

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

~~RECEIVED~~

~~APR 10 2014~~

~~S.C. Supreme Court~~

FRED DOUGLAS DOWNER,

v.

STATE OF SOUTH CAROLINA,

PETITIONER,

RECEIVED

APR 11 2014

S.C. Supreme Court

RESPONDENT

APPELLATE CASE NO.2013-001851

APPENDIX

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ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

GUILTY PLEA TRANSCRIPT 1

APPLICATION FOR POST-CONVICTION RELIEF25

RETURN 32

AMENDED APPLICATION FOR POST-CONVICTION RELIEF38

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JUNE 18, 201345

AFFIDAVIT72

ORDER OF DISMISSAL76

INDICTMENTS85

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 FRED DOUGLAS DOWNER,)
)
 DEFENDANT.)
_____)

2010-GS-3-3341-3345 AND 3407-3408

JUNE 15, 2011

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

MARK MOYER, ESQUIRE
ATTORNEY FOR THE STATE

RICHARD H. WARDER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

INDEX

	PAGE
Guilty Plea	3
Certificate of Reporter	24

EXHIBITS

(NONE)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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20
21
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23
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June 15, 2011

(WHEREUPON, court convened with all parties present
and the following proceedings were had.)

THE CLERK: Your Honor, this is case 2010-GS-23-
3341, the State versus Fred Douglas Downer. He's indicted
for assault and battery with intent to kill. And he's
pleading to the same.

In the case of 2010-GS-23-3342, Mr. Downer is indicted
for assault and battery of a high and aggravated nature and
he is pleading to the same.

In the case of 2010-GS-23-3343, 3344, 3345, Mr. Downer
is indicted for kidnaping and he is pleading to the same.

In the case of 2010-GS-23-3407, Mr. Downer is indicted
for possession of a weapon during the commission of a crime
and he's pleading to the same.

In the case of 2010-GS-23-3408, Mr. Downer is indicted
for conspiracy and he is pleading to the same.

And Your Honor, these are all true billed.

Mr. Downer, please raise your right hand. Do you
promise to tell the truth and nothing but the truth, so
help you God?

DEFENDANT: Yes.

THE COURT: Mr. Warder, do you represent Mr.
Downer in these matters?

MR. WARDER: Yes, Your Honor, I do.

1 THE COURT: Have you had an opportunity to talk
2 with your client about the charges pending against him, the
3 possible punishments he faces and his constitutional
4 rights?

5 MR. WARDER: Yes, sir, I have.

6 THE COURT: Do you believe he understands those
7 discussions you've had with him?

8 MR. WARDER: I'm convinced he does, sir.

9 THE COURT: Have you had an opportunity to review
10 with your client the State's evidence?

11 MR. WARDER: Yes, sir.

12 THE COURT: And based upon your investigation of
13 all the facts and circumstances about the case, do you
14 believe the State could present sufficient evidence to
15 convince a jury of his guilt beyond a reasonable doubt on
16 each of these charges?

17 MR. WARDER: Yes, Your Honor, I do.

18 THE COURT: Mr. Downer, how old are you, sir?

19 DEFENDANT: I'm twenty years old.

20 THE COURT: Are you married?

21 DEFENDANT: No, sir. Engaged.

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

23 DEFENDANT: Twelfth grade.

24 THE COURT: Do you have any children?

25 DEFENDANT: I have two.

1 THE COURT: How old are your children?

2 DEFENDANT: My little boy's five, little girl
3 two.

4 THE COURT: When you went to the twelfth grade,
5 did you drop out or did you graduate?

6 DEFENDANT: Dropped out.

7 THE COURT: Where were you attending?

8 DEFENDANT: Berea High.

9 THE COURT: Have you obtained your GED or sought
10 to since you've been out of school?

11 DEFENDANT: No, sir. I was doing that and I was
12 in the midst of doing it before this right here.

13 THE COURT: What kind of work have you done since
14 you've been out of high school?

15 DEFENDANT: Restaurant and retail.

16 THE COURT: Where did you last work?

17 DEFENDANT: McDonald's.

18 THE COURT: Mr. Downer, have you ever been
19 treated for alcohol or drug abuse?

20 DEFENDANT: No, sir.

21 THE COURT: Have you ever been treated for any
22 mental health issues?

23 DEFENDANT: Not recently. Back in my younger
24 days.

25 THE COURT: Okay. How long ago was that?

1 DEFENDANT: It was about six, seven years ago.

2 About seven years ago.

3 THE COURT: Did you just go to mental health and
4 see a doctor or did you get hospitalized?

5 DEFENDANT: No. Marshall Pickens.

6 THE COURT: Marshall Pickens?

7 DEFENDANT: Uh-huh (Affirmative).

8 THE COURT: Have you been under a doctor's care
9 in the last couple of years?

10 DEFENDANT: No, sir.

11 THE COURT: Are you taking any kind of
12 medication?

13 DEFENDANT: No, sir.

14 THE COURT: Do you have any alcohol or drugs of
15 any kind in your body today?

16 DEFENDANT: No, sir.

17 THE COURT: You're fully aware of what these
18 charges are and why we're here today?

19 DEFENDANT: Yes, sir.

20 THE COURT: I have several charges that have been
21 presented to me, sir. The first one says that on or about
22 December the 13th, 2009, that you wilfully and unlawfully,
23 combined with a Cassandra Mitchell, for the purpose of
24 accomplishing an unlawful object or a lawful object by
25 unlawful means, that being either a kidnap or an armed

1 robbery. Are you pleading guilty of that conspiracy today?

2 DEFENDANT: Yes, sir.

3 THE COURT: I also have an indictment that says
4 on or about the same date -- I think all these occurred on
5 or about December the 13th, 2009 -- it says that you're
6 charged with kidnaping and that you unlawfully seized or
7 abducted or carried away Christopher Barton without
8 authority of law. Are you pleading guilty of that
9 kidnaping?

10 DEFENDANT: Yes, sir.

11 THE COURT: And I have another indictment that
12 says Shae Barton was also kidnaped at that same -- on or
13 about that same day here in Greenville County. Are you
14 pleading guilty to that kidnaping?

15 DEFENDANT: Yes, sir.

16 THE COURT: And Daniel Perry was also unlawfully
17 seized or carried away, constituting a kidnaping charge on
18 that same day. Are you pleading guilty to that third
19 kidnaping charge?

20 DEFENDANT: Yes, sir.

21 THE COURT: I have an indictment that says on or
22 about that same date of December 13th, that you unlawfully
23 committed an assault and battery upon that Daniel Perry,
24 and it was accompanied by circumstances of aggravation;
25 that being the use of a deadly weapon or with the intent to

1 commit a felony or inflict serious bodily harm. Are you
2 pleading guilty to that assault and battery of a high and
3 aggravated nature?

4 DEFENDANT: Yes, sir.

5 THE COURT: I also have an indictment that says
6 on or about that same date that you wilfully and
7 unlawfully, with malice aforethought, either express or
8 implied, committed an assault and battery upon Christopher
9 Barton; that being with the intent to kill. Are you
10 pleading guilty to that charge?

11 DEFENDANT: Yes, sir.

12 THE COURT: I finally have an indictment that
13 says on that same date that you possessed or visibly
14 displayed a firearm during the commission of a violent
15 crime; that violent crime being kidnaping, armed robbery
16 and/or the assault and battery with intent to kill. Are
17 you pleading guilty to each of these charges today, sir?

18 DEFENDANT: Yes, sir.

19 THE COURT: Solicitor, I'll be glad to hear about
20 the background and facts surrounding this incident.

21 MR. MOYER: Thank you, Your Honor. May it please
22 the Court.

23 The incidents, as Your Honor noted from the
24 indictments, occurred on December the 13th of 2009. The
25 three victims who you read from the kidnaping indictments,

1 along with one other person, were staying at a hotel in
 2 Greenville. This other individual decided that he wanted
 3 crack cocaine but didn't have money for the crack cocaine,
 4 so he decided that he would steal crack from somebody. The
 5 three victims knew this defendant because they used to buy
 6 crack from him. One of those victims called this
 7 Defendant. They arranged to have the Defendant bring the
 8 crack to the hotel. The Defendant showed up with about a
 9 quarter ounce of crack. The victims let the Defendant into
 10 the hotel room. The Defendant gave the crack to this other
 11 individual who then told the Defendant he was not going to
 12 pay. The Defendant became very irate, began throwing
 13 things around the room, made some threats. And the victim
 14 pushed him out of the room. The Defendant continued to
 15 make threats against the victims; and eventually left.

16 The police showed up and also hotel security came to
 17 the scene and they told the victims that they had to leave
 18 the hotel. The victims caught a ride and they ended up a
 19 few hours later at the bus station in downtown Greenville.
 20 While they were there they had a phone call from the Co-
 21 Defendant, Cassandra Mitchell. And she called them and
 22 told them that she would come pick them up and they would
 23 go off to another hotel. Cassandra Mitchell was a
 24 girlfriend of this Defendant at the time. Well, she showed
 25 up and picked up the three victims. But instead of going

1 to this hotel, she told them that she had to stop by a
2 residence first where she was going to get some drugs. She
3 drove to that residence here in Greenville County and
4 pulled into the driveway. And at that time a car pulled in
5 behind them, blocking them, blocking them into the
6 driveway.

7 This Defendant got out of the passenger side of that
8 vehicle. He had a pistol in his hand. He walked over to
9 Mr. Perry and began striking him in the head with the
10 pistol. That's where the ABHAN charge came from. He then
11 told all the victims to get into the car and the Defendant
12 got into the car as well. He still had the gun. Cassandra
13 Mitchell, the Co-Defendant was driving. The Defendant was
14 telling her where to go; making threats against the
15 victims. They drove a short distance; five to ten minutes.
16 They came to the intersection of 253 and White Horse Road
17 and they stopped at a red light. When they did so, one of
18 the victims, Mr. Barton, who was in the backseat, tried to
19 make a little diversion. He reached over his wife, who was
20 seated next to him on his left, and he opened the door.
21 His wife spilled out of the car, dropped something and ran.
22 The third victim in the front passenger seat, he got out of
23 the vehicle and he ran also. He ran to a McDonald's that
24 was there at that intersection. Mr. Barton was trying to
25 leave, but this Defendant began scuffling with him. During

1 that scuffle, the Defendant fired the pistol. The victim
2 was able to elbow the Defendant and get away and he began
3 running and the Co-Defendant -- the Defendant shot again.

4 One of those two shots struck Chris Barton in the
5 neck. It was a -- fortunately for him, it was not a
6 serious wound. It went through, it went through his neck
7 and struck nothing vital, so he was not badly injured. He
8 and his wife ran into Taco Bell and got an employee at the
9 Taco Bell to call 911 and the police showed up. The
10 victims were able to identify both suspects and based on
11 that information the law enforcement got arrest warrants
12 for these Defendants.

13 Cassandra Mitchell has already pled guilty to
14 conspiracy and kidnaping. She received five years on the
15 conspiracy; deferred sentence on the kidnaping, pending the
16 results of the trial today. But she was prepared to
17 testify in the trial, as well.

18 That essentially would have been the facts as they
19 would have been presented at trial, Your Honor.

20 THE COURT: She was driving?

21 MR. MOYER: She was driving; that's correct.

22 THE COURT: You heard the facts surrounding this
23 particular incident, Mr. Downer. Are those substantially
24 the facts to which you're here to plead guilty today?

25 DEFENDANT: Yes, sir.

1 THE COURT: I understand that there's to be some
2 of the matters that the Solicitor recited that you might
3 not totally agree with. But substantially that was what
4 happened?

5 DEFENDANT: Yes, sir.

6 THE COURT: Now, do you understand that by
7 entering a plea of guilty, you're giving up substantial
8 rights that you have. You have a right to have a jury
9 empaneled. We have a jury downstairs waiting to be
10 empaneled, for that matter; and once we select a jury, the
11 State of South Carolina would have to prove your guilt
12 beyond a reasonable doubt. They would have to convince
13 that jury unanimously that you did what the State says you
14 did. You would be presumed innocent. You wouldn't have to
15 say anything at all. You could remain silent. The jury
16 would be instructed that your silence couldn't be held
17 against you in anyway. You would have an opportunity, if a
18 trial were held, to confront the witnesses against you; let
19 your lawyer ask questions of them under oath. You could
20 challenge any evidence that the State tries to offer. You
21 could challenge any incriminating statements you may have
22 made during the course of the investigation. You would
23 have a right to bring witnesses in your own behalf and
24 subpoena them at the State's expense to present a defense
25 if you chose to. But again, because you would be presumed

The State of South Carolina -vs- Fred Douglas Downer (2010-GS-23-3341-3345 and 3407-3408)
Guilty Plea

13

1 innocent, you wouldn't have to say anything or put up any
2 defense.

3 You have these and other rights under our Constitution
4 and you're giving all those up by pleading guilty. Do you
5 understand that?

6 DEFENDANT: Yes, sir.

7 THE COURT: And you want to give those rights up?

8 DEFENDANT: Yes, sir.

9 THE COURT: Are you satisfied with the
10 representation that Mr. Warder has given you?

11 DEFENDANT: Yes, sir.

12 THE COURT: Has he done everything to defend you
13 that you've asked him to do?

14 DEFENDANT: Yes, sir.

15 THE COURT: Have you met with him as often and as
16 long as you feel necessary?

17 DEFENDANT: Yes, sir.

18 THE COURT: Have you understood those discussions
19 that you've had with him?

20 DEFENDANT: Yes, sir.

21 THE COURT: Is there anything else you feel like
22 you need to talk with him about?

23 DEFENDANT: No, sir.

24 THE COURT: Do you have any complaints whatsoever
25 about his representation of you?

1 DEFENDANT: No, sir.

2 THE COURT: There is no recommendation from the
3 State, I assume?

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

5 THE COURT: Is there anybody promised you
6 anything to entice you to plead guilty today by holding out
7 any hope of reward or promised you anything whatsoever to
8 entice you to plead guilty today?

9 DEFENDANT: No, sir.

10 THE COURT: Has anybody coerced you or threatened
11 you in anyway to get you to plead guilty?

12 DEFENDANT: No, sir.

13 THE COURT: Has anybody connected with the case
14 in the Solicitor's Office or law enforcement mistreated you
15 in anyway?

16 DEFENDANT: No, sir.

17 THE COURT: You're pleading guilty of your own
18 free will then?

19 DEFENDANT: Yes, sir.

20 THE COURT: And you're pleading guilty because
21 you are, in fact, guilty?

22 DEFENDANT: Yes, sir.

23 THE COURT: Now, do you understand that by
24 entering the plea that -- on the conspiracy and the
25 possession of a weapon, you could be sentenced up to five

1 years in jail for each of those?

2 DEFENDANT: Yes, sir.

3 THE COURT: And for the other three charges, you
4 could get ten years on the assault and battery with a high
5 and aggravated nature?

6 DEFENDANT: Yes, sir.

7 THE COURT: Twenty years on the assault and
8 battery with intent to kill?

9 DEFENDANT: Yes, sir.

10 THE COURT: And you have three counts of
11 kidnaping that would carry thirty years each?

12 DEFENDANT: Yes, sir.

13 THE COURT: You understand that?

14 DEFENDANT: Yes, sir.

15 THE COURT: And you still want to plead guilty?

16 DEFENDANT: Yes, sir.

17 THE COURT: Mr. Downer, have you understood the
18 questions I've asked you?

19 DEFENDANT: Yes, sir.

20 THE COURT: Have you been truthful in your
21 answers to me?

22 DEFENDANT: Yes, sir.

23 THE COURT: The law gives you a right, if you
24 meet our Appellate Court rules, to appeal this proceeding
25 within ten days and if you can't afford an attorney, one

1 could be appointed for you. Do you understand that?

2 DEFENDANT: Yes, sir.

3 THE COURT: I find there is a substantial factual
4 basis for the plea; that it has been freely, voluntarily,
5 knowingly and intelligently made by Mr. Downer, with the
6 advice of competent legal counsel with whom he's expressed
7 his satisfaction. I will accept your plea, sir.

8 Mr. Warder, I'll be glad to hear from you; certainly
9 your client or anyone else who would like to address me
10 before sentence is imposed.

11 MR. WARDER: Thank you. Your Honor, it's hard to
12 imagine what it must be like to be twenty years old and be
13 standing here before Your Honor facing these charges. Fred
14 is -- he's like a lot of people; he's not all good and not
15 all bad. And certainly he has a side that is of a lot of
16 good characteristics and good values. He has two children;
17 a daughter two and a son five. He lives with their mother,
18 who's seated in the courtroom down on that end, Your Honor.
19 They've been together for seven years. He supports the
20 family. Fred has a work history of several fast food
21 restaurants, carpenter skills. He's detailed cars. He's
22 industrious. He works hard.

23 On the bad side, Fred had an involvement with crack
24 cocaine. It's per change that him and the victim came
25 together when they decided to get the cocaine by strong

1 armed robbery. And it kind of spiraled out of control,
2 Your Honor.

3 But all of the good in Fred, he comes from a family
4 with ten children. He's got four ---

5 DEFENDANT: Four brothers and five sisters.

6 MR. WARDER: Yeah. Your Honor, he's the fourth
7 oldest. But as you can see, his family sits there. He has
8 a strong family that will help him make the decisions, will
9 be there for him, will help him put his life together when
10 he gets out, Your Honor.

11 I've seen a lot of people go to prison, Your Honor.
12 And after you put them in jail, for about five years,
13 you've done just all you can do in the sense that all of
14 his contacts, friends, many times his family is gone. We
15 hope that isn't the case in this. It certainly destroys
16 one's credit; gives them a record. My client stands before
17 you without a record, Your Honor. If he were to ever be
18 before any court again at any time, this plea would be a
19 substantial record. So he's changed all in one moment his
20 status of having no significant record, to a status of
21 having a very significant record.

22 Your Honor, I urge you to give leniency in this case.
23 I think if there's people that are capable of
24 rehabilitating, a twenty year old is certainly that. I
25 think both his youth and the fact his family, and hopefully

1 his wife and his children, will be there when he gets out,
2 it's a concern to Fred to be a significant influence in his
3 children's life. He comes from a family. He knows the
4 value of family.

5 Your Honor, it's -- I think I could not be
6 representing a client who had this serious of charges and
7 deserved a change -- a second change more than Fred.

8 I know Fred wants to say something.

9 THE COURT: Yes, sir, do you want to address me
10 about anything?

11 FREDRICK DOWNER: Yes, sir.

12 THE COURT: Yes, sir, what's your name, please?

13 FREDRICK DOWNER: My name is Fredrick Downer.

14 THE COURT: Just let me know what -- your name is
15 Fredrick ...

16 FREDRICK DOWNER: Downer. He's my junior.

17 THE COURT: All right. Be glad to hear from you,
18 Mr. Downer.

19 FREDRICK DOWNER: Yes, sir. Thank you, Your
20 Honor. My son, it was a short spree for him. It was just
21 something just happened in that moment of time, that
22 season; you know what I'm saying. I know he's very sorry
23 for that to happen. But he was doing real well, just
24 something happened just in a little moment of time. It can
25 happen like that. But you know, after it happened and

1 everything and I talked to him about it, you know, it
2 really hurt him deep to the core. And then he's got family
3 that really care about him. But he slipped, Your Honor.
4 He made a mistake; you understand? But all I'm saying,
5 whatever you do to him, he go down, whatever, he's got
6 family that do love him. He might have made a mistake, but
7 we're here to help him get back where he needs to get back
8 to and get back on track right. So, Your Honor, any mercy
9 that you have, I'd really appreciate it for us and for him.

10 THE COURT: All right. Thank you, sir.

11 Not everybody has supporting families around to be
12 blessed in that regard.

13 Mr. Downer, anything you want to tell me, sir?

14 DEFENDANT: Yes, sir. I mean, I made a mistake.
15 I know I've got to pay for what I did, but I've got two
16 beautiful kids and a loving family I want to return to.
17 And I truly apologize, Your Honor, for what I did. Like I
18 said, I've never been in no kind of serious trouble.

19 THE COURT: How long had you been doing drugs at
20 the time?

21 DEFENDANT: At the time, probably about like a
22 year. I was getting high with them and I was sniffing and
23 they was doing their thing and they did what they did, I
24 did what I did. I know two wrongs don't make a right.

25 THE COURT: When did you start using?

1 DEFENDANT: Sir?

2 THE COURT: How old were you when you started
3 using drugs?

4 DEFENDANT: Well, I was like sixteen when I was
5 smoking weed. And then I started sniffing a little bit
6 when I was like eighteen, nineteen.

7 THE COURT: You started marijuana at sixteen?

8 DEFENDANT: Yes, sir.

9 THE COURT: Yes, ma'am, anything you want to tell
10 me?

11 ASHLEY GLENN: My name is Ashley Glenn and I
12 would like to say that we've been together for seven years.
13 I have two kids by him. And if it wasn't for him I
14 wouldn't have graduated. I was able to graduate with two
15 kids. And my father who raised me died on me at the same
16 time and he dropped out of school to take care of our
17 daughter who was two months old at the time so that I could
18 finish school. So he's not a violent person. He's a very
19 good person. And I just ask that you give him leniency.
20 This was a mistake and he's learned his lesson. I see some
21 people who do stuff and they continue to do stuff. But
22 he's changed. It was just a mistake and he didn't mean for
23 it to happen. They did wrong to him. And like he say, two
24 wrongs don't make a right, but everybody was wrong in this
25 situation. And I just ask that you give him leniency.

1 THE COURT: Thank you, ma'am.

2 Have the victims been notified, Solicitor?

3 MR. MOYER: Yes, Your Honor. They are in the
4 courthouse. They did not want to address the Court. I
5 just want to add also that he doesn't have a significant
6 record. He does have a couple of convictions. In 2008 he
7 was convicted of possession of drug paraphernalia and
8 giving a false name to police. And also I want to state
9 that my original plea offer in the case was a
10 recommendation of ten years. That was my original plea
11 offer.

12 THE COURT: Yes, sir, your name, please?

13 THOMAS DOWNER: I'm Thomas Downer.

14 THE COURT: You're a brother?

15 THOMAS DOWNER: Yes, sir.

16 THE COURT: I'll be glad to hear from you, sir.

17 THOMAS DOWNER: I just recently graduated from
18 Woodmont High School with honors as the only African-
19 American male. And probably the reason is because of my
20 brother Fred. He's always been my idol, hero. And I
21 remember -- like, I'm in foster care. And when I was
22 sixteen I was thinking about running away and I told Fred.
23 And he told me, don't do it. He urged me to stay strong
24 and make it. And I give credit to my brother for that. He
25 also played a part in me going to college. I just ask that

1 you have mercy on him. I would ask that you let him come
2 back home today, if possible.

3 THE COURT: Where are you going to college, sir?

4 THOMAS DOWNER: Berea College in Kentucky. I'd
5 like to see him at my graduation. And he's part of my
6 inspiration to graduate.

7 THE COURT: I'm proud of you. Thank you, sir.

8 Any time served, Solicitor?

9 MR. MOYER: Three hundred twenty-one days, Your
10 Honor.

11 THE COURT: Of course today you're looking at
12 prison, Mr. Downer, but some folks are in a prison behind
13 bars and some folks are in prison from drugs and other
14 problems that they have in life that they imprison
15 themselves. Frankly, you've already been in prison, it
16 sounds like, since you turned eighteen years old. Trying
17 to cope in life with a drug addiction, I wish that had
18 never happened to you so all these other things wouldn't
19 have happened to you.

20 This is case 2010-GS-23-3343, the sentence of the
21 Court is Defendant be committed to the State Department of
22 Corrections for a period of one hundred seventy-two months.
23 Case 3344, 3345, 3341, all concurrent sentences, one
24 hundred seventy-two months. Case 3342, a ten year sentence
25 concurrent. 3404, 3408, each of those a five year sentence

The State of South Carolina -vs- Fred Douglas Downer (2010-GS-23-3341-3345 and 3407-3408)
Guilty Plea

23

1 to be concurrent. Wish you the best. I know that you can
2 turn your life around.

3

4

5 (END OF REQUESTED TRANSCRIPT OF RECORD)

1

CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal, in
9 the Circuit Court for Greenville County, South Carolina, on
10 the 15th day of June, 2011.

11

This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13

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

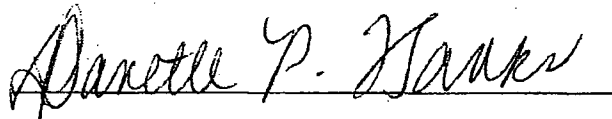
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June 20, 2012

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19

Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Greenville)

Fred Douglas Downer 346507)

2012-CP-23-023 83

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

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

FILED
CLERK OF COURT
GREENVILLE CO, S.C.
2012 APR - 5 PM 1:10

INSTRUCTIONS TO READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution 990 wisacky
Hwy Bishopville SC
2. Name and location of Court which imposed sentence Greenville General Sessions
305 E. North Street Greenville County Greenville SC 29601-2120
3. Name(s) of co-defendant(s) (if any) Cassandra E. Mitchell
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010 GS 2303343 Kidnapping; 2010 GS 2303344 Kidnapping;

- (b) 2010GS 2303345 Kidnapping; 2010GS 2303407 Possession of
- (c) weapon during violent crime; 2010GS 2303408 Conspiracy;
2010GS 2303341

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

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

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty ✓ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

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

No

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

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

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

(c) the date of each such result:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

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

- (a) N/A

- (b) _____
- (c) _____

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

- (a) 4th amendment violation
- (b) 6th amendment violation ineffective assistance of preliminary hearing counsel and plea counsel
- (c) involuntary guilty plea

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

- (a) Failure to challenge deficient affidavit in support of arrest warrant
- (b) ~~The Court~~ Preliminary hearing counsel failed to challenge/object to applicants conclusory affidavits in support of arrest warrants. Plea counsel failed to advise applicant he could proceed to trial and challenge conclusory affidavits in support of arr. warrant.
- (c) Failure to advise applicant of several rights he had prior to involuntary plea

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

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

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

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

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) First time filing PCR
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Richard Warder Post office Box 26133
(Plea Counsel) Greenville SC 29616
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. plea
- ii. Preliminary hearing
- iii. _____

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

vacate sentence and conviction

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Greenville)

VERIFICATION

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

[Signature]

SWORN to and subscribed before me this 23 day of March 2002

[Signature] (L.S.)
Notary Public

My Commission Expires: 5/1/02

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

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

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

Fred D. Downer
Applicant

SWORN or affirmed to and subscribed before me this
23 day of March 2012
A. Braggion
Notary Public

My Commission Expires: 5-10-14

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Fred Douglas Downer,)
 S.C.D.C. No. 346507,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-2383

RETURN

In response to the post-conviction relief application filed April 5, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the July 2010 term of the Greenville County Grand Jury for assault and battery with intent to kill (ABIK) (2010-GS-23-3341), assault and battery of a high and aggravated nature (ABHAN) (2010-GS-23-3342), three (3) counts of kidnapping (2010-GS-23-3343, -3344, -3345), possession of a weapon during the commission of a violent crime (2010-GS-23-3407), and conspiracy (2010-GS-23-3408). Richard H. Warder, Esquire represented the Applicant.

On June 15, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker levied concurrent sentences of one hundred and seventy-two (172) months for ABIK, ten (10) years for ABHAN, one hundred and seventy-two (172) months for each count of kidnapping, five (5) years for possession of a weapon during the commission of a violent crime, and five (5) years for conspiracy. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The plea transcript will be forwarded upon receipt.

II.

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

1. Ineffective assistance of counsel.
 - a. Failed to properly challenge deficient arrest warrant affidavits.
 - b. Failed to advise Applicant he could proceed to trial and challenge arrest warrant affidavits
2. Involuntary guilty plea.

III.

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

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must

overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999). An Applicant 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 Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief

hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits 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, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

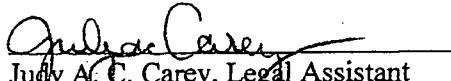
July 31, 2012

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
)	
)	2012-CP-23-2383
)	
FRED DOUGLAS DOWNER, 346507)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

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

**Fred Douglas Downer, 346507
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010**

DATED this 31st day of July, 2012.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Fred Downer #346507

Applicant,

V.

State of South Carolina

Respondents.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE # 2012-CP-23-02383

AMENDMENT TO ORIGINAL P.C.R.

APPLICATION

FILED IN COURT
GREENVILLE, S.C.
OCT 23 PM 1:33

Applicant Fred Downer, Moves to ammend claim to his original Post Conviction Relief Application for Ineffective Assistance of Counsel, with exhibits, and supporting documents to support his claim.

10.(A):Applicant U.S.C.A. Const. Amend. 5,6,14, was liolated because plea was in violation of an undisclosed plea bargain that he would recieve a maxiumum sentence of ten (10) years. Applicant's plea was not knowingly, voluntarily, and intelligently made.

Applicant states his plea of guilty was entered only after he was promised by Counsel that the plea would not exceed a maximum of ten years.

10.(B): IN Crawford v. U.S, 519 F2d 347 (4th Cir. 1973) and more-particulary under Waiters v. Harris, 460 F2d 988 (4th Cir.1972), held a prisoner that established cause will be permitted to controvert the statements made by him at the time that he tendered a plea of guilty. The Court held an unkept plea bargain requires exploration of the record of any promise that induced Applicants plea. An examination of the record at the plea hearing alone will not always bring out into the open a promise that has induced his guilty plea. Because it is well known that a defendant will sometimes deny the existance of a bargain..out of fear that a truthful response would jeopardize the bargain. Applicant is alledging that the Court imposition of sentence constitutes a breach of the plea bargain entered with the State and Defense Counsel, who assured Applicant and his family before entering his guilty plea that the Court would follow the recommendation of the ten year maximum plea. Applicant gave his admission soley on the advice of Counsel Applicant states the plea was not knowingly, voluntarily, and intelligently made, but was the product of trickery, misadvice and ineffective assistance of Counsel, which violated applicant's fifth, sixth, and fourteenth Ammendments under the due process clause.

It is axiomatic that to be voluntarily and understandingly made a plea of guilty must be solely the product of the Accused's informed free will. A guilty plea is not voluntary and must be stricken if that free will is overborne by the prosecutor or the Accused's lawyer.

ARGUMENT

(A) An unkept bargain which has induced a guilty plea is grounds for relief from sentence, Santobello v. New York, 404 U.S. 257, (1971)

(B) If Applicant was in fact promised by Counsel that he would receive a ten year sentence, Applicant is entitled to relief, U.S. v Carter, 454 F2d 426.

(C) It is well known that a defendant will sometimes deny the existence of a bargain that has in fact occurred, White v Gaffney, 435 F2d 1241, Jones v U.S. 423, F2d 252; out of fear that the truth would jeopardize the bargain.

If the Judge, the Prosecution, or the defence Counsel makes a statement in open Court that is contrary to what he has been led to believe, especially as to promises by the Prosecutor or his defence Counsel.. [the defendant] would no more challenge the statement in open Court than he would challenge a Clergyman's sermon from the Pulpit. U.S. v Williams, 407 F2d 940.

This 9th day of October 2012

S/ [Signature]
Respectfully Submitted

COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
 Fred Douglas Downer, SCDC 346507)
 Applicant,)
)
 vs.)
)
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)
 _____)

IN THE COURT OF COMMONS PLEAS
 CASE NO: 2012-CP-23-2383

AMENDMENTS TO
 POST CONVICTION
 RELIEF APPLICATIONS

FILED-CLERK OF COURT
 GREENVILLE CO, S.C.
 2012 JAN 28 AM 8:55

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):
 - (a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.
15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were

or whether or not I understood exactly what the term "criminal element" actually meant.

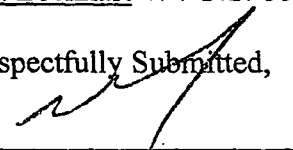
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with any adversarial litigation.
27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.

29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

January 11, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Fred Douglas Downer, SCDC 346507,)
)
 vs.)
)
 THE STATE OF SOUTH CAROLINA)

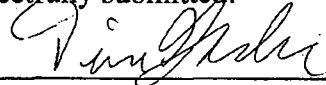
IN THE COURT OF COMMONS PLEAS
 CASE NO: 2012-CP-23-2383

AFFIDAVIT OF SERVICE

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 2013 JAN 28 AM 8:55

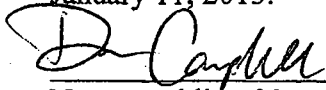
I certify that I have served the Amendments to PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on January 11, 2013, addressed to their attorney of record, Karen Ratigan, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:



Tina Garduno, paralegal
 Richey and Richey, P.A.
 Post Office Box 10916
 Greenville, South Carolina 29603

Sworn to before me on
 January 11, 2013.



Notary Public of South Carolina
 My Commission Expires: 7/15/2013

I N D E X

(AW) - Denotes Applicant's Witness
 (RW) - Denotes Respondent's Witness

Page No.

<u>(AW) FRED DOUGLAS DOWNER, JR.:</u>	
Direct Examination by Mr. Richey.....	4
Cross-Examination by Ms. Ratigan.....	9
<u>(AW) RICHARD HAROLD WARDER:</u>	
Direct Examination by Mr. Richey.....	12
Cross-Examination by Ms. Ratigan.....	14
<u>(AW) FREDERICK DOUGLAS DOWNER, SR.:</u>	
Direct Examination by Mr. Richey.....	17
Cross-Examination by Ms. Ratigan.....	20
<u>(AW) ASHLEY NICOLE GREEN:</u>	
Direct Examination by Mr. Richey.....	23
Cross-Examination by Ms. Ratigan.....	25

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE COURT: This is 2012-CP-23-2383, Fred D. Downer
3 v. State of South Carolina. He is in the courtroom with
4 his counsel, Mr. Richey.

5 And, Ms. Ratigan, yes.

6 MS. RATIGAN: Thank you, Your Honor.

7 May it please the Court.

8 Mr. Downer was indicted for assault and battery with
9 intent to kill, assault and battery of a high and
10 aggravated nature, three counts of kidnapping, possession
11 of a weapon during the commission of a violent crime, and
12 conspiracy. He was represented on these charges by
13 Mr. Warder.

14 On June 15th of 2011, he pled guilty before Judge
15 Welmaker. He received concurrent sentences of 172 months
16 for ABWIK, 10 years for ABHAN, 172 months for each count
17 of kidnapping, five years for the weapons charge, and five
18 years for conspiracy. The 172 months shakes out to be 14
19 years and four months. So he's serving an active sentence
20 of 14 years and four months overall.

21 He did not file an appeal. Mr. Warder is here today.
22 And the State is ready to proceed.

23 THE COURT: Mr. Richey.

24 MR. RICHEY: We call Mr. Fred Downer.

25 THE CLERK: Mr. Downer, step over toward the Bible.

1 Place your left hand on the Bible and raise your
2 right hand.

3 WHEREUPON,

4 FRED DOUGLAS DOWNER, JR.,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you.

7 Please state your full name for the record.

8 THE WITNESS: I'm Fred Downer, Jr.

9 THE CLERK: Thank you.

10 You may be seated.

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q Mr. Downer, are you currently incarcerated?

14 A Yeah.

15 Q Step back a little bit.

16 A Yes.

17 Q Okay. And where are you incarcerated?

18 A Lee County.

19 Q And are you incarcerated for convictions that you had
20 in Greenville County?

21 A Yes.

22 Q And who represented you on those charges?

23 A Richard Warder.

24 Q And you filed an application stating that you believe
25 Mr. Warder did not effectively represent you; is that

1 correct?

2 A Yes. Due to the fact --

3 Q Hold on. Hold on. We'll get to it.

4 A All right.

5 Q What type of sentence did you receive?

6 A 14 years.

7 Q 14 years. And you understand that this Court can
8 give you -- the remedy they can give you is a new trial.

9 Do you understand that?

10 A Yes.

11 Q So that means you would start over?

12 A Yes.

13 Q Okay. And just on these kidnapping charges, you're
14 facing 90 years. Do you understand that?

15 A Yes.

16 Q Okay. But you still want to go forward with this,
17 and ask this Court to vacate these sentences -- these
18 convictions?

19 A Yes.

20 Q All right. At the time of your guilty plea, were you
21 promised anything in exchange for your guilty plea?

22 A Yes.

23 Q And what were -- just tell me, what were you
24 promised?

25 A I was promised 10 years.

1 Q Okay. And who promised you that?

2 A Mr. Warder.

3 Q Okay. In what setting did he promise this to you?

4 Were you in his office? Were you in the jail? Where were
5 you at?

6 A I was at his office, and in the courtroom.

7 Q Okay. You were at his office. Was anybody with you?

8 A Yes.

9 Q And who was with you?

10 A My father, my kid's mother, my brother, my sister.

11 Q Some of these folks in the courthouse -- the
12 courtroom, were they with you that day?

13 A Yes.

14 Q Okay. And can you tell me how he conveyed that
15 promise to you?

16 A Due to the fact that I'm a layman to the law, I would
17 like to present some issues to state that my guilty plea
18 was not knowingly, voluntarily, and intelligently made.
19 The reason we're here today is because --

20 Q Hold on. Not a speech. You've got to answer the
21 questions I ask you.

22 The first question is, how was that promised to you
23 by Mr. Warder? Tell me how he promised that to you. Tell
24 me how the 10 years was promised to you. Did he say, hey,
25 you're going to get 10 years? Tell me how it was promised

1 to you.

2 A Yes. He had told me if I plead today, I would get 10
3 years.

4 Q And did he tell you that the State was recommending
5 that 10 years? Did he tell you anything about the State's
6 connection with that?

7 A No.

8 Q Okay. Did you believe that he was able to get 10
9 years on this conviction?

10 A Yes.

11 Q And how did you believe that?

12 A Can I finish talking first?

13 Q Well, you can answer the question. And we'll go from
14 there.

15 Okay. Did you believe he was able to get you 10
16 years?

17 A Yeah. Because I -- yes.

18 Q Okay. And what other issue did you have to raise
19 against Mr. Warder? You've got to tell them to me,
20 because it's not a speech --

21 A I --

22 Q Go ahead.

23 A Due to the fact that I'm a layman to the law, I would
24 like to present some issues to state that my guilty plea
25 was not knowingly, voluntarily, intelligently made. The

1 reason we're here today is because my Fifth, Sixth,
2 Fourteenth Amendments has been violated because my plea
3 was in violation of an undisclosed plea bargain that I
4 would receive a maximum sentence of 10 years. My plea was
5 not knowingly, voluntarily, intelligently made.

6 I only entered a plea after me and my family was
7 promised by counsel that the plea would not exceed a
8 maximum of 10 years. Due to counsel promising me and my
9 family that I would receive nothing but 10 years, I took
10 his advice to go ahead and plead to this inducement that
11 led me to my unknowing, unintelligent, and involuntary
12 guilty plea.

13 At my plea arraignment, counsel informed me to say if
14 the judge asked me was I promised anything to say, no. So
15 I went along with that thinking if I -- it would
16 jeopardize my plea of the 10 years.

17 So to conclude my argument, for the record, the plea
18 was not knowingly, voluntarily, intelligently made, but
19 was produced of trickery, mis-advice, ineffective
20 assistance of counsel, which violated my Fifth, Sixth,
21 Fourteenth Amendments under the due process clause.

22 And Sentavella [phonetic] v. New York United States
23 Supreme Court established that state prosecutor or counsel
24 are obligated to fulfill the promise that's made to
25 defendant when those promises serve as inducement to

1 defendant to plead guilty. Ever since Sentavella
2 [phonetic] has been established, this rule has applied to
3 being held. An unkept bargain which has induced a guilty
4 plea is grounds for relief for sentencing.

5 In Sentavella [phonetic] v. New York, applicant was,
6 in fact, promised by counsel that he would receive a
7 10-year sentence after he was entitled to relief. U.S. v.
8 Carter, it is well known that a defendant will sometimes
9 deny the existence of a bargain that has, in fact,
10 occurred out of the fear that the truth would jeopardize
11 the bargain. White v. Gaffney. Under no circumstances,
12 if I knew I would get more than 10 years, would I have
13 took this plea.

14 MR. RICHEY: No other questions.

15 CROSS-EXAMINATION

16 BY MS. RATIGAN:

17 Q When you had talked about your case with Mr. Warder,
18 did he tell you about the maximum sentences that you could
19 get?

20 A Yes.

21 Q And you had gone over all of the evidence with him
22 before pleading guilty?

23 A No.

24 Q Okay. When did he make you this promise? Was it
25 like a week before the plea? A month before the plea? Do

1 you remember?

2 A The same day.

3 Q Okay. So in his office?

4 A In the office, and when we came back to the little
5 room back there.

6 Q Okay. So you went to his office and he promised the
7 10 years. Then y'all came to court and he re-promised it
8 out in the little hallway office?

9 A Yeah.

10 Q Now, when he was talking about this 10 years, did he
11 say he was pretty sure he could get it for you, or that
12 you would absolutely get it?

13 A He guaranteed me I would get my 10 years.

14 Q Did he show you any kind of a letter, or an e-mail,
15 or anything from the State about the 10 years, or is it
16 just something that he told you?

17 A That's what he had told me.

18 Q Now, during the guilty plea hearing, the Solicitor
19 told the Judge there was no sentence recommendation. Do
20 you remember him saying that?

21 A Yeah.

22 Q And why didn't you say anything at the time, you
23 know, hold on a second, I thought I was getting 10 years
24 for this?

25 A Because I was advised not to say anything, but to go

1 along with -- he had told me to say -- what he told me to
2 say, I wasn't promised anything. So I'm following
3 counsel's advice.

4 Q Okay. Now, before you went in to plead guilty, did
5 Mr. Warder give you the sentencing sheets to sign?

6 A Yes.

7 Q And so that was before you went in, you went ahead
8 and signed it. Then you went in and pled guilty?

9 A Yes.

10 Q Now, did you notice on the sentencing sheet that
11 there's a box that's checked that says there's no
12 recommendation? Do you remember seeing that?

13 A No. I just signed it. I didn't never look.

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

15 THE COURT: Redirect?

16 MR. RICHEY: No questions.

17 We call Mr. Warder.

18 THE COURT: Thank you, Mr. Downer.

19 THE CLERK: Mr. Warder, place your left hand on the
20 Bible and raise your right hand.

21 WHEREUPON,

22 RICHARD HAROLD WARDER,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 State your full name for the record.

1 THE WITNESS: Richard Harold Warder.

2 DIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q Mr. Warder, do you recall representing Fred Downer,
5 Jr.?

6 A I remember some. There's some things that I don't.

7 Q All right. You are aware that we're here on a
8 post-conviction relief case today; correct?

9 A I'm sorry.

10 Q We're here on a PCR today --

11 THE COURT: Hold on one second. I've got -- somebody
12 is asking me to step out here one minute. I apologize.

13 (Pause.)

14 THE COURT: I'm sorry about that. My apologies.
15 Go ahead, Mr. Richey.

16 MR. RICHEY: Thank you.

17 BY MR. RICHEY:

18 Q Mr. Warder, the issue here, Mr. Downer pled guilty.
19 Do you recall that?

20 A Yes, sir.

21 Q And his testimony was that he pled guilty based on
22 the advice from you that he was going to get 10 years. Do
23 you recall that?

24 A Well, his family mentioned it today. And I don't
25 recall that, and that didn't happen.

1 Q Okay. It didn't happen that you said he was going to
2 get 10 years. Is that what you're saying?

3 A No, I didn't.

4 Mr. Downer came to me and he hired me on March the
5 9th of 2011. The reason he came and hired me, I noted on
6 my information sheet at the first interview on the 9th, he
7 hired me because Randy Chambers of the Public Defender's
8 Office had been representing him. And the best Randy
9 Chambers could do was get a 10-year offer. He didn't want
10 that. He wanted to go to trial. He hired me because he
11 rejected the 10-year offer.

12 I sent motions of discovery in. And Mark Moyer wrote
13 me back on April the 11th of 2011. And one of the things
14 he said, of course, at that time was the discovery had
15 been furnished to Mr. Chambers. He would send me
16 discovery, also, and that the offer had long since expired
17 in the case. And it was because Mr. Chambers had informed
18 him that the Defendant didn't want to take that offer.

19 So I'm certain I didn't tell him that he could get 10
20 years. He hired me only because the last lawyer told him
21 he could get 10 years. And I'm certain that I never had
22 an offer. Because the offer had expired before I got the
23 case. And it was tried in June, some four months after I
24 got it -- first got it.

25 Q So by the time you got the case, it was set on the

1 trial docket. So there was no offer to be had. Is
2 that --

3 A That's right. And the offer had expired. It had
4 been made to Randy Chambers and had been rejected.

5 MR. RICHEY: No other questions.

6 CROSS-EXAMINATION

7 BY MS. RATIGAN:

8 Q So you re-filed discovery. And Mr. Moyer just sent
9 you another discovery packet, even though he had already
10 sent something over to Mr. Chamber?

11 A I'm not sure whether I got discovery from Randy,
12 also. I got discovery, I believe, from the Solicitor's
13 Office.

14 Q Okay. And did you review all the documentation?

15 A Yes.

16 Q Did you review it with Mr. Downer?

17 A Yes. In fact, in trying this, he brought one of the
18 victims in. And they had handwritten an affidavit kind of
19 not to prosecute. He had filed that, I believe, with the
20 Solicitor's Office. One of victims was saying that they
21 didn't want -- that -- I think saying that he was innocent
22 and they didn't want to go to trial.

23 Q And did you review with Mr. Downer his version of
24 what had happened that day?

25 A I went over all the facts. And, of course, as I got

1 through them, it appeared to me that he should have taken
2 the offer that was extended to the public defender.

3 Q Did you explain to him the minimum and maximum
4 sentences on these charges?

5 A Yes.

6 Q Did you explain to him kind of the elements, what the
7 State would have to prove to find him guilty?

8 A Yes. We went over that. We went over the effect of
9 this witness that we thought was on our side. I think,
10 ultimately, he was not at the time of trial. Although, I
11 don't have a clear recollection of that.

12 Q So during your representation, you didn't get any
13 kind of offers from the State?

14 A No. Mark -- at least, we got no formal -- I do
15 somehow believe that Mark, the day we pled, at least,
16 didn't make us plead to everything. But I don't have any
17 documentation. And I'm not absolutely sure. But I
18 believe that there was some stuff that was kind of dropped
19 down.

20 Q Okay. So when you showed up to court that day with
21 Mr. Downer, you had told him he was pleading guilty
22 without any kind of a recommendation from the State?

23 A Yes. I told him -- I was convinced at that time that
24 our conviction was assured. And that -- I felt that Judge
25 Welmaker would give us some benefit for a plea. I had the

1 jury notes with my notes on the jurors.

2 So I take it that this case pled after the viewing of
3 the jury in the morning, and just before the calling of
4 the case first thing up.

5 Q In your opinion, did Mr. Downer understand, after you
6 talked with him, that he was pleading guilty and there was
7 no sentence recommendation that day?

8 A Yeah. I mean, he -- and I have no question he
9 pled -- and he believed at the time he pled that he would
10 come out somewhat better than we would by having a jury
11 find him guilty.

12 MS. RATIGAN: That's all I have, Your Honor.

13 MR. RICHEY: No other questions.

14 THE COURT: Thank you, Mr. Warder.

15 THE WITNESS: Thank you.

16 MR. RICHEY: I call Mr. Fred Downer, Sr.

17 THE CLERK: Mr. Downer, place your left hand on the
18 Bible and raise your right hand.

19 WHEREUPON,

20 FREDERICK DOUGLAS DOWNER, SR.

21 after first having been duly sworn, testified as follows:

22 THE CLERK: Thank you.

23 Please state your full name for the record.

24 THE WITNESS: Frederick Douglas Downer.

25 THE CLERK: Thank you.

1 You may be seated.

2 DIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q Mr. Downer, are you -- Frederick Douglas Downer, Jr.,
5 is your son; is that correct?

6 A Correct.

7 Q And you understand why we're here today, the issue is
8 whether this 10-year offer was made. Were you present at
9 the time that your son talked to Mr. Warder during this
10 trial?

11 A Yes, sir.

12 Q Where were you -- where were y'all at, and who was
13 there?

14 A Well, at first, me, my wife, my daughter,
15 Fredricka [phonetic], my son, Thomas and my son's
16 girlfriend, who he had his children by, Ashley. And we
17 was altogether. And we went to go to the office first.

18 Q You went to Mr. Warder's office?

19 A Yes, all of us, plus my son, Fred, Jr.

20 Q And where is that office located.

21 A It's located right off of East North Street down
22 by -- near 4 McGee.

23 Q You mean 4 McGee, the jail --

24 A The jailhouse, yeah. It's about two blocks over from
25 the jailhouse.

1 Q All right. So y'all went there. And was Mr. Warder
2 there?

3 A Yes, he was.

4 Q And did y'all have a conversation with him there?

5 A Yes. We had several conversations.

6 Q Okay. Was it several that day, or several within the
7 time you were there?

8 A No. That day, we talked.

9 Q All right. Did you talk about the case?

10 A Yes. We talked about the case.

11 Q Okay. Did you talk about a plea offer?

12 A Yes.

13 Q Okay. And what was the conversation?

14 A The conversation was that if he went to a jury trial,
15 he would get a large amount of time. But if he pleaded
16 guilty today, that he would, you know, work a deal out for
17 10 years.

18 Q Okay. Mr. Warder said he would work that deal out?

19 A Yeah, with the Solicitor.

20 Q Did he ever mention to you that there was a previous
21 10-year offer that had been rejected and that that was
22 unavailable?

23 A No. He never said that.

24 Q Okay. And so when he said he'd get 10 years, what
25 did you say? What was your response? Do you know?

1 A Well, I was thinking about a YOA. But he couldn't
2 get it because it was a violent crime.

3 Q Okay.

4 A But, yeah, I was wondering why he didn't get nothing.
5 Because he never had been to jail or prison before, or
6 anything, or been in trouble like that in his life. When
7 we left his office and come down to the courtroom, we had
8 a conversation in the back room right outside this door.

9 Q Who had a -- who was present?

10 A Me, my wife, Ashley Glenn, and my son, and daughter.

11 Q Your son Fred, Jr.?

12 A Fred, Jr., Thomas Downer Jr., and [inaudible] Downer.
13 We had the conversation.

14 Q Okay. Who was the conversation with? Was it with
15 Mr. Warder?

16 A Yes.

17 Q Okay. And so y'all left his office talking to him.
18 And y'all came to the courthouse and talked to him. What
19 was that conversation about?

20 A Well, the conversation was about that Fred had agreed
21 if he was going to pled guilty to get the 10 years, then
22 he had to agree on everything that the -- you know, when
23 he asked him was he was guilty, he had to say --

24 Q When who asked him?

25 A The judge.

1 Q Okay. Go ahead.

2 A He had to agree, you know, to that. Because if he
3 would have said anything else, it wouldn't have been
4 accepted, the 10 years wouldn't be accepted.

5 Q So did you believe he was going to get 10 years?

6 A Yes.

7 MR. RICHEY: Okay. Thank you.

8 Answer any questions the Attorney General has for
9 you.

10 CROSS-EXAMINATION

11 BY MS. RATIGAN:

12 Q When you went to Mr. Warder's office that day, did he
13 show you anything in writing from the State like an
14 e-mail, or a letter, or anything that said, you know, this
15 is a 10-year offer we're making to your client?

16 A No. He just acknowledged that he had talked to the
17 Solicitor. And that if Fred didn't agree to plead guilty,
18 he wouldn't get -- he would get more time if he didn't do
19 it that day.

20 Q Okay. And I believe what you testified to is that
21 Mr. Warder said he would work out a 10-year deal, if your
22 son pled that day?

23 A Yes, ma'am.

24 Q Okay. Now, did he promise he'd get 10 years, or
25 that he would try and get it, he was pretty sure he'd get

1 it?

2 A Well, he was saying that if he pled guilty and didn't
3 go in front of a jury that he would, you know, get the 10
4 years. That was before the jury even got here. The jury
5 wasn't even here. I mean, he hadn't went before --
6 picking out no jurors, or anything.

7 Q Okay. But did --

8 A So it wasn't court.

9 Q Okay. But did Mr. Warder make it sound like it was a
10 done deal, like he'd automatically get the 10, or just
11 that he was going to work to get him the 10?

12 A Yeah. When he was -- I, also, put the emphasis on
13 there to help him to talk to the judge about, you know,
14 his background, and the things he'd been through, and how
15 he ended up in the situation he was in, you know. Things
16 got a little carried away. But he's a good child. He
17 just got involved with the wrong thing, and it run too
18 quick on him, you know.

19 Q I guess what I'm trying to ask you is, did he promise
20 that he'd get that 10 years, or just that he was going to
21 try and get him the 10 years? Because there's a
22 difference. Which -- what did Mr. Warder, actually,
23 say?

24 A What I'm trying to say is he said that if he pleaded
25 guilty before they got the jury trial that he would get 10

1 years.

2 Q Okay. So he promised him he'd get 10 if he pled
3 before the jury?

4 A Yes, ma'am.

5 Q Okay.

6 A But if he didn't, then he was looking at a lot more
7 time.

8 MS. RATIGAN: That's all I have, Your Honor.

9 MR. RICHEY: No other questions.

10 We call Ashley Glenn.

11 THE COURT: Thank you, Mr. Downer.

12 THE WITNESS: Yes, sir. You're welcome.

13 THE CLERK: Ms. Glenn, please, place your right hand
14 on the Bible and raise your left hand -- place your left
15 hand on the Bible and raise your right hand. I'm sorry.
16 WHEREUPON,

17 ASHLEY NICOLE GLENN,

18 after first having been duly sworn, testified as follows:

19 THE CLERK: Thank you.

20 Please state your full name for the record.

21 THE WITNESS: Ashley Nicole Glenn.

22 THE CLERK: Thank you.

23 THE WITNESS: Can I make a statement before I answer
24 any questions?

25 THE COURT: No.

DIRECT EXAMINATION

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BY MR. RICHEY:

Q Ma'am, do you know Fred Downer, Jr.?

A I do. I'm the mother of his kids.

Q Okay. And the issue here is were you at Mr. Warder's office on June the 15th, 2011?

A Yes, sir.

Q And did you -- were you -- did you participate in a conversation between Fred Downer, Jr., Fred, Sr., and other people -- his family members with Mr. Warder?

A Yes, sir.

Q And during that conversation, do you recall an offer or a guaranty being made to Fred Downer, Jr., as to his sentence?

A Yes, sir.

Q And what was that promise or -- what was it?

A He was promised 10 years. And if he didn't [sic] take it to trial, he would get 30 years.

Mr. Warder told us a story that day that he had a client similar to Fred Downer, Jr., that he had -- kind of the exact same situation. And he told him to take it to -- to not take it to trial, to take the plea. And he didn't take the plea. He took it to trial. And he ended up getting 30 years.

And he said his client wrote him maybe like a year or

1 two later on the date that he would have been getting
2 out -- a couple years later on the date that he would have
3 been getting out had he took the plea. And he told him, I
4 wish I would have taken [sic] the plea. I should have
5 listened to you, and I didn't. And now I've got to do
6 these 30 years. So that's how Fred Downer, Jr., ended up
7 taking the plea.

8 Q Okay. And so there's no doubt in your mind that
9 Mr. Warder told him he would get 10 years?

10 A He promised him the 10 years.

11 Q Did you participate in the conversation at the
12 courthouse later on?

13 A I did.

14 Q Okay. And, at that conversation, was that a
15 reaffirmation of what was said at his office?

16 A Correct.

17 Q Tell me, when you got to Mr. Warder's office, y'all
18 went in and y'all sat down. What was -- was the
19 conversation, hey, what's going to happen at trial today?
20 Is that how it started, or something like that?

21 A I don't remember exactly how it started. But we was
22 trying to figure out if he was going to go to trial, or if
23 he was going to take a plea bargain, what he was going to
24 do. Because Fred, actually, wanted to take it to trial.
25 And the lawyer was telling him, well, I don't think you

1 should take it to trial. And several other family members
2 thought he should do different things.

3 So we was, actually, trying to figure out exactly
4 what he wanted to do. It wasn't until we got into the
5 room outside there -- right there that Mr. Warder told us
6 the story. And this is when he decided his -- that he was
7 going to take the plea.

8 MR. RICHEY: Okay. Thank you, ma'am.

9 Answer any questions the Attorney General has.

10 CROSS-EXAMINATION

11 BY MS. RATIGAN:

12 Q When you were at Mr. Warder's office, did he show you
13 anything in writing from the State like a letter, an
14 e-mail, or anything about an offer?

15 A No, ma'am.

16 Q Okay. It was just something that he told you he'd
17 get the 10 years if he pled?

18 A Yes, ma'am.

19 Q And Mr. Downer, he was set to go to trial that day?

20 A He -- not to go to trial. He -- if he would have
21 went to trial, he would have got 30 years. But he was to
22 be in court that day, yes.

23 Q Okay. So he was going to court, and he just hadn't
24 decided if he was going to plead or go to trial. Does
25 that sound right?

1 A Uh-huh.

2 MS. RATIGAN: That's all I have, Your Honor.

3 THE WITNESS: The 10 years -- it's in reference to
4 something that was said.

5 Can I just...

6 THE COURT: No, ma'am. You're just a witness. You
7 can answer questions.

8 Thank you.

9 MR. RICHEY: Thank you.

10 No other witnesses.

11 MS. RATIGAN: I don't have any witnesses to call,
12 Your Honor.

13 THE COURT: Any further evidence?

14 MR. RICHEY: No, sir.

15 THE COURT: Okay. Thank you for your presentations.

16 I'm going to take this under advisement and review it
17 in light of the testimony I've heard, and let you know my
18 decision, hopefully, in the next 10 days.

19 Thank you.

20 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 18th day of June, 2013.

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

November 4, 2013



Hollie M. Jenkins, Court Reporter

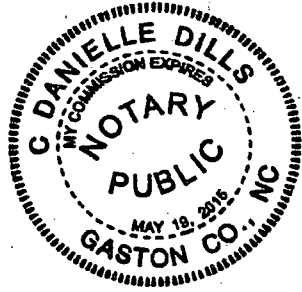
My Commission Expires: 09/24/20

Affidavit

Labertha Downer

North Carolina, C. Danielle Dills, a Notary Public
for Gaston County, North Carolina, do hereby certify that
Labertha Downer personally appeared before me this day and acknowledge the due
execution of the forgoing instrument.

Witness my hand and official seal this the 24th day of September
2012



C. Danielle Dills

My commission expires: May 19, 2015

The above persons appeared before me, who first being sworn deposes and states that the following declarations are true and correct under the penalty of perjury!

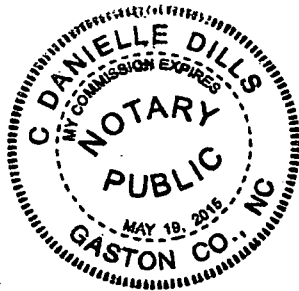
- 1.) That I witness and discussed with Fred Downer Jr., that it would be best for him to take the 10 years instead of the 30 years. I and Fred Downer Jr. counsel influenced him to plea to 10 year plea bargain. At no time did I or he hear or counsel informed him of the possibility of getting anything else. That's why I told him to plea. Labertha Downer

Affidavit

Frederick Downer Sr.

North Carolina, C. Danielle Dills, a Notary Public
for Gaston County, North Carolina, do hereby certify that
Frederick Downer Sr. personally appeared before me this day and acknowledge the due
execution of the forgoing instrument.

Witness my hand and official seal this the 24th day of September
2012.



C. Danielle Dills

My commission expires: May 18 2015

The above persons appeared before me, who first being sworn deposes and states that the following declarations are true and correct under the penalty of perjury!

- 1.) That I witness and discussed with Fred Downer Jr., that it would be best for him to take the 10 years instead of the 30 years. I and Fred Downer Jr. counsel influenced him to plea to 10 year plea bargain. At no time did I or he hear or counsel informed him of the possibility of getting anything else. That's why I told him to plea.

Frederick D. Downer Sr

AFFIDAVIT

Thomas Downer

*Thomas Downer**10/1/2012*

The above person(s) appeared before me, who, first being duly sworn deposes and states that the following declarations are true and correct under the penalty of perjury!

I That I witness and discussed with Fred Downer that it would be best for him to take the 10 years instead of the 30 years. Fred counsel and my family influenced him to plea to the 10 year plea. At no time did we or him hear/or counsel inform him of the possibility of getting anything else. That's why we told him to plea.

Phillip B Cole

PHILLIP B. COLE
NOTARY PUBLIC
Kentucky, State At Large
My Commission Expires 9/12/2016
I.D. # 474565

AFFIDAVIT

Ashley Glenn

The above person appeared before me, who, first being duly sworn deposes and states that the following declarations are true correct under the penalty of perjury!

- 1.) I witnessed and discussed with Fred Downer that it would be best for him to take the 10 years instead of the 30 years. Fred counsel and I influenced him to plea to the 10 year plea. At no time did I or he hear counsel inform him of the possibility of getting anything else. That's why we told him to plea.

Ashley Glenn

Notary Public of Greenville SC

Laura Blackmon 4-11-13

Laura G. Blackmon
My Commission Expires
August 10, 2021

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Fred Douglas Downer,)
 S.C.D.C. No. 346507,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-2383

ORDER OF DISMISSAL

2013 AUG 21 PM 3:08
 FILED-CLERK OF COURT
 GREENVILLE CO S.C.
 PAUL B. WICKENS/HEA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 5, 2012. The Respondent made its return on July 31, 2012. An evidentiary hearing was convened on June 18, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Fred Downer, Sr., Ashley Glenn, and the Applicant's plea counsel, Richard H. Warder, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the July 2010 term of the Greenville County Grand Jury for assault and battery with intent to kill (ABIK) (2010-GS-23-3341), assault and battery of a high and aggravated nature (ABHAN)

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(2010-GS-23-3342), three (3) counts of kidnapping (2010-GS-23-3343, -3344, -3345), possession of a weapon during the commission of a violent crime (2010-GS-23-3407), and conspiracy (2010-GS-23-3408). He was represented by Richard H. Warder, Esquire.

On June 15, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker levied concurrent sentences of one hundred and seventy-two (172) months for ABIK, ten (10) years for ABHAN, one hundred and seventy-two (172) months for each count of kidnapping, five (5) years for possession of a weapon during the commission of a violent crime, and five (5) years for conspiracy. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Failed to properly challenge deficient arrest warrant affidavits.
 - b. Failed to advise Applicant he could proceed to trial and challenge arrest warrant affidavits
2. Involuntary guilty plea.

The Applicant, through counsel, submitted an amendment to his application filed January 28, 2013, in which he alleged the following:

1. Ineffective assistance of counsel:
 - a. Failed to conscientiously discharge professional responsibilities.
 - b. Failed to effectively challenge search and seizure.
 - c. Failed to act as a diligent and conscientious advocate.
 - d. Failed to give complete loyalty.
 - e. Did not have Applicant's best interest in mind.
 - f. Failed to serve the cause in good faith.
 - g. Neglected necessary investigations and preparation.
 - h. Did not do necessary factual investigations.
 - i. Did not do necessary legal research.
 - j. Did not conscientiously gather information to protect rights.
 - k. Did not try to have the case settled in a manner that would have been to my best advantage.

- l. Did not advise me of all my rights or take any of the actions that were necessary to protect and preserve them.
- m. Never properly ascertained whether or not I actually understood or comprehended all of the issues involved in the case.
- n. Never properly consulted with me or kept me informed.
- o. Never explained to me or discussed with me any of the elements.
- p. Never made any attempt to ascertain whether or not I actually knew the elements of the crime charged or whether or not I understood exactly what "criminal element" meant.
- q. Never explained or discussed with me how the elements of the crime charged and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd.
- r. Never informed me of any of the defenses that were available to me.
- s. Never intended to offer any defense to the court on my behalf.
- t. Never explained to me or discussed with me any kind of defense strategy.
- u. Never explained to me or discussed with me any of the tactical choices that were made or planned to be made.
- v. Dictated to me exactly how my case was going to be handled and offered no alternative options.
- w. Failed to properly acquaint herself with the law and facts surrounding my case and, as a result, there was a very serious error in the assessment of both the law and the facts.
- x. No defense at all was put in issue for me during the Court proceedings.
- y. Did not subject the prosecution's case to any adversarial testing.
- z. Failed to oppose the prosecution's case with any adversarial litigation.
- aa. Failed to function as the government's adversary in any sense of the word.
- bb. Failed to pursue any of the legal recourse that was available.
- cc. Failed to function as the counsel that the Constitution's Sixth Amendment guarantees.
- dd. Failed to call alibi witnesses on my behalf.
- ee. Failed to appeal my case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the

opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

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

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

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, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing.

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Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated on the day of the guilty plea hearing, plea counsel twice promised that he would receive a ten year sentence if he pled guilty. The Applicant stated he never saw a written ten-year recommendation from the State. The Applicant admitted the State told the plea judge there was no sentence recommendation but stated he did not object to this because plea counsel told him not to say anything. The Applicant stated his guilty plea was involuntary because of "trickery" and ineffective assistance of plea counsel.

Fred Downer, Sr. (the Applicant's father) and Ashley Glenn (the mother of the Applicant's child) stated they met with the Applicant and plea counsel in counsel's office on the day of the plea hearing. Downer and Glenn stated plea counsel told them the Applicant would receive a ten year sentence if he pled guilty. Downer and Glenn stated plea counsel restated this when they met at the courthouse later that day.

Plea counsel testified he was retained to represent the Applicant on March 9, 2011, but that there had been a previous attorney on the case. Plea counsel testified the previous attorney obtained a ten-year sentence recommendation from the State but that the Applicant refused it and hired him. Plea counsel testified he received a letter from the assistant solicitor dated April 11, 2011 stating the discovery materials would be re-sent to him and that the plea offer had expired because the previous attorney had informed him that the Applicant rejected it. Plea counsel testified the State did not make any plea offers during his representation, as the case was on the trial docket when he was retained. Plea counsel testified he was certain he did not tell the Applicant he would receive a ten-year sentence and that he had explained to the Applicant that there was no recommendation.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.11; p.14). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.12-14). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel promised he would receive a ten-year sentence if he pled guilty. Plea counsel testified he never made any such promise to the Applicant. Plea counsel testified the Applicant had rejected a ten-year offer when he was represented by previous counsel and that the case was on the trial docket by the time he was retained. Plea counsel testified he had explained to the Applicant that he was pleading guilty without a sentence recommendation. This Court finds plea counsel's testimony is credible. This Court finds the guilty plea transcript refutes the Applicant's allegation because it was noted at the plea hearing there was no sentence recommendation and the Applicant did not object. (Plea transcript, p.14). See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007) (citing also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994)). The Applicant also told the plea judge he had not been promised anything in exchange for his guilty plea. (Plea transcript, p.14). See id. This Court further notes the Applicant signed the

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sentencing sheets in this case, all of which are clearly marked that the plea is being entered "Without Negotiations or Recommendation." Even assuming arguendo that plea counsel improperly advised the Applicant, any alleged error was cured by the plea colloquy. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011). Further, as the Applicant pled guilty without a recommendation, was advised of the sentence ranges for the offenses, and was sentenced within those ranges, he cannot prove any prejudice.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea 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 plea counsel's performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

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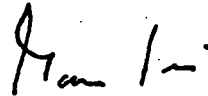
established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation. Furthermore, the Applicant's guilty plea was entered knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12th day of August, 2013.



D. Garrison Hill
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2302383

2013 AUG 21 PM 3: 08
FILED
CLERK OF COURT
GREENVILLE CO. S. C.
PAUL B. WICKENSIMER

Fred Downer vs. South Carolina State Of

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 21st day of August, 2013.

Court Reporter:

PRESIDING JUDGE - D Garrison Hill

This judgment was entered on the 21st day of August, 2013, and a copy mailed first class this 21st day of August, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Rodney Wade Richey PO Box 10916 Greenville, SC 296030916

Karen Christine Ratigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer, Greenville County Clerk Of Court
Clerk of Court

WITNESSES

David Weiner

Greenville County Sheriff's Office

3/16/2010

DOCKET NO. 2010-GS-23-003408

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2010

6-15-11 THE STATE

vs.

FRED DOUGLAS DOWNER

ARREST WARRANT NUMBER

M177361

ACTION OF GRAND JURY
TRUE BILL

Wm. J. ...

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for
0049

CONSPIRACY

VIOLATION § 16-17-0410

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

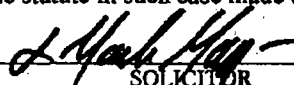
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on **JUL 20 2010** the Grand Jurors of Greenville
County present upon their oath:

That FRED DOUGLAS DOWNER did in Greenville County, on or about the 13th day of December, 2009,
willfully and unlawfully combine with Cassandra Mitchell for the purpose of accomplishing an unlawful object or
a lawful object by unlawful means, to wit: Armed Robbery and/or Kidnapping. This is in violation of §16-17-
0410 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

David Wehner

Greenville County Sheriff's Office

3/16/2010

DOCKET NO. 2010-GS-23-

LMM

The State of South Carolina

County of Greenville

003407

COURT OF GENERAL SESSIONS
July
TERM 2010

6-15-11

THE STATE

vs.

FRED DOUGLAS DOWNER

ARREST WARRANT NUMBER

M177362

ACTION OF GRAND JURY
TRUE BILL

Ann Woodruff
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0549

Indictment for

POSSESSION OF A WEAPON DURING THE
COMMISSION OF A CRIME

VIOLATION § 16-23-0490

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

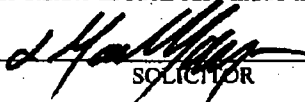
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING THE COMMISSION OF A
CRIME

At a Court of General Sessions, convened on **JUL 20 2010** the Grand Jurors of Greenville
County present upon their oath:

That FRED DOUGLAS DOWNER did in Greenville County, on or about the 13th day of December, 2009,
possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit:
Armed Robbery, Kidnapping, and/or Assault and Battery with Intent to Kill. This is in violation of §16-23-0490
of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

David Weimer

Greenville County Sheriff's Office

3/16/2010

ARREST WARRANT NUMBER
M177357

ACTION OF GRAND JURY
TRUE BILL
Wm. J. ...
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-
LMM

003345

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2010

JULY

6-15-11

THE STATE

VS.

FRED DOUGLAS DOWNER

0095

Indictment for

KIDNAPPING

VIOLATION § 16-03-0910

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on **JUL 20 2010** the Grand Jurors of Greenville
County present upon their oath:

That FRED DOUGLAS DOWNER did in Greenville County, on or about the 13th day of December, 2009,
unlawfully seize, abduct, confine, inveigle, decoy or carry away CHRISTOPHER BARTON, without the
authority of law. This is in violation of § 16-03-0910 of the South Carolina Code of Laws (1976) as amended.

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

J. Mark Hays

SOLICITOR

WITNESSES

David Weiner

Greenville County Sheriffs Office

3/16/2010

ARREST WARRANT NUMBER
M177356

DOCKET NO. 2010-GS-23-
LHM

003344

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2010

6-15-11 THE STATE

VS.

FRED DOUGLAS DOWNER

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0095

Indictment for

KIDNAPPING

VIOLATION § 16-03-0910

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

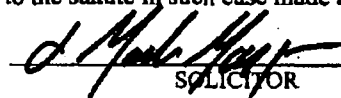
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on **JUL 20 2010** the Grand Jurors of Greenville
County present upon their oath:

That FRED DOUGLAS DOWNER did in Greenville County, on or about the 13th day of December, 2009,
unlawfully seize, abduct, confine, inveigle, decoy or carry away SHAE BARTON, without the authority of law.
This is in violation of §16-03-0910 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

LMH
WITNESSES

David Weiner

Greenville County Sheriff's Office

3/16/2010

DOCKET NO. 2010-GS-23-
LMH

003343

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July TERM 2010

6-15-11 THE STATE

vs.

FRED DOUGLAS DOWNER

ARREST WARRANT NUMBER

M177355

ACTION OF GRAND JURY
TRUE BILL

Wm Steadforth

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0095

Indictment for

KIDNAPPING

VIOLATION § 16-03-0910

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on

JUL 20 2010

the Grand Jurors of Greenville

County present upon their oath:

That FRED DOUGLAS DOWNER did in Greenville County, on or about the 13th day of December, 2009, unlawfully seize, abduct, confine, inveigle, decoy or carry away DANIEL PERRY, without the authority of law. This is in violation of §16-03-0910 of the South Carolina Code of Laws (1976) as amended.

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

J. Mark May

SOLICITOR

WITNESSES

David Weirner

Greenville County Sheriff's Office

3/16/2010

ARREST WARRANT NUMBER
M177353

ACTION OF GRAND JURY
TRUE BILL
Wm J. Spalding
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-
LMM

003341

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS
JULY
TERM 2010

6-15-11

THE STATE

VS.

FRED DOUGLAS DOWNER

0014

Indictment for

ASSAULT AND BATTERY WITH INTENT TO
KILL

VIOLATION § 16-03-0620

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

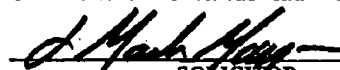
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY WITH INTENT TO KILL

At a Court of General Sessions, convened on **JUL 20 2010** the Grand Jurors of Greenville
County present upon their oath:

That FRED DOUGLAS DOWNER did in Greenville County, on or about the 13th day of Deccmber, 2009,
willfully, unlawfully and with malice aforethought, either express or implied, commit an assault and battery upon
CHRISTOPHER BARTON. This is in violation of §16-03-0620 of the South Carolina Code of Laws (1976) as
amended.

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



SOLICITOR

WITNESSES

David Wehner

Greenville County Sheriff's Office

3/16/2010

DOCKET NO. 2010-GS-23-

The State of South Carolina

County of Greenville

003342

COURT OF GENERAL SESSIONS
July
TERM 2010

6-15-11 THE STATE

VS.

FRED DOUGLAS DOWNER

ARREST WARRANT NUMBER
M177354

ACTION OF GRAND JURY

True Bill

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0013

ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE

VIOLATION § CIL

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
NATURE

At a Court of General Sessions, convened on **JUL 20 2010** the Grand Jurors of Greenville
County present upon their oath:

That FRED DOUGLAS DOWNER did in Greenville County, on or about the 13th day of December, 2009,
willfully and unlawfully commit an assault and battery upon DANIEL PERRY constituting an unlawful act of
violent injury to DANIEL PERRY, accompanied by circumstances of aggravation, to wit: Use of a deadly
weapon and/or with intent to commit a felony and/or infliction of serious bodily injury. This is in violation of the
Common Law of the State of South Carolina.

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


SOLICITOR