on August 26, 2009 at the time and place
8 heretofore set forth; and that the foregoing pages numbered
9 from 3 through 19, inclusive, constitute a true and accurate
10 transcription of my stenographic notes of the said proceeding.

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

15 July 12, 2010

16
17 Margaret A. Woods

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

ORIGINAL

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Spartanburg)Andre Lee Reed #21837)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

County of Spartanburg)

20 CP-42-2995

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SPARTANBURG COUNTY
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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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence General Sessions Court
in Spartanburg County Courthouse
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) NA/ Last known No. (MO 21534 • MO 21535 • MO 21536 •
 - (b) MO 21537 Modified to Common Law Robbery ad.
 - (c) 2nd Degree Burglary
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sentenced on August, 26, 2009 sentence imposed
 - (b) totaled 15 years and 5 years consecutive = 20 years
 - (c) _____

5. Check whether a finding of guilty was made

- (a) after a plea of guilty by way of coercion
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes but only a "Pro se" motion for reconsideration = ignored by Court

7. If you answered "yes" to (6), list

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

- i. Submitted a motion for reconsideration of
 ii. August 28th 2009 to The Spartanburg Court
 iii. Clerk of Court, aforesaid

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

- i. NA
 ii. NA
 iii. _____

(c) the date of each such result:

- i. NA
 ii. NA
 iii. _____

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

- i. NA
 ii. NA
 iii. _____

8. If you answered "no" to (6), state your reason for not so appealing: _____

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

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

- (a) Incorrect and/or unlawful sentence
 (b) Judicial "Abuse of Discretion" by Judge at sentencing
 (c) Lack of Jurisdiction and Coerced confession
 (d) Prosecutorial Misconduct

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No. 10(A)
See Issue
Attachment

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) The facts to this issue are in reference to S.C. code of laws
17-25-130 Mercy see Attachment to issue
22-3-740 Election of offense and 17-25-50 Closely related 17-25-130

(b) Judge Abused his Discretion in sentencing Phase willfully
ignoring state statutes and/or legislation (See Attachment to Issues No. 10)

(c) Filed Motion based jurisdiction to Grand Jury at General Sessions
therefor obtaining a coerced confession (See Attachment to issues No. 10, (c))
(D) Prosecutorial Misconduct Attach.

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

Only the motion for reconsideration to Sptbg. Co. Court

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any,
already specified in (7)

No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____
ii. NA
iii. _____
iv. _____

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

i. _____
ii. NA
iii. _____
iv. _____

(c) the disposition thereof:

i. _____
ii. NA
iii. _____
iv. _____

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(d) the date of each such disposition:

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

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

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

13 Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? One on motion for reconsideration
18-3-30 and 22-3-990

14 If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. 22-3-740 S.C. Code Election of Offenses
- ii. Closely related offenses - Not under the same authority
- iii. _____

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

- i. "Pro se" on reconsideration which was
- ii. ignored and never responded too by
- iii. court and/or Judge

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) My attorney refused to
- (b) bring anything back before the courts
- (c) and/or any Courts

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

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

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Jamaa Cheeks' Atty. 155 Hawk Creek rd.
- ii. Spartanburg S.C. 29301
- iii. _____

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

- i. Plea and sentencing
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

Correction of sentence and/or modification in light
of Statutory and Constitutional infractions

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

NA

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2010 JUN -4 PM 1:54

10. A

Attachment to PCR applic.

Incorrect and/or unlawful sentencing

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CLERK OF COURT
SARASOTA COUNTY
JUN 16 PM 3:15
10. A

I, Andre' Reed was incorrectly sentenced to 15 years and 5 years consecutive "20 years for the crimes of 2nd Degree Burglary, and Common law Robbery on August 26 2009, all stemming from one offense and/or, a multiplicitous indictment and/or arrest warrant(s). Therefore, all sentences should have been concurrent, because of legislative intent, S.C. code of laws 17-25-5 Considering closely connected offenses as one offense, for the purpose of imposition of sentencing; Although in my case it happened at one in conjunction to S.C. code of laws 22-3-740 "Election of offense" this statute states that "judge at trial shall be required to elect which offense to try when there is an offense, or one offense susceptible of being designated as several different offenses", a "shall bar the others from further prosecution. This overstepping legislation, violates the separation of powers doctrine, also denies defendant privileges and immunities, equal protection, and ^{Double Jeopardy S.C. constitution Art. 1 § 12} due process under S.C. constitution Art. 1 § 3; With aforesaid, the "mercy" statute also exist, and apply to a sentence on a guilty plea S.C. code 17-25-130 on review less than maximum for a plea to avoid the maximum, legislature in this that "Accepted plea of guilty as equivalent a jury recommendation of mercy for sentencing purposes, was the max on one of the ~~the~~ convictions, also the other conviction should of been elected out, or ran concurrently, 2 of my co-defendants was sentence to 15 suspended to 5 concurrent

Attachment to PCR application No. (10.B) re: 9B.

Judicial "Abuse of Discretion" By Judge & sentencing

On August 26th 2009 in the same courtroom at the same time by the same judge the Honorable Mark Hayes "Judge at large" both myself, Mrs. Brandi Lane, and Mrs. Stefanie P. Wilks and 2 of my co-defendants was sentenced by Judge Hayes. The girls was both sentenced to 15 years suspended to 5 years concurrent to their current probation violation, of which gives them basically no ~~additional~~ additional time to serve, after which he sentenced me to 15 plus 5 consecutive, giving me a 20 year sentence for the same crime, after after offense modifications the girls was only facing 15 years. My offenses carried 15 plus 15 which is double the ~~time~~ time of my co-defendants, the most fairly the judge could have been by not giving me the same sentence, was to give me a sentence of 15 suspended to 5 consecutive to my probation which is double the sentence of my 2 co-defendants, also in light of S.C. code of law "Mercy 17-25-130" on a plea "guilty" and "22-3-740 Elect of offense" and 17-25-50 closely related offenses Judge understood all (Modus Operandi) ^{co-defendants} and state statutes, but willfully abused his discretion in the sentencing phase, disregarding equal protection privileges and immunities, due process, also S.C. code 17-15-130 And Double Jeopardy for consecutive sentencing S.C. const. Art. I section 12 in his Abuse to S.C. constitution Art. 1 § 3, By the

Andrew L. Reed # 218837

(10.D)

Re: 9.D

10.D

Attachment to PCR Application Prosecutorial Misconduct

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SPARTANBURG COUNTY
2010 JUN - 11 PM 3:55

At sentencing on Aug. 26, 2009, the solicitor committed grave misconduct, that could be considered Obstruction of Justice - Never the less, The prosecutor at sentencing gave false facts as to what really took place in the incident, he stated that the victims door was kicked in also that that I had and another guy had a gun and tied the victim up, and hit with gun on head, after learning all of that was untrue, just to have a greater sentence imposed, he knew the real story was as follows: Every Saturday, Myself, Brandi Lane, & Stefan Wilson goes out to Vic Morgans. Sometimes we take alone others, male and female to entertain and party ect... but this time Vic got a little too high, and we stole his goods when I came back to pick the girls up from his house, the ~~at~~ only two offenses that exist would have been breach of trust and/or grand larceny on me, the girls, and other parties in relation. Vic Morgan the vic knew what really happened, he told the girls not to talk about it, because he wanted to go to his insurance company first to secure a claim, he also told me not to worry about it, he was aware that me, and Brandi, and others stole his goods but his insurer would honor his claim, without a police report, so he told us that he would not include anybody, but that he would make-up something, so that's when the story changed, even the police report, and the newspapers mention foul play, the courts was saying it sounded like an insurance fraud ~~case~~ case because

Andrew Reed

10.1

Attachment to PCR Applic. (10.1)
continuedFILED
CLERK OF COURT
SHERMAN COUNTY
2010 JUN 21 PM 1:55

Investigations showed "no forced entry" of restraints from being tied up, also, V.C. is 70 years of age with no marks to support his allegations, also no marks being hit on the head with a gun, did not go to the hospital, or called the police on the night in question, did ~~not~~ attempt to until after the insurance company denied his claims, further he didn't tell the investigator that we were guess regularly, and partied every week, also guess that night, because after the investigation the prosecutor ~~was~~ became aware that no burglary or kidnapping, The State charged the girls first with 1st degree Burglary, after finding out that they were guess, also kidnapping, Armed Robbery and Grand Larceny, and threatened them with life sentences taking advantage of the situation S.C. code of laws 16-17-735 (A(2); (E. 3.c.) I'm humble to avoid obstruction of justice. So, everyone just ~~then~~ went along with the state to avoid further conflict, thinking since the state found out true story and/or situation, that they would play fair, we had enough troubles hanging over, with the probation parole, and service and everybody just wanted it to be over, it work out for the girls; But because of the prosecutor will be testifying falsely to the facts of the case at sentencing, ~~we~~ suffered greatly, in contrast to S.C. const. Art. 15.3 a Privileges due process, immunities and Double Jeopardy in sentencing, I not attempting to raise criminal charges, and/or suit, I'm requesting.

STATE OF SOUTH CAROLINA)

VERIFICATION

COUNTY OF Spartanburg)

I, Andres Lee Reed #219837 6-2-2010, 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.

Andres Lee Reed

Sworn to and subscribed before me

This 7th day of June, 2010

Steven T. McCauley L.S.

Notary Public for South Carolina

My Commission Expires March 7, 2016

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CLERK OF COURT
SPARTANBURG COUNTY
2010 JUN -4 PM 1:55

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

I, Andres Lee Reed 6-2-2010, 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 proceeding or give security therefor.

Andres Lee Reed

Applicant

Sworn to and subscribed before me

This 7th day of June, 2010

Steven T. McCauley L.S.

Notary Public for South Carolina

My Commission Expires March 7, 2016

IN THE COUNTY Courthouse
OF SPARTANBURG COUNTY

Andre' L. Reed #218837
applicant

6-2-2010

v.
State of South Carolina
County of Spartanburg
Respondents

Certificate of Service
and of Mailing

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 JUN -4 PM 11:55

I, Andre' L. Reed #218837, certify that on this 2nd day of June 2010, did place within the institutional mailroom, postage prepaid for mailing from Perry C.I. to Spartanburg County Courthouse, Clerk of Court Mrs. Hope Blakely the original Post Conviction Application, verification to proceed without payment, and a 5-page Attachment to support issues set out in application Nos. 9 and 10 A-D. to Spartanburg County Clerks office, 180 Magnolia St. Sp'tbg. S.C. 29303 for filing and processing.

SWORN AND SUBSCRIBED BEFORE ME

Shirley G. McLaughlin ON THIS

2nd DAY OF June 2010
NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES

November 2, 2016

Sincerely, S/ Andre' Reed

Andre' Lee Reed #218837
PERRY C.I. QIA Room 207
430 Oaklawn rd.
Peltzer S.C. 29669

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2010-CP-42-2995
Andre Lee Reed, #218837,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 4, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the October 2008 term of the Spartanburg County Grand Jury for burglary – 1st degree (08-GS-42-6036) and armed robbery (08-GS-42-6038)¹. Applicant was represented by James A. Cheek, Esquire. On August 26, 2009, the Applicant pled guilty to the lesser-included offenses of burglary – 2nd degree and common law robbery. Applicant was sentenced by the Honorable J. Mark Hayes II to confinement for a period of fifteen years for burglary – 2nd degree and a consecutive sentence of five years for common law robbery. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South

¹ Upon information and belief, two additional charges of kidnapping and grand larceny were dropped as part of the plea negotiations.

Carolina Department of Corrections, and the sentencing 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. Incorrect and/or unlawful sentence, in that;
 - a. Sentence violates various statutes and the legislative intent,
2. Abuse of discretion by judge at sentencing, in that;
 - a. Judge abused his discretion in sentencing phase willfully ignoring state statutes and/or legislation by sentencing Applicant to a fifteen year sentence and a consecutive five year sentence,
3. Lack of jurisdiction, in that;
 - a. Applicant filed a Motion to appeal the Preliminary hearing decision and Motion to dismiss all related criminal offenses in an attempt o procedurally bar the State jurisdiction to the grand jury and the General Sessions, but the Motions were never dealt with,
4. Coerced confession, in that;
 - a. Applicant pled under coercion to avoid further confrontations and threats, in a hope to receive the aforementioned sentence to resolve,
5. Prosecutorial misconduct, in that;
 - a. Solicitor, at sentencing, gave false facts as to what really took place in the incident

III.

In his first and second allegations, the Applicant alleges that his sentence is incorrect, unlawful, and too harsh. The court has broad discretion in imposing criminal sentences. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976). Absent a showing of partiality, prejudice, oppression or corrupt motive by the sentencing court, or absent a showing that the statutory punishment in and of itself constitutes cruel and unusual punishment, the post-conviction relief

court has no authority or jurisdiction to review or change a sentence falling within statutory limits. State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979).

Furthermore, the Applicant did not object to the sentence handed down by the trial court. The Applicant's failure to object has waived any allegation that his sentence was excessive or otherwise improper. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). The Court should summarily dismiss this ground for relief.

IV.

The Respondent submits that the Applicant's third allegation, that the circuit court lacked subject matter jurisdiction, is meritless. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003), citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001). In this case, the Applicant was indicted by the Spartanburg County grand jury. That indictment was true-billed and signed by the foreman of the grand jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. 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 here cannot show any irregularity, because the indictments in question are sufficient on their face. Therefore, the Respondent would move for summary judgment on this allegation pursuant to S.C. Code Ann. § 17-27-70 (2003), because there is no issue of material fact relating to this allegation and it should be dismissed as a matter of law.

V.

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

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

VI.

The Applicant also alleges that the solicitor made false statements regarding the facts of the case during the Applicant's sentencing hearing, after the Applicant had previously pled guilty. The Court should summarily dismiss this ground for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Additionally, the Applicant failed to object to the statements made by the Solicitor at the plea or sentencing and in fact, proceeded with the plea. Therefore, the Respondent submits that the Applicant waived any objections he may have had. The Respondent therefore moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

VII.

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

VIII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the allegation of involuntary guilty plea.

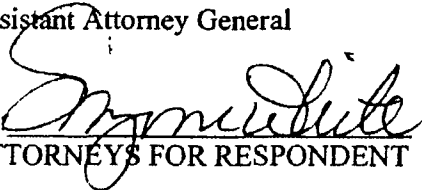
Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

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

December 30, 2010.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

André Lee Reed,

2010-CP-42-2995

Applicant,

v.

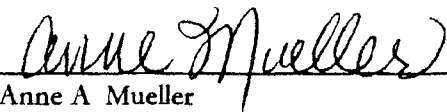
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

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

John R. Holland, Esquire
Campbell & Shabel, LLC
P.O. Box 1793
Spartanburg, South Carolina 29306


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 30th day of December, 2010.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Andre Lee Reed,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2010-CP-42-2995
7 The State.) April 6, 2011
8 Spartanburg, South Carolina
9
10

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE
13
14

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

16 JOHN R. HOLLAND, ESQUIRE
17 Attorney for the Applicant

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

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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Andre Reed
Direct examination by Mr. Holland

1 THE COURT: Andre Reed. Mr. Holland, you represent
2 him.

3 MR. HOLLAND: I do, Your Honor.

4 THE COURT: Are y'all ready to proceed on your
5 application?

6 MR. HOLLAND: We are ready, Your Honor. Andre Reed.

7 ANDRE REED, having been first
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. HOLLAND

10 MR. HOLLAND: May it please the Court.

11 Q Mr. Reed, please state your name for the record.

12 A Andre Reed -- Andre Lee Reed. Excuse me.

13 Q And you're currently confined in the South Carolina
14 Department of Corrections.

15 A Yes, sir.

16 Q And you were indicted in October of 2008 on burglary
17 first and armed robbery. You were charged and indicted
18 with burglary first and armed robbery.

19 A Yes, sir. I can't remember the date.

20 Q All right. And then sometime later you pled guilty to
21 burglary second degree and common-law robbery, is that
22 correct?

23 A Yes, sir, yes, sir.

24 Q And then you were sentenced 15 years on the burglary
25 and five years on the common-law robbery to run

Andre Reed
Direct examination by Mr. Holland

- 1 consecutive.
- 2 A Yes, sir.
- 3 Q All right. And who was your lawyer?
- 4 A At first it was Roger Poole, and then James Cheeks
- 5 took -- took it the day of -- the day before the plea.
- 6 Q All right. Now, did you ever -- did you ever discuss
- 7 with Mr. Poole any negotiations, possible plea deals?
- 8 A Well, it was 15 suspended to seven he was talking
- 9 about, and saying that Kevin was going to get it, he
- 10 would've took the plea, but if Kevin wasn't going to get it
- 11 I, I can go ahead and plea first and I'll get it.
- 12 Q And, and who is Kevin for the Court?
- 13 A Kevin Foster is one of the other codefendants.
- 14 Q All right. And, and did you understand this to be an
- 15 offer from the solicitor?
- 16 A Well, detrimental lies. I know the pro -- the
- 17 solicitor can't be guaranteed, I mean he can't guarantee
- 18 it, but he can --
- 19 Q Did you understand that this was an offer of a
- 20 recommendation --
- 21 A Oh, yes, sir.
- 22 Q -- to the Court from the solicitor?
- 23 A Yes, sir, yes, sir.
- 24 Q All right. And at that point were you interested in
- 25 pleading guilty if it was for 15 years suspended to seven?

Andre Reed

Direct examination by Mr. Holland

1 A Yes, sir. That's my whole motive.

2 Q Okay. When it came time to plea did you find out that
3 someone else was your lawyer?

4 A Yes, sir. A couple of days before, but, you know,
5 James Cheeks took me in for the plea for those lesser
6 included offenses.

7 Q All right. And at that time were you still wanting
8 the, the offer you thought you had of 15 years suspended to
9 seven?

10 A Yes, sir.

11 Q And did you learn at some point that that wasn't the
12 offer?

13 A Yes, sir. He, he said it could be -- he couldn't --
14 he hadn't talked to Poole because he couldn't guarantee
15 that.

16 Q And so at that time did your decision as to whether or
17 not you wanted to plead change?

18 A Well, to the offenses, no, but, you know, I wanted to
19 plead to those offenses to get it off the table. And-but I
20 was in the mind-state that I would have 15 suspended to
21 seven.

22 Q Yeah. But when you knew that wasn't a possibility you
23 no longer wanted to plea, right?

24 A No. But I liked the, the, the offer of the
25 sentence -- offense modification and --

Andre Reed
Direct examination by Mr. Holland

1 Q I, I understand. Please listen to my question.

2 A Okay.

3 Q When you knew that there was no longer an offer do you
4 feel that you were influenced by, by James Cheek?

5 A Yes, sir, because he didn't -- yes, sir.

6 Q And, and you didn't want to plead guilty, but
7 Mr. Cheek -- did he influence you to do that?

8 A Yes, sir. He said he talked to the victim, and the
9 victim was going to come and ask for mercy, so I probably
10 can, you know -- mercy, I probably can get 15 suspended to
11 five. So and the victim was, was going to, was talking
12 like he was going to come and tell the truth or whatever,
13 really what happens and goes on out there and --

14 Q And so based on that you were interested in taking the
15 plea?

16 A Right. And then the victim came the day of my plea,
17 and, you know, when I admitted to the judge, accepted the
18 plea, you know, he, you know, he even kinda waved at me,
19 you know, shook his head like, like, you know,
20 I-appreciate-it type, so I --

21 Q Who shook his head?

22 A Mr. Vic Morgan. He just came to the plea that day.

23 Q Okay. At that point you were sentenced to 20 years.
24 Do you recall -- did you ask anything of Mr Cheek?

25 A Yeah. He said he wasn't satisfied with sentence and I

Andre Reed

Direct examination by Mr. Holland

1 wished to file a direct appeal, and so I asked for the
2 motion reconsideration, and he said, oh, yeah, yeah, we
3 need to do that today and we need to get that done today,
4 going to get motion for reconsideration file.

5 Q To your knowledge was that done?

6 A No, sir. I filed it pro se on, on the 28th. I was
7 sentenced on the 26th of August of 2009.

8 Q Okay. So, and you feel as if he, Mr. Cheek, did not
9 file the motion to reconsider --

10 A Yes, sir.

11 Q -- after you asked him to?

12 A Well, I know about the day. I know he's real busy and
13 all and he didn't file it. So I just went ahead and took
14 the initiative, because it seems likely that he wouldn't
15 get around to it before the jurisdiction of days elapsed.

16 Q Do you feel like two days was enough time to speak to
17 your lawyer, your new lawyer, before pleading guilty?

18 A No, sir.

19 MR. HOLLAND: If I may have one moment, Your Honor.

20 (Pause.)

21 Q You've put many other things in your application. Are
22 there any statutes you'd like to share with the judge?

23 A Well, my, my, oh, excuse me, my motive for pleaing was
24 in light of the statute. I had knowledge on, you know,
25 close related offenses, election of offense and concurrent

Andre Reed
Direct examination by Mr. Holland

1 sentencing, you know, same-elements test.

2 And I figured, well, if I get a sentence for this same
3 offense, if I get it multiplicity indictment that they was
4 going to hold, then I was entitled to concurrent sentencing
5 because of one crime and the same elements.

6 And from then I was hoping, well, they most likely
7 will run both 15s together on concurrent and maybe I'll end
8 up with -- if I didn't get the seven it'd probably be 15
9 suspended to ten.

10 You know, and so that was my motive in reference to
11 the statute 17-27-50, close related, and modus operandi and
12 operation of -- motive operation. We's all acting as one
13 collective body to, you know, to steal some money from a
14 person, being the two girls and my other victim, and we all
15 planned it out together and we all, you know, stole the
16 money.

17 So I figured we'd get a sentence maybe the same or
18 real close to the same. And they was talking about the
19 girls would get like 15 suspended to five maybe concurrent
20 And I was like, well, that sounds good because we might end
21 up with 15 suspended to five consecutive, which is double
22 what the girls have, or maybe 15 suspended to seven, is
23 when Roger Poole was talking to me first. So that was my
24 motive for pleaing. And that didn't happen.

25 So I wanted the motion to reconsideration to bring up

Andre Reed
Direct examination by Mr. Holland

1 statutory issues of election offense that 22-3-740 and with
2 the hope that these statutes would be honored in reference
3 to my favoring and reconsideration to try to obtain the 15
4 suspended to seven.

5 Instead of collaterally attacking the whole sentence I
6 had a right to 17-27-26(b) to collaterally attack the
7 sentence or conviction. I was just attacking the sentence.

8 The same way with this state statute to be honored in
9 my favor, at least get him on the record for to be
10 preserved for the Supreme Court. And so that was my issue
11 to file the motion for reconsideration and hope that I can
12 get, obtain that sentence.

13 Q Is that all you and I discussed in the back room?

14 A No, sir. The ineffective assistance of counsel is
15 what was discussed.

16 Q But I mean, between -- I -- between ineffective
17 assistance of counsel, is that the only other stuff you and
18 I talked about?

19 A That I can recall.

20 Q All right. So you --

21 A I been in three days.

22 Q You don't want to share anything else.

23 A Oh, yes, sir, but I was saying that what me and you
24 shared in the -- in the room, I can't recall anything else

25 Q Let me see your notes here.

Andre Reed
Direct examination by Mr. Holland

1 MR. HOLLAND: If I may have a moment.

2 A Yes, sir.

3 (Pause.)

4 Q Think there's a Brady violation?

5 A Yes, sir. I never seen the, the full discovery. I
6 only seen a 1-portion of the evidence.

7 Q All right. So do you feel like your lawyer should
8 have gone over that discovery with you?

9 A Yes, sir, for the purpose of the charges really
10 burglary first and armed robbery. And, you know, we gets
11 at the house, you know, every Saturday, with the girls and,
12 you know, partying and what not.

13 And a lot of times, you know, people in and out, and
14 so, and the girls guests at the house that night. We all
15 coming to pick the girls up. So that gives us a right to
16 get in and the, the tenant is intoxicated and the guests
17 let some other friends in that usually come in anyway. And
18 they steal some property. It's not burglary, is it? I
19 mean, a breach of trust on grand larceny, but it's not a
20 burglary because if the same goes if I was a, a tenant at
21 your house and we was partying and you get intoxicated, I
22 got control of the premises. I can let in who I want to
23 let in. And if they steal something then, you know, then
24 you know, that's a crime but it's not burglary, you know,
25 because people in and out anyway. And that's usually what

Andre Reed
Direct examination by Mr. Holland

1 takes place out there every Saturday. So I would've
2 attacked the burglary on that issue, that it is a crime of
3 grand larceny and breach of trust. But that was my motive,
4 so.

5 Q Excuse me. So do you feel if you had a trial you
6 could have beaten the burglary?

7 A Well, I feel the state, you know, since the evidence
8 came out and found out that the state charged the girls
9 first and once they found out they was guests at the house
10 they still charged me with first degree burglary, they
11 charged the girls first -- Stephanie Wilson.

12 I didn't have a charge. They charged on first degree
13 burglary, armed robbery and grand larceny knowing she was a
14 guest at the house -- and then Brandy Lane -- with the
15 purpose of, you know, keeping the weight over their head so
16 we can find out who was the other parties involved and
17 knowing that if burglary never took place guests at the
18 house, I feel the state would have dropped that anyway down
19 to the lesser included offense, you know, because the
20 burglary never took place and the armed robbery never took
21 place, but a crime did take place so far a larceny So
22 that was my mentality

23 Q All right.

24 A And a breach of trust on the, the guests at the house.

25 Q Anything else you want to share with the Court?

Andre Reed
Direct examination by Mr. Holland

1 A Well, you know, instead of plead guilty I wanted to
2 talk about the mercy statute where my mentality was also
3 the -- on the mercy statute that a second plea of guilty is
4 as if the jury was asking for recommendation for the
5 mercy -- for sentence modification and said, you know, the
6 sentence be -- you'll be sentenced in like manner if the
7 jury was asking for a recommendation for mercy for the
8 Court if the judge accepted the plea of guilty And that
9 was my mentality -- 17-25-130 -- when I pled. And I was,
10 you know, figuring I can get the mercy because of that
11 statute.

12 Q All right. So between talking to James Cheek and that
13 statute you thought you were going to get mercy?

14 A Yes, sir.

15 Q Mr. Cheek influenced you?

16 A Yes, sir.

17 Q All right. I'm sorry. I didn't mean to take this
18 from you.

19 A Oh, no. That's fine.

20 Q You don't have anything else to share, do you?

21 A Not right now. Maybe with talking to Mr. Cheeks
22 about, I mean, after my -- Mr. Cheeks take the stand I
23 probably will.

24 Q All right. I don't have any more questions.

25

Andre Reed
Cross-examination by Ms. White

1 CROSS-EXAMINATION

2 BY MS. WHITE

3 Q Mr. Reed, you pled guilty understanding that you were
4 pleading guilty to the lesser offenses of burglary second
5 and common law, is that right?

6 A Yes, ma'am.

7 Q And did the judge go over with you the potential range
8 of sentences you could face of up to -- burglary second was
9 up to 15 and common law was up to 15?

10 A I had discussed it with counsel.

11 Q Okay. So you had. You had talked with Mr. Cheek
12 about it?

13 A Yes, ma'am.

14 Q Okay. And so you knew that each of them faced up to
15 15, but y'all were hoping that you were going to get maybe
16 some suspended time.

17 A Right. And my mentality was since it was one crime,
18 the election of offense, then the sentence would most
19 likely be run concurrent anyway because the same element's
20 test. And it's only on offense. It's not like it was
21 multiple charges.

22 And the state originally charged home invasion, which
23 has all the same elements as, you know, robbery and
24 burglary and all. But once they found the true evidence
25 they would modify them down anyway, was my mentality

Andre Reed
Cross-examination by Ms. White

1 Q Okay.

2 A And I wouldn't never be facing the first degree or
3 armed robbery anyway.

4 Q Okay. So you understood that they had dropped it down
5 from the armed robbery and burglary first. And you and
6 Mr. Cheek talked about the possibility of either concurrent
7 versus consecutive and the reduction down to the lesser
8 included charges?

9 A Yes, ma'am, to a certain extent.

10 Q Okay. All right. And Mr. Cheek told you -- you knew
11 going in that you did not have a definite plea or
12 negotiated sentence, is that right?

13 A Right, by the solicitor, right.

14 Q Okay. And so you were hoping that you would get a
15 less amount based on the facts of the case. Once they
16 explained everything you were hoping that the judge would
17 see it and give you a lesser amount, is that right?

18 A Yes, ma'am, was a portion of my mentality.

19 Q Okay. And, in fact, Mr. Cheek spoke pretty -- a
20 pretty lengthy time about the facts of the case and on your
21 behalf and kind of asking for mercy, as you referred to it,
22 is that right?

23 A Yes, ma'am, but I feel it could've been a little more
24 deliberated, but yes, ma'am.

25 Q So you acknowledge he did speak on your behalf, but

Andre Reed
Cross-examination by Ms. White

1 you think he could have said a little more or said some
2 other things?

3 A Yes, ma'am.

4 Q Okay. Now, you definitely wanted to plead to the
5 lesser included of the burglary second and common law, is
6 that right?

7 A Right. I had pled in June, and the sentence was
8 August. And so we was in the sentencing phase. So all my
9 issues related to the sentencing.

10 Q Okay.

11 A And I feel like, you know, coming into the sentencing
12 phase you're trying to get the judge to, you know,
13 recommend so everything derives in proportion to that
14 sentencing phase.

15 Q Okay.

16 A So that's my issues on it.

17 Q And, in fact, you thought at the time, and Mr. Cheek
18 thought, that the victim was going to come in and speak on
19 your behalf.

20 A Right.

21 Q And also ask for mercy.

22 A Right. My wife had also went down to the shop and
23 talked to them. And she's supposed to have went back. She
24 said somebody supposed to have got together.

25 Her schedule got busy. She didn't go. So the other

Andre Reed
Cross-examination by Ms. White

1 side influenced, which is the judicial system. They got to
2 get to him before my wife did, and then what he had already
3 told the counsel, so that didn't happen.

4 Q Okay. So, so he didn't talk, speak on your behalf at
5 the --

6 A Right. My wife didn't get back, but he told my
7 attorney that he was going to.

8 Q Okay. And you were hoping that both of these
9 sentences would be run concurrent, right?

10 A Yes, ma'am, from the same element, conduct test

11 Q But you didn't know for sure. You weren't positive or
12 Mr. Cheek had not promised you that they would be
13 concurrent. Y'all just had discussed and hoped that that
14 would happen?

15 A Well, in light of the statute I really, I believed
16 that it would happen.

17 Q You believed that. Had you talked with Mr. Cheek
18 about that, your belief?

19 A Well, I tried to talk to him about the statute. But,
20 like I say, he's very busy handling a lot of cases. So I
21 don't know that my persuasion get to him, but I wasn't,
22 right.

23 Q Okay. You also testified you never saw full
24 discovery, you saw a portion of the evidence What you
25 saw -- what did you see from -- was this in conversations

Andre Reed
Cross-examination by Ms. White

1 with Mr. Cheek or Mr. Poole?

2 A Well, Mr. Poole, and a portion at the preliminary
3 hearing. I was seen -- well, one party's statement was
4 Brenda Lane, and she was talking about other things that
5 were not -- nonrelated to the crime like counterfeit money,
6 some type of drugs or something. It wasn't in relation to
7 the crime. And, and Stephanie Wilson and Brandy admitting
8 it, you know, what they doing and why they out there every
9 weekend and what we do out there every Saturday and-but --

10 Q So you saw some of the witness statements.

11 A Yes, just two portions, not all -- not even, not even
12 a tenth of the, the discovery material.

13 Q Okay. All-right. And you said you filed a pro se
14 motion for consideration on the 28th.

15 A Yes, ma'am, two days after the -- I have it. It's on
16 file in the clerk's office, and I have a copy of it stamped
17 on the desk over there.

18 Q Okay. And what was the result of that? Did anything
19 come of that?

20 A Never went to court yet. I been waiting on the date
21 to get back in front of the original sentencing judge on
22 it, and also sent him a letter after -- well, I sent him
23 a -- I forwarded him the original copy, and the solicitor's
24 office and the clerk at the same time Then I wrote him a
25 letter, and in reference to it, and I never got a response

James A. Cheek
Direct examination by Ms. White

1 to the letter, only clocked, stamped and filed by the Court
2 is on file.

3 Q Okay, okay.

4 MS. WHITE: I think that's all the questions I have at
5 this time, Your Honor.

6 MR. HOLLAND: I have no redirect.

7 THE COURT: Okay. You can step down.

8 MS. WHITE: Your Honor, the state would now call
9 Mr. James Cheek to the stand.

10 JAMES A. CHEEK, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. WHITE

13 Q Mr. Cheek, if you could, tell us. Mr. Reed has
14 testified that he was originally represented by Mr. Poole
15 and then you took over maybe a few days prior to this plea.
16 Do you recall how those events occurred?

17 A Yes. In the public defender's office where I am
18 employed the cases are actually assigned to the various
19 staff attorneys who have the responsibility for trying a
20 case. And the defendant actually winds up on the docket
21 for trial.

22 In the interim many of these staff attorneys, as well
23 as the solicitors, and I communicate to try to work out any
24 requests or any proposals or any offers of a plea with the
25 inmates while they're at the Spartanburg County Detention

James A. Cheek
Direct examination by Ms. White

1 Facility or at the South Carolina Department of
2 Corrections.

3 Q So you essentially took over his case when it was
4 determined that he was going to plead guilty?

5 A That he was interested in a plea, yes, and discussing
6 a plea.

7 Q Okay. Now, do you recall Mr. Reed testified that Mr.
8 Poole had told him that there was a plea offer of 15 years
9 suspended to seven if he took it prior, before, his
10 codefendant, Mr. Foster, took it? Do you recall anything?

11 A I recall there being some discussion about that,
12 because I think the state was interested in seeing who
13 would actually come forward for a plea, an agreement to
14 testify in the case.

15 My recollection is that Mr. Foster was conflicted out
16 from my office, because I think he was leaning more towards
17 cooperating with the state as opposed to giving Mr. Reed an
18 opportunity.

19 I think Mr. Reed was actually incarcerated at the time
20 in the department of corrections. So I think it was more
21 communication here locally with Mr. Foster. And so I'm not
22 sure maybe actually representing him at first because I
23 wasn't involved in any of that. But many times when I see
24 that they have been conflicted out to private counsel, that
25 generally indicates that that person is probably going to

James A. Cheek
Direct examination by Ms. White

1 cooperate with the state.

2 Q And so was there ever an actual plea offer on the
3 table from the state for Mr. Reed to plead to 15 suspended
4 to seven?

5 A I'm not aware of that. Mr. Poole would have more,
6 more knowledge of an actual concrete offer. I do know
7 there had been some discussion, but I didn't know the
8 actual concrete offer or not was made.

9 Q Okay. Did you have an opportunity to discuss with the
10 solicitor before you proceeded to the guilty plea with Mr.
11 Reed any potential recommendation or negotiated sentence?

12 A At that point the state was not interested in a
13 negotiated sentence or a recommendation other than to move
14 forward with the reduction in charges.

15 Q And, in fact, you were able to get the charges reduced
16 from burglary first and armed robbery to burglary second
17 and common law?

18 A Yes. In fact, Mr Poole also played a large part in
19 doing that.

20 Q And in your discussions or meetings with Mr. Reed had
21 you shared discovery with him, or are you aware of whether
22 or not he had seen anything other than that just a couple
23 of witness statements?

24 A Well, in my discussions with Mr. Reed I actually had
25 the solicitor's file with me. So we went through what he

James A. Cheek
Direct examination by Ms. White

1 was interested in seeing and what I thought was most
2 relevant to the situation.

3 My primary concern was what Mr. Foster might do and
4 that Stephanie Wilson and Brandy Lane were definitely going
5 to be on board to testify in the case on behalf of the
6 state.

7 Q So you were -- had he, had Mr. Reed, talked with you
8 about going to trial or did you think that --

9 A Yeah, we talked about going to trial. And to be frank
10 with you, I feel like Mr. Reed has some very good points
11 that would have been brought out at trial.

12 I felt that he had a great concern about when the
13 actual theft occurred at the house, because if my
14 recollection is correct there was a large number of coins,
15 very valuable coins, that all wound up in Virginia being
16 sold at the hands of Stephanie Wilson with the assistance
17 of Brandy Lane and some of their friends.

18 And for the amount of coins that got missing and the
19 fact that Mr. Reed and neither Mr. Foster were going to be
20 involved in getting any money out of that or any real
21 knowledge of those coins, I feel like the theft actually
22 probably occurred before Mr. Reed and Mr. Foster even went
23 into the home that night.

24 I think that Brandy Lane and Stephanie stole those
25 coins and got them out of the house before these gentlemen

James A. Cheek
Direct examination by Ms. White

1 ever arrived.

2 And Mr. Reed was very adamant bringing that to my
3 attention, and that's what he would use at his trial also
4 is that he felt like -- he never saw any coins, and the
5 coins were probably gone when he actually entered the
6 residence that night.

7 Q Okay. So who ultimately -- who was the one that
8 decided to plead guilty to these other charges? Was it Mr.
9 Reed?

10 A It was Mr. Reed's decision to plead guilty to the
11 charges.

12 I've been present and heard his testimony today, and
13 I, I do feel that of the number of clients that I
14 represented that I probably impacted that decision more
15 than I usually do with a client.

16 Q And in regards to the discussions about concurrent
17 versus consecutive, do you recall? Did y'all discuss that
18 at all in what you were hoping he would get versus what he
19 might get?

20 A We talked about the possibility of it being run
21 consecutive, but since it all happened in one incident I
22 did talk with him about the probability that it would run
23 concurrent.

24 Q So you were hoping yourself based on the facts and
25 circumstances that it would run concurrent?

James A. Cheek
Direct examination by Ms. White

1 A Yes, I was.

2 Q In regards to I guess the question about asking for
3 mercy, you spoke on Mr. Reed's behalf a pretty lengthy
4 period during the guilty plea. Was it your impression as
5 well that the victim was going to be speaking on his behalf
6 or --

7 A Yes. I felt that from my communications and contact
8 with the victim in this case, Mr. Morgan, that there's a
9 very high probability. And if I had to give a rate I would
10 have thought 99 percent chance that he would come forward
11 and acknowledge that he had some knowledge and association
12 with Mr. Reed prior to this night and that given the
13 circumstances of what could have been alleged at trial
14 regarding allegations of prostitution and same sex
15 associations and voyeurism, as well as very personal
16 matters regarding a person's sexual effectiveness, that all
17 of that stuff did not want to be called at trial and that
18 the victim would come forward and be very generous in his
19 common statements and position regarding leniency and mercy
20 towards Mr. Reed.

21 Q And did that occur?

22 A No, that did not occur.

23 In fact, I had gone out and met with the victim at his
24 business. I have a very big regard for him as a
25 businessman and a man of high stature in our community So

James A. Cheek
Direct examination by Ms. White

1 I wanted to have a talk with him because I knew it was
2 going to come out at trial. And so I went and met with Mr.
3 Morgan at his business. I had a very, very I thought
4 rewarding and very emotional meeting with him.

5 In fact, as gentlemen we shook hands and we hugged
6 before I left his business. He indicated that he would
7 think very strongly about how he would approach the Court
8 on behalf of Mr. Reed.

9 Q Tell me about in regards to a motion for
10 reconsideration. Do you recall Mr. Reed asking you to file
11 a motion for reconsideration?

12 A I know we had some discussion about reconsideration,
13 but I also told him that I couldn't assure, that I would
14 call it into my office -- but sometimes things get waylaid
15 or mislaid -- and that he should probably file a motion
16 also just in case, and that if we had to come back later
17 and clean up the motion or shore it up we could do that,
18 because I wasn't sure if I would get a chance to actually
19 get it done myself. I would call my office and leave
20 instructions that that would happen. So I don't know if it
21 actually got filed or not. And I didn't think to check
22 back behind myself on that.

23 Q But you heard the testimony today that Mr. Reed said
24 he filed a pro se motion.

25 A Yes. And I'm very glad that he did

James A. Cheek
Direct examination by Ms. White

1 Q And to your understanding has there been any
2 resolution or any hearing on that?

3 A No, no, there has not. But I'm hoping that if he
4 comes back on reconsideration that maybe the victim in the
5 case might still reconsider Mr. Reed's situation with his
6 family and prior associations and all of that at the time
7 of resentencing.

8 Q Okay. Just a couple of follow-up questions. Did you
9 ever promise Mr. Reed a particular sentence that he would
10 receive?

11 A No, I did not promise a particular sentence, but I
12 told him that I would make every effort to do what I could
13 as a plea counsel to try to push the Court towards and
14 influence the Court towards mercy and leniency and that
15 hopefully given the age of his children and the state of
16 his marriage and his prior associations and involvement
17 with this particular victim and given the very sensitive
18 nature of what had happened had this gentleman gone forward
19 in testimony, as well as Mr. Foster, and with Brandy Lane's
20 reputation in the community and with Stephanie Wilson's
21 reputation in the community, I felt like given the
22 circumstances that the Court would have mercy on him for
23 not requiring a person of such stature to be subjected to
24 such humiliation and testimony in the courts of Spartanburg
25 County.

James A. Cheek
Cross-examination by Mr. Holland

1 Q Okay. Thank you very much.

2 MS. WHITE: That's all the questions I have.

3 MR. HOLLAND: Thank you. May it please the Court.

4 CROSS-EXAMINATION

5 BY MR. HOLLAND

6 Q Mr. Cheek, so you think that my client had some real
7 defenses to that burglary.

8 A I do. I mean, it was a whorehouse by that point in
9 time, what he described to me and what his wife had
10 knowledge of.

11 His wife was about at the point of filing for a
12 divorce given the things she'd learned that her husband had
13 been involved in and the allegations and things that Brandy
14 Lane and Stephanie Wilson had supposedly shared with her.

15 She was very, very concerned about even her health
16 issues. All of that was going to be brought forward, and
17 some things that she felt like she might be subjected to.

18 So I tried to keep all of that. Probably I kept an
19 open ear to the wife, meaning Mr. Reed's wife, and concern
20 for her and her reputation and the children exposed to all
21 of this and press and all of that. It would have been
22 incumbent with the trial in this case. So I just tried to
23 make peace between all of the parties, which may have been
24 a mistake in the long run.

25 Q So, and you feel as if he had a trial he may have --

James A. Cheek
Cross-examination by Mr. Holland

1 he may have been able to beat that, beat the burglary.

2 A I feel like he probably would have beat the burglary.

3 Q And probably --

4 A Definitely, definitely burglary first degree and very
5 possibly burglary second degree, because these young ladies
6 opened the door. And they were obviously guests in the
7 home at the time.

8 Q And these, these young ladies, they're prostitutes?

9 A Yeah, prostitutes. And their records indicate such,
10 and they admittedly are methamphetamine, pills, those kind
11 of drugs.

12 Q But after talking to the victim it was your opinion
13 that a plea on burglary second at least was the way to go?

14 A The way to go.

15 Q And you acknowledge that you, you, you may have pushed
16 Mr. Reed into pleading?

17 A I think that my influence with Mr Reed very, very
18 heavily weighed on his decision to go ahead and plead as
19 opposed to going to trial in the matter, and more so than
20 most of the people I deal with.

21 Q Okay. And he could have misunderstood y'all's
22 conversation about the victim coming forward and supposed
23 to ask for mercy. He could have understood that to mean
24 he's going to get less time?

25 A I don't believe that Mr. Reed misunderstood what I

James A. Cheek
Cross-examination by Mr. Holland

1 said, because what I said to him was this: "Mr. Reed, I
2 have gone and met with Mr. Morgan, and I would advise you
3 to not come to court and subject Mr. Morgan to any of that
4 very ugly behavior and activities that you and Brandy Lane
5 and Stephanie Wilson Foster are alleging happened in that
6 home, and so I would as advise you that given my
7 conversation with Mr. Reed and my meeting with him."

8 I told Mr. Reed given my meeting and discussion with
9 Mr. Morgan, I felt that Mr. Morgan would come forward at
10 trial and express a desire for leniency and mercy in
11 sentencing.

12 And I thought that up to the time that we were right
13 in the plea, because Mr. Morgan came into the courtroom.
14 He saw Mr. Reed. He got his eye. He acknowledged him. He
15 smiled. He waved at him. So I was as shocked as Mr. Reed
16 was when something different happened during the course of
17 the opportunity for the victim to speak to the Court.

18 Q But his knowledge of the victim, the saying that he
19 would come forward and ask for mercy was through you, not
20 through anybody else?

21 A Through me.

22 Q All right. I don't have any further questions

23 MS. WHITE: I just have one brief redirect
24
25

James A. Cheek
Redirect examination by Ms. White

1 REDIRECT EXAMINATION

2 BY MS. WHITE

3 Q In all of your conversations with Mr. Reed when you
4 got to the Court to the plea, the guilty plea, and the
5 Court was asking him if he was pleading freely and
6 voluntarily, Mr. Reed said yes to the Court?

7 A He did say yes to the Court.

8 Q And he did admit his guilt to the Court that day?

9 A He did.

10 Q And ultimately he was the one that made the decision
11 to plead guilty?

12 A Yes.

13 Q Okay. Thank you.

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

15 THE COURT: Step down.

16 MS. WHITE: The state has no other witnesses, Your
17 Honor.

18 MR. HOLLAND: I have nothing else, Your Honor.

19 THE COURT: All right. I'll review the record and
20 issue an order.

21 Ms. White, as a part of this packet I've got a copy of
22 a transcript of the sentencing hearing which was on
23 August 26th --

24 MS. WHITE: Yes, Your Honor.

25 THE COURT: -- 2009. I do not have a transcript of

1 the plea hearing which apparently was prior to that.

2 MS. WHITE: And I believe we have ordered that I
3 believe we can -- if you'll allow us to submit that later,
4 I believe that that was one of the issues that we were not
5 understanding that it had been a separate time until the
6 last week or so before this hearing. And so we have
7 ordered that if you will allow us to submit it for the
8 record with that.

9 THE COURT: Okay.

10 END OF REQUESTED TRANSCRIPT OF RECORD

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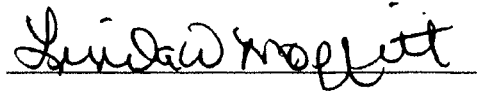
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 6th day of April 2011.

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

April 16, 2012

A handwritten signature in cursive script, reading "Linda D. Moffitt", is written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Andre Lee Reed, #218837,	)	2010-CP-42-2995
	)	
Applicant,	)	
	)	
v	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 4, 2010. The Respondent made its Return on or about February 28, 2011. An evidentiary hearing into the matter was convened on April 6, 2011, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by John R. Holland, 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. Also testifying was James A. Cheek, Esquire. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, and the plea and sentencing transcripts.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the October 2008 term of the Spartanburg County Grand Jury for burglary - 1st degree.

(08-GS-42-6036) and armed robbery (08-GS-42-6038)¹. Applicant was represented by James A. Cheek, Esquire. On August 26, 2009, the Applicant pled guilty to the lesser-included offenses of burglary – 2nd degree and common law robbery. Applicant was sentenced by the Honorable J Mark Hayes II to confinement for a period of fifteen years for burglary – 2nd degree and a consecutive sentence of five years for common law robbery. The Applicant did not appeal his conviction or sentence

ALLEGATIONS

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

1. Incorrect and/or unlawful sentence, in that;
 - a. Sentence violates various statutes and the legislative intent,
2. Abuse of discretion by judge at sentencing, in that;
 - a. Judge abused his discretion in sentencing phase willfully ignoring state statutes and/or legislation by sentencing Applicant to a fifteen year sentence and a consecutive five year sentence,
3. Lack of jurisdiction, in that;
 - a. Applicant filed a Motion to appeal the Preliminary hearing decision and Motion to dismiss all related criminal offenses in an attempt to procedurally bar the State jurisdiction to the grand jury and the General Sessions, but the Motions were never dealt with,
4. Coerced confession, in that,
 - a. Applicant pled under coercion to avoid further confrontations and threats, in a hope to receive the aforementioned sentence to resolve,
5. Prosecutorial misconduct, in that,
 - a. Solicitor, at sentencing, gave false facts as to what really took place in the incident

¹ Upon information and belief, two additional charges of kidnapping and grand larceny were dropped as part of the plea negotiations

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IN. HUR-2012

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).

Involuntary Guilty Plea

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

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

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors,

the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

Applicant alleged that Counsel coerced him into pleading guilty and confessing to the charges. Counsel testified that it was ultimately the Applicant's decision to plead guilty, although he cannot say whether his influence weighed more heavily on Applicant than on others. Applicant testified that the charges were reduced from burglary – 1st degree and armed robbery to burglary – 2nd degree and common law robbery. Applicant testified that he thought he had a plea offer for concurrent terms of fifteen years suspended to seven years if his co-defendant Kelvin Foster did not accept the plea offer first. Applicant testified that Roger Poole was his first appointed attorney, but then Mr. Cheek ("Counsel") came in and took over his case the day before the plea. Counsel testified that he took over the case once the Applicant had decided to plead guilty. Applicant testified that he discussed the charges with Counsel and knew he faced up to fifteen years on each charge and was informed by Counsel that the plea offer was not guaranteed. Counsel testified that he and the Applicant discussed the possibility of a sentence of seven to fifteen years on the charges, but the State was not willing to offer a negotiated or recommended sentence to the court. Applicant also testified that Counsel had informed him that the victim was going to speak to the court on Applicant's behalf at the plea. Counsel agreed that based on his discussions with the victim, he had informed the Applicant that he thought the victim was going to come forward and ask for mercy on behalf of the Applicant at the plea but he did not.

Applicant also alleged at the hearing that Counsel was ineffective for failing to give Applicant all of his discovery materials and only saw a portion of the evidence the State had.

against him. However, he then acknowledged that he saw discovery materials at his preliminary hearing and with Mr. Poole, which included the witness statements. Counsel also testified that he showed the Applicant the file from the Solicitor. Counsel testified that he and the Applicant discussed the possibility of a trial and the good and bad points regarding the facts of the case. Applicant argued that Counsel was ineffective for failing to file a motion for reconsideration. Applicant argued that he asked Counsel to file a motion, but Counsel never did and Applicant ended up filing a motion on his own, but never had a hearing on his motion. Counsel acknowledged that a discussion was held in regards to a motion for reconsideration, but Counsel did not see any merit and instructed the Applicant to file a motion if he wanted to. Applicant argued that he believed the statute that he was sentenced under required him to receive concurrent sentences since the crimes were closely related. Counsel testified that he did discuss the possibility of concurrent and consecutive sentences with the Applicant, but was hoping the Applicant would receive concurrent sentences. Applicant argued that the case was more of a breach of trust or grand larceny case, not a burglary case. Counsel testified that he never promised the Applicant a particular sentence, but he did attempt to argue for mercy the best he could.

This Court finds that the Applicant's allegations that he was denied effective assistance of counsel and his guilty plea was involuntary are without merit. This Court finds that Applicant's testimony that he was coerced lacked credibility. When an ineffectiveness claim is presented the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the Applicant must show that the outcome of his proceeding was prejudiced and it is reasonably probable that the outcome

would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. This Court finds that the Applicant's attorney demonstrated a normal degree of skill, knowledge and professional judgment that is expected of an attorney who practices criminal law. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, *supra*; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

This Court further finds that Applicant has failed to carry his burden of proving that his guilty plea was not freely and voluntarily entered. The overwhelming evidence in the record and presented through the testimony of the witnesses at the hearing reflects that the plea was knowingly and voluntarily entered. Boykin v. Alabama, 395 U.S. 238 (1969); Vickery v. State, 258 S.C. 33, 186 S.E.2d 827 (1972). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The Applicant showed no reason why he should be allowed to depart from the truth of the statements he made during his guilty plea hearing. This Court finds the Applicant's testimony at the PCR hearing lacked credibility. Therefore, this Court finds that Applicant's guilty plea was freely and voluntarily entered.

Improper and Illegal Sentence

The Applicant alleged that he was sentenced improperly by the judge ignoring State statutes and sentencing him to a consecutive rather than concurrent term. This Court finds that this argument lacks merit. The court has broad discretion in imposing criminal sentences. State

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M. H. ...
C. E. ...
...

Prosecutorial Misconduct

The Applicant also alleged that the Solicitor gave false facts as to what really took place during the incident. This Court also finds that this allegation lacks merit. The record indicates that the Applicant had an opportunity to respond to the Solicitor's recitation of the facts at his guilty plea and address any fact that he thought was not accurate. Additionally, the Applicant failed to present any evidence or testimony at the hearing to support this claim or indicate how this alleged misconduct prejudiced him. Therefore, this Court finds that the Applicant has failed to meet his burden of proof as to this claim and it is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel and involuntary guilty plea, the Applicant's testimony is not credible, while also finding Counsel's testimony is credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below 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. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See *Brasier* *supra*. Therefore, this allegation is denied.

CONCLUSION

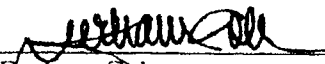
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71 1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 6 day of January, 2012


 J. Derham Cole
 Presiding Judge

2012 JAN 10 AM 10:01
 CLERK OF COURT
 SCAPPELLATE DEPT
 M.H.P. BLOCKB...

M-021535

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

against

Andre Lee Reed

Address 451 Sierra Drive

Spartanburg, SC 29307-

Phone _____ SSN 250-29-4901

Sex M Race B Height 5 8 Weight 175

DL State _____ DL # _____

DOB 12/21/1974 Agency ORI # SC0420000

Prosecuting Agency Spartanburg County Sheriff

Prosecuting Officer Lorin Williams - 0773

Offense Burglary / Burglary (After June 20, 1985) - First degree

Offense Code 0079

Code/Ordinance Sec. 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

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

(LS)

Signature of Judge

Date _____

RETURN

A copy of this arrest warrant was delivered to defendant Andre Reed on 5-21-08

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO

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

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Spartanburg

Personally appeared before me the affiant

Lorin Williams

wt

being duly sworn deposes and says that defendant Andre Lee Reed

did within this county and state on or about 01/13/2008

violate the criminal laws of

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Spartanburg

in the following particulars.

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on January 13, 2008, in the county of Spartanburg, one Andre Lee Reed did enter a dwelling located at 1310 N PACOLET ROAD, CAMPOBELLO without consent and with intent to commit a crime therein THE ENTERING OCCURRED WHILE ARMED WITH A DEADLY WEAPON, PISTOL OR REVOLVER.

WARRANT BASED UPON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street

Spartanburg, SC 29303-

Affiant's Telephone _____

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe

on or about 1/13/2008

defendant Andre Lee Reed

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

☒ County/☐ Municipality of

Spartanburg

) as set forth below

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of his execution, or as soon thereafter as is practicable. Sworn to and subscribed before me

on 04/21/2008

(LS)

Signature of Issuing Judge
James Freeman Ashmore
Judge Code 5740

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306-2333

Judge's Telephone (864)596-3424

Issuing Court

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

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ORIGINAL

M-021537

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

THE STATE

against /

Andre Lee Reed

Address 451 Sierra Drive

Spartanburg, SC 29307-

Phone SSN 250-29-4901

Sex M Race B Height 5 8 Weight 175

DL State DL #

DOB 12/21/1974 Agency ORI # SC0420000

Prosecuting Agency Spartanburg County Sheriff

Prosecuting Officer Lorin Williams - 0773

Offense Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code 0139

Code/Ordinance Sec. 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to

defendant on

Andre L. Reed
5-21-08

Signature of Court Clerk/Law Enforcement Officer

RETURN WARRANT TO

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

ORIGINAL

ORIGINAL

Spartanburg

Personally appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on or about

State of South Carolina (or ordinance of

in the following particulars.

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on January 13, 2008, in the county of Spartanburg, one Andre Lee Reed did take JEWELRY AND CASH from VIC EVERETT MORGAN with intent to deprive while armed with a FIREARM, a deadly weapon.

WARRANT BASED UPON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 804 J Howard Street
Spartanburg, SC 29303-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe

on or about 1/13/2008

defendant Andre Lee Reed

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

☒ County/ ☐ Municipality of Spartanburg

) as set forth below

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 04/21/2008

Signature of Issuing Judge
James Freeman Ashmore
Judge Code: 5740

(L.S.)

Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-2335

Judge's Telephone (864)596-3424

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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100

M-021535

STATE OF SOUTH CAROLINA



County/



Municipality of

Spartanburg

THE STATE
against

Andre Lee Reed*

Address 451 Sierra Drive

Spartanburg, SC 29307-

Phone _____ SSN 250-29-4901

Sex M Race B Height 5 8 Weight 175

DL State _____ DL # _____

DOB 12/21/1974 Agency ORI # SC0420000

Prosecuting Agency Spartanburg County Sheriff

Prosecuting Officer Lonn Williams - 0773

Offense Burglary / Burglary (After June 20, 1985) - First degree

Offense Code 0079

Code/Ordinance Sec. 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant on Andre Reed 5-21-08

Signature of Court Clerk/Law Enforcement Officer

RETURN WARRANT TO:

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

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Spartanburg

Personally appeared before me the affiant Lonn Williams

being duly sworn deposes and says that defendant Andre Lee Reed

did within this county and state on or about 01/13/2008

violate the criminal laws of

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

Spartanburg

in the following particulars

DESCRIPTION OF OFFENSE Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

That on January 13, 2008, in the county of Spartanburg, one Andre Lee Reed did enter a dwelling located at 1340 N PACOLET ROAD, CAMPOBELLO without consent and with intent to commit a crime therein THE ENTERING OCCURED WHILE ARMED WITH A DEADLY WEAPON, PISTOL OR REVOLVER.

WARRANT BASED UPON POLICE INVESTIGATION

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street

Spartanburg, SC 29303-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

If appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/13/2008

defendant Andre Lee Reed

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

☒ County/☐ Municipality of

Spartanburg

) as set forth below

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 04/21/2008

(L.S.)

Signature of Issuing Judge

James Freeman Ashmore

Judge Code 5740

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306-2335

Judge's Telephone (864)596-3424

Issuing Court



Magistrate



Municipal



Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Computer

E-646164

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
SPARTANBURG

THE STATE
against

ANDRE LEE REED

Address: 250 N THOMPSON ST
SPARTANBURG SC 29301

Phone: _____ SSN: _____

Sex: M Race: B Height: _____ Weight: _____

DL State: _____ DL #: _____

DOB: _____ Agency ORI #: _____

Prosecuting Agency: CITY POLICE

Prosecuting Officer: OFFICER W.D. FISHER

Offense: ARMED ROBBERY

Offense Code: _____
Code/Ordinance Sec: 16-11-330

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of _____
The accused
is to be arrested and brought before me to be
dealt with according to law

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant: Andre Lee Reed
on: 8-29-95

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

SPARTANBURG MAGISTRATE COURT
SPARTANBURG COUNTY COURTHOUSE
SPARTANBURG, SC 29301

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of _____

AFFIDAVIT

Personally appeared before me the affiant OFFICER W.D. FISHER who
being duly sworn deposes and says that defendant ANDRE LEE REED
did within this county and state on 08-28-95 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of _____)
in the following particulars:

DESCRIPTION OF OFFENSE: ARMED ROBBERY
16-11-330

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

THE DEFENDANT DID TAKE @\$65.00 FROM THE PERSON OF DARRELL EUGENE
JACKSON BY MEANS OF FORCE AND VIOLENCE AND WHILE ARMED WITH A
DEADLY WEAPON, BEING A SHOTGUN.

AFFIANT'S BELIEF IS BASED UPON POLICE INVESTIGATION.

Sworn to and subscribed before me
on August 29, 1995

Signature of Affiant

Affiant's Address: 145 BROAD ST
SPARTANBURG SC 29301

Affiant's Telephone: 596-2097

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
SPARTANBURG

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 08-28-95 defendant ANDRE LEE REED
did violate the criminal laws of the State of South Carolina (or ordinance of _____)

☐ County/ ☐ Municipality of _____) as set forth below:
DESCRIPTION OF OFFENSE: ARMED ROBBERY
16-11-330

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address: 410 MAIN ST
REIDVILLE SC 29375
433-9223

Signature of Issuing Judge

Judge's Telephone

Judge Code: 579
EBER CHARLES GOWAN, JR.

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 318

102

11/29/97 4:50p
161/27
1995 AUG 31 PM 4:56
KENTH R. HUGHES
CLERK OF COURT

103

WITNESSES

Spartanburg Co. Sheriff's Office

1. SENTENCE MADE

2. REPORT ENTERED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND PAYMENT RECEIVED
ARREST WARRANT NUMBER

M021535 TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 10-29-08

VERDICT

Foreperson of Petit Jury
Date

08-GS-42-6036

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 27 2008

TERM

THE STATE
vs.

Andre Lee Reed

Indictment for
BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311
CDR Code: 0079
Class: FEL/EXM (V)

FILED
CLERK OF COUR
SPARTANBURG COUNTY

2008 NOV -3 AM 10:4

MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

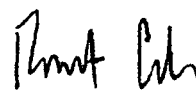
At a Court of General Sessions, convened on OCT 24 2008, the Grand Jurors of
 Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

(DWELLING)

The Defendant, Andre Lee Reed, did in Spartanburg County, on or about January 13, 2008, wilfully and unlawfully enter the dwelling of Vic Everett Morgan located at 1340 N. Pacolet Road, Campobello, South Carolina without consent and with the intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime either displays what appears to be a knife or pistol, revolver, rifle, shotgun or other firearm, and/or uses or threatens the use of a dangerous instrument and/or is armed with a deadly weapon ~~or explosive; and/or the entering or remaining occurs in the nighttime;~~ and/or causes physical injury to a person who is not a participant in the crime; and/or the defendant has (2) two or more prior convictions for Burglary and/or housebreaking in violation of Section 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

WITNESSES

Mund
Spartanburg Co. Sheriff's Office

1. SENTENCES MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND INDEX BY JURY
ARREST WARRANT NUMBER

8. TRAFFIC VIOLATION COPY

M021537

ACTION OF GRAND JURY

John
Foreperson of Grand Jury
Date 10-24-08

VERDICT

Foreperson of Petit Jury
Date:

08-GS-42-6050

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

OCT 27 2008 TERM

THE STATE
VS.

Andre Lee Reed

Indictment for
ARMED ROBBERY

SC Code: 16-11-330 (A)
CDR Code: 139
Class FEL/A

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2008 NOV -3 AM 10:41

MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

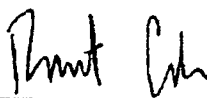
At a Court of General Sessions, convened on OCT 24 2008 the Grand
 Jurors of Spartanburg County present upon their oath.

ARMED ROBBERY

That Andre Lee Reed did in Spartanburg County on or about, January 13, 2008,
 committ a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or
 other deadly weapon, or while alleging, either by action or words, he was armed while
 using a representation of a deadly weapon or any object which a person present during
 the commission of the robbery reasonably believed to be a deadly weapon, and did
 feloniously take from the person or presence of Vic Everett Morgan by means of force,
 violence, and/or intimidation, goods or monies of Vic Everett Morgan to wit: jewelry
 and/or cash, with the intent to deprive the owner permanently of such property in

~~violation of §16-11-330 (A), 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

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Andre Lee Reed

AKA:

Race: B Sex: M Age: 34

DOB: 12-21-1974 SS#: 250-29-4901

Address: 210 TANICHELL LANE
CHESLER, SC 29323

DL#: SID#:

Computer

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS4206036

A/W#: M021535

Date of Offense: 1/13/2008

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Burglary - Second degree - Violent (0 - 15 years)

in violation of § 16-11-0312(b) of the S.C. Code of Laws, bearing CDR Code # 0086

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Levld Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

JELINS, ZACHARY D

71919
SC Bar#

Defendant

Attorney for Defendant

1202
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 522 dep. sent Aug 23, 2008

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

SPECIAL CONDITIONS:

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

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

Payment Terms _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5%) \$

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

§ 35-13 (Public Def/Prob) \$500 \$

§ 23-3, 1B TP (Law Enforce Funding) \$25 \$25.00

§ 33-7, 1B TP (Drug Court Surcharge) \$100 \$

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

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

3% to County (if paid in installments) \$3.90

§ 90-11 TP (SCCJA Surcharge) \$5 \$5.00

TOTAL \$133.90

A. Suppa

Clerk of Court/ Deputy Clerk

Court Reporter: S. Williams Warrick

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35-13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 8/26/09

Computer

COUNTY OF SPARTANBURG
STATE VS.

Andre Lee Reed-

AKA:

Race B Sex M Age: 34DOB: 12-21-1974 SS# 250-29-4901

Address:

DL#: SID#:

INDICTMENT/CASE#: 2008GS4206038

A/W#: M021537

Date of Offense: 1/13/2008S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ -PLEADS TO: Common Law Robbery (0 - 15 years)in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Zachary D. Ellis
ELLIS, ZACHARY D71919
SC Bar#Andre Lee Reed
DefendantMark Eric
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 65 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: to 2008-GS-42-6036.☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 522 days since Aug 23, 2008☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 35-13 (Public Def/Prob)

§ 73-3, 1B TP (Law Enforce Funding)

§ 33-7, 1B FP (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90-11 TP (SCCJA Surcharge)

TOTAL

A. Steffen
Clerk of Court/ Deputy ClerkCourt Reporter: Steffen

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd in equal, consecutive weekly/monthly pmts of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel §35-13 TP
Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code:

Sentence Date

8/26/09

IN THE COUNTY COURT
OF SPARTANBURG COUNTY

Andre' Lee Reed
Plaintiff

August 29, 2008

vs.
State of South Carolina

* 9-9-08 - Sent copy to inmate

The County of Spartanburg

Mo 21534
Mo 21535
Mo 21536
Mo 21537

Certificate of Mailing

Certificate of Service

This is to certify that the Plaintiff/movant did on this date serve the Motion to Appeal Decision from Preliminary Hearing held August 23, 2008 And Motion to Dismiss all related criminal offences in conjunction or Relation/ and conclusion attached upon The Defendant, State of South Carolina in The County of Spartanburg a 4 page motion 1 page conclusion totaling 5 of 5 pages to the Clerk of Court in The Court Courthouse 180 Magnolia st. Sptbg. S.C. 29303 and to Ms. Cynthia Codespoti Spartanburg County Public Defender officer 366 N. Church st. Suite 300 Spartanburg, S.C. 29303 / and to The S.C. Supreme Court official Justices The S.C. Supreme Court P.O. Box 11330 Columbia S.C. 29211 by mailing copies to the above addresses, U.S. postage prepaid on this 3rd day of Sept. 2008.

SWORN AND SUBSCRIBED BEFORE ME

[Signature]

ON THIS

3

DAY OF Sept.

2008

MY COMMISSION EXPIRES ON

4-2015

2008 SEP -9 AM 8:29

Andre' Lee Reed
Plaintiff/movant 218837

LEE C-I Sumter 1260-7
990 W. Seely Hwy Bldg
S.C. 29510

FILED
CLERK OF COURT

IN THE COUNTY COURT OF SPARTANBURG COUNTY

Andre Lee Reed
Plaintiff,

August 29, 2008

VS

State of South Carolina

the County of Spartanburg

Defendant.

Motion to Appeal Decision From

Preliminary Hearing On August 28, 2008

And Motion to dismiss all related
Criminal offences in Conjunction or Relat.

Plaintiff Reed moves to appeal decision of magistrate Judge _____ on August 2008, in the County Courthouse of Spartanburg S.C. in the magistrate court/courthouse number _____ around 12:00 p.m.

Plaintiff Reed moves and motions to appeal decision from preliminary hearing and/or in conjunction with a motion to dismiss all related criminal offences, all stems from one alleged act and/or incident, in relation to: Kidnapping, Armed Robbery and 1st degree burglary, for the following reasons, in the interest of justice.

Issue #1

2008 SEP -9 AM 8:30

Movant Reed contends that he timely submitted documentation and requested preliminary hearing on the 2nd day following arrest, May 23, 2008 in conjunction with the 10 days allowed in S.C. code of laws title 17-26-160 "Notice of right," Plaintiff Reed contends that he never waived right and/or jurisdiction to the grand jury under title 17, But did request that preliminary hearing to be held pro-se, under title 17 and 22 citing S.C. code of laws title 22-5-320 and "Effective Representation" State v. Harper 297 S.C. 257 / 374 S.E.2d 27 (1989) first off, The County of Spartanburg was on August 28, 2008. knowingly and maliciously discriminating against movant by failing to honor S.C. rules SCRPC-crim procedures Rule 2(b) "Time of Hearing" that quotes "If a defendant request a preliminary hearing, the hearing, shall be held within 10 days following request... The defendant may appear by counsel or in person or both;" The hearing was not held in the allotted time set out in rules of court, nor has movant received any type of disposition requesting a motion to extend and/or enlarge time.

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SPARTANBURG COUNTY

Therefore, The County of Spartanburg is in direct contrast to procedural due process, abridgement and/or denial of fundamental immunities, and equal protection, U.S. Const Amendment 14 and S.C. constitution Art. 1 § 3. in the interest of justice. Because from May, 23, 2 filing date, till August 28, 08, greatly exceeds time allotted, Therefore, movant moves and request motion to be granted in favor, The movant request equal protection of civil rights.

Issue No. 2. Movant contends that magistrate deliberately showed bias discrimination against movant by, with committing "prejudicial error", by not allowing movant to speak at hearing in his attempt to limit the scope of movant's defence, by stating to movant "You are not allowed to speak," also "You don't have the right to," denying me of my 6th Amendment right and S.C. Const. Art. 1 § 14 and the right to confrontation. That was just reaffirmed by The U.S. Justices 6 to 3 Cir. Giles v. California supra. 2007 Right to Confrontation - by Self, by Counsel, or Both, magistrate further erred, by allowing County official to overstep legislation as a 3rd party witness, in contrast to S.C. title code 17-23-162 quote "Presence of affiant or arresting officer to testify at hearing; The affiant on an arrest warrant or The Chief Investigating officer of the county must be present to testify at the hearing." I don't believe that the officer at the hearing, as the affiant on the arrest warrant or the chief investigating officer, (this portion is still in up because... I was not allowed to view my arrest warrants that was taken away from me at County Detention on May 30, 2002 and not returned to me; Also, I was not allowed to ask him any questions in contrast to S.C. code title 22-5-320. By this code means ^{have} ~~infact~~ had the right to question this officer, But magistrate willfully denied my right to this Statute. For above said, movant request motion in favor.

Issue No. 3. Movant contends that "probable cause" has not been established by a 3rd party witness testifying by reading a statement by a person who was charged with the same offense who was already charged with offenses first, who wrote statements to be able to obtain \$20,000.00 bond, also this person was believed to have been in ^{possession} of some evidence, this person was not present to testify as requested;

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SPARTANBURG COUNTY

2008 SEP -9 AM 8:30
KITCHENS

The State contends that I was charged because of this persons ~~statement~~, with
 No evidence to hold movant to offences; that people charged with an offence
 and/or offences will usually give statements to save their situation or ^{position} position;
 Furthermore, movant believes that statements was obtained by influence and
 intimidation, in contrast to Jackson v. Denno supra. in relation to involuntary
 statements and prolong interrogations, which is prohibited. Therefore citing under
 pre-hearings S.C.R. crim R (Rule 608c) Evidence of bias / Subsection A) of this
 rule permits a witness truthfulness to be impeached by opinion or reputation
 evidence. The general rule in S.C. is that a witness general reputation for truth
 and veracity is placed in issue when testifying. — also, in conjunction with Rule 403
 when the prejudicial effect of evidence substantially outweigh its probative value
 evidence may be excluded; No witnesses was present to testify as to the
 truthfulness and voluntariness of statement as was requested in light of court
 rules, also, S.C.R. crim. Proc. Rule 613 subsection b.) when ~~a~~ a witness has
 been impeached of this clause, all evidence could become inadmissible, at
 this court level. For said reasons, movant moves to exercise his 5th and 6th
 Amendment rights, in reference to probable cause, right to confrontation, and to
 favorable witnesses, and to be fully heard in defence by self, by counsel or
 both; also citing S.C. const. Art. 1.5 12 and 14; movant request motion to be
 held in favor, in the ^{interest} of Justice as to civil rights, liberty ^{interest} interest, and
 due process Amendment 14 and S.C. const. Art. 15 3. Which was denied by magistrate.

due No. 4. Movant contends that not only did magistrate commit prejudicial error by not
 allowing him to speak at preliminary hearing pro-se but also overstepped legislative
 decree and intent in S.C. code of laws title 22-5-320, Movant contends that
 he had a motion to dismiss present at the hearing pro-se, and at no point
 requested assistance to represent me at pre-hearing. The Court tried to
 state that some lady from the office of the public defender was there

to represent me. I never requested assistance from that office for my preliminary hearing, but the office was aware of my motion pro-se, and tried to convince and persuade movant from speaking and/or submitting motion to dismiss at preliminary hearing, also, not to have the hearing. The magistrate was aware of my motion and my intent, so he willfully denied me of my access to the courts at preliminary hearing in contrast to S.C. const. Art 587, 11 & S.C. law code title 22-5-320, in quote: "At preliminary hearing, the defendant may cross-examine, the state witness in person or by counsel, have the reply in argument, if there be counsel for the state - And be heard in argument as to whether a probable cause has been made out, and whether case ought to be dismissed by magistrate and defendant discharged without delay; When such a hearing has been so demanded, the case shall not be transmitted to the court of general sessions or submitted to the grand jury until the preliminary hearing shall have been held. The magistrate & court in jurisdiction and the Court of General Sessions not to acquire jurisdiction until after such preliminary hearing." In contrast to this law and/or right, the magistrate told movant that he did not have the right to speak at hearing, directly denying movant of his rights prejudicially. Movant contends that magistrate lacks jurisdiction to overstep legislation in conjunction to The Separation of Power Doctrine. S.C. const. Art. 158, to interpret legislation, and quote that I have no right to title 22 and Art. 587, 11 S.C. const; Magistrate further denied my rights to title 22-3-740 S.C. title [Election of offense to try accused] quote "Whenever a person be accused of committing an act which is susceptible of being designated as several different offenses, The magistrate upon the trial of the person shall be required to elect which charge to prefer and a conviction or an acquittal upon such elected charge shall be a complete bar to further prosecution for such alleged act." None the less; I stand fast on title 22-5-320 and S.C. const. Art. 587, 11 as to my rights and the jurisdiction change of custody, also S.C. R. Crim. proced. Rule 613 subsection b) because "if a witness has been impeached every thing is not inadmissible" and Rule 403, excluding evidence by it's prejudicial effect.

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CLERK OF COURT
SPARTANBURG COUNTY

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MARGARET WITCHE

Movant contends that he was bluntly and prejudiciously denied constitutional rights in relation to the U.S. Const. Amendments 5th, 6th & 14 / S.C. const. Art. I, sections 3, 12 and 14 - equal protection, due process and to be heard, right to confrontation, probable cause, and favorable witnesses. For all above said language in motions, movant request motion be held in favor.

"Conclusion"

Movant Reed contends that lower Courts and prosecutors usually attempts to overstep Rules of Court in Criminal Procedures and state law codes in relation to Preliminary Hearings, when the rules are in favor of defendants, but expects defendants to follow every microbe of ink. None the less, The Preliminary hearing, which is the 1st and true foundation to the right to confrontation S.C. crim. P. Rule 608 c subsection c (S.C. crim. P. Rule 613 subsection b.) in reference to impeaching witness McMillan v. Ridges supra. and to be fully heard and informed in U.S. Amendment 6 & S.C. const. Art 1 § 14 - S.C. code of laws title 22-5-32 preliminary hearings, also equal protection, Due process, privileges and immunities. U.S.C. Amendment 14 & S.C. Art. 1 § 3; Therefore, pre-hearing jurisdiction S.C. const. Art. 5 § 7, 11. S.C. law code title 22-5-320, greatly upholds all above said in detail. The scope of legislative intent to uphold constitutional rights in preliminary hearings. For all above said language and words stated in motion, Movant request that motion be granted in his favor, in light of equal protection, liberty interest, in the interest of Justice.

FILED
CLERK OF COURT
SOUTH HAVEN, CT

2008 SEP -9 AM 8:30

MARC KITCHENS