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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Beaufort County

Deadra L. Jefferson, Circuit Court Judge

QUINCY HOLMES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002566

APPENDIX

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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NO. 2011-GS-07-00657

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

MAY 21, 2012

TRANSCRIPT OF GUILTY PLEA

BEAUFORT, SOUTH CAROLINA

QUINCY HOLMES

DEFENDANT

B E F O R E:

HON. R. DENNIS MARKLEY, JR., JUDGE.

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

ON BEHALF OF THE STATE:

HON. MEREDITH BANNON

ON BEHALF OF DEFENDANT:

HON. JAMES BELL

ORIGINAL

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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1 BEGIN 2:55 P.M.

2 WITNESS SWORN.

3 BY THE COURT:

4 THE COURT: You're Quincy Holmes?

5 A Yes, sir.

6 THE COURT: Mr. Holmes, I'm advised by your lawyer,
7 and now what appears to be on the sentencing sheet
8 bearing your signature, that you're desirous of entering
9 a plea in this case. Is that true?

10 A Yes, sir.

11 THE COURT: You understand, of course, we went
12 through the process of selecting a jury, and that jury
13 has been empaneled. It just hasn't been sworn yet.
14 Certainly, your lawyer has talked with you about this
15 process; has he not? About a jury trial and your rights
16 as they pertain to a jury trial?

17 A Yes, sir.

18 THE COURT: You fully understand those rights?

19 A Yes, sir.

20 THE COURT: You're 27 years old?

21 A I'm 28, sir.

22 THE COURT: Twenty-right? Okay. What sort of
23 education do you have?

24 A I got a high school diploma.

25 THE COURT: What type of jobs have you had?

1 A I normally do construction or operating heavy
2 equipment or working on a shrimp boat.

3 THE COURT: Okay. It appears to be a negotiated
4 sentence. Is that correct?

5 MS. BANNON: No, your Honor. He's pleading straight
6 to the Court.

7 THE COURT: Okay. The negotiated is checked. We
8 agree it's not a negotiated sentence, Mr. Bell?

9 MR. BELL: We do.

10 THE COURT: Do you know what that means, Mr. Holmes?
11 It's a straight-up plea, and I'm going to check that.
12 And so, it's without any recommendations. Is that true?

13 MR. BELL: That's correct, your Honor.

14 THE COURT: Is that your understanding, Mr. Holmes?

15 A Yes, now, sir, yes, it is.

16 THE COURT: Now?

17 A As of now. I mean, now I understand what you're
18 saying.

19 THE COURT: You didn't know that before just now?

20 A I just look at the paper. It did say negotiated.

21 THE COURT: All right. Do you want to talk with
22 your lawyer anymore about what that means and the
23 changes that means?

24 A No, sir.

25 THE COURT: When you signed it, it had a checked

1 negotiated.

2 A Yes, sir.

3 THE COURT: You were very astute in observing that.
4 That's not correct. So do you wish to withdraw your
5 plea?

6 MR. BELL: Judge, that's my fault for not alerting
7 him to that.

8 THE COURT: Oh, I understand. It's not anybody's
9 fault. There's no wrong. Nobody's doing anything
10 wrong. We're just getting it on the right page, so to
11 speak. Do you agree with that, Mr. Holmes?

12 A Yes, sir, I do.

13 THE COURT: But no question you were correct when
14 you affixed your signature there was the negotiated
15 sentence had been blocked. I'm striking that and
16 initialing my actions. Is that agreeable? Are you in
17 agreement with that?

18 A Yes, sir, I am.

19 THE COURT: Okay. And I've also now checked without
20 negotiation or recommendation, which means, stated
21 another way, it's a straight-up plea. Do you understand
22 that?

23 A I do, yes, sir.

24 THE COURT: And your lawyers have explained to you
25 that the possible sentence in this case is a minimum of

1 15 years, with a maximum sentence of up to life. Do you
2 understand that?

3 A Yes, sir.

4 THE COURT: You understand that if you were to
5 continue, the State would have to prove your guilt
6 beyond a reasonable doubt. You would not have to prove
7 or disprove anything. You understand that?

8 A Yes, sir.

9 THE COURT: And that means, in fact, I would tell
10 the jury in my opening statement that that's one of the
11 major differences between a proceeding in a civil forum
12 versus a criminal forum; that in a civil setting there
13 are occasions when a defendant may have some burden of
14 proof. Very limited, but there are occasions when that
15 is the case.

16 But not so in a criminal trial, because the
17 defendant never has to prove anything. They don't have
18 to present any evidence. In fact, I would tell them you
19 don't have to say a word. And they can never hold that
20 against you. You understand that?

21 A Yes, sir.

22 THE COURT: Notwithstanding that's your right, and
23 notwithstanding that the State would have to present
24 evidence, it is your desire to enter this plea. Is that
25 true?

1 A Yes, sir.

2 THE COURT: Ask you to raise your right hand,
3 please. Do you solemnly swear or affirm that all of
4 your responses to my questions will be the truth, and
5 nothing but the truth, so help you God?

6 A Yes, sir.

7 THE COURT: Have you truthfully responded to all my
8 questions thus far, sir?

9 A Yes, sir.

10 THE COURT: Have you fully understood the question?

11 A Yes, sir.

12 THE COURT: And have you given a complete answer to
13 those questions?

14 A Yes, sir.

15 THE COURT: You understand and realize that you're
16 giving up your right to have a jury trial in this
17 matter.

18 A Yes, sir.

19 Q And you understand that, if you had the trial, if
20 your lawyers have explained to you, you would have the
21 right to confront your accusers, so to speak, and
22 witnesses against you. You understand that.

23 A Yes, sir.

24 THE COURT: That means that your lawyers could
25 cross-examine those witnesses and attempt to discredit

1 those witnesses by cross-examination questions. You
2 understand that?

3 A Yes, sir.

4 THE COURT: Since you're not going to have a trial,
5 you're not going to have the opportunity to confront the
6 witnesses. Do you realize that, sir?

7 A Yes, sir, I do.

8 THE COURT: Do you also understand that you have
9 absolutely no responsibility or obligation to talk to me
10 or say a word in this proceeding. Do you understand
11 that? You have the absolute right to remain silent at
12 all times. Do you understand that?

13 A Yes, sir, I do.

14 THE COURT: But by entering a guilty plea,
15 obviously, you're giving up your constitutional right to
16 remain silent. Do you realize that?

17 A Yes, sir.

18 THE COURT: Are you under the influence of any
19 alcohol or any medications?

20 A No, not right now, sir.

21 THE COURT: When you say *not right now*, you have
22 been?

23 A When I was home, I, like, drinking on the weekends.

24 THE COURT: I understand. Did you have anything to
25 drink last night?

1 A Yes, sir

2 THE COURT: Okay. Does it in any way affect what
3 you're doing here today?

4 A Oh, no, sir.

5 THE COURT: Do you have full control of your
6 faculties?

7 A Yes, sir.

8 THE COURT: Do you have the ability to think and
9 reason for yourself today?

10 A Yes, sir, I do.

11 THE COURT: And you don't believe anything that you
12 consumed last night is affecting you in any way
13 whatsoever?

14 A No, sir.

15 THE COURT: Have you ever been treated for any
16 emotional problems, any mental illness?

17 A Yes, sir.

18 THE COURT: How long ago and what was the reason?

19 A About a year ago.

20 THE COURT: For what?

21 A Depression.

22 THE COURT: Okay. Are you under the care of any
23 physician now for depression?

24 A No, sir.

25 THE COURT: Have you taken any medication for

1 depression?

2 A Recently?

3 THE COURT: Um-hmm. Yes, sir.

4 A No. My prescription ran out, but I was taking it.

5 THE COURT: Okay. And you didn't renew that
6 prescription.

7 A No, sir.

8 THE COURT: Has that in any way impaired your
9 ability to think and reason?

10 A No, sir.

11 THE COURT: And again, you feel comfortable with
12 your ability to analyze what's going on here today and
13 make a decision for yourself.

14 A Yes, sir.

15 THE COURT: Are you satisfied with your lawyers?

16 A Not really.

17 THE COURT: Okay. What are the problems?

18 A There's really no problem. I'm just not satisfied,
19 but.

20 THE COURT: What are you not satisfied with? I
21 mean, obviously, having been a lawyer, and that has been
22 some time, I understand, that you tried to postpone as
23 long as possible, the ultimate trial. But your lawyer
24 doesn't control that. You understand that?

25 A Yes, sir, I do.

1 THE COURT: And obviously, lawyers have to deal with
2 the facts that they're dealt, and they can't create
3 facts or make facts disappear. You understand that.

4 A Yes, sir.

5 THE COURT: So, what, specifically, otherwise, are
6 you disappointed with your lawyers about?

7 A I really -- it's not really in that details. It's
8 more like just my situation. That's all.

9 THE COURT: They didn't create it, though; did they?

10 A No, sir.

11 THE COURT: Do you know anything that they didn't do
12 for you that you specifically wanted them to do?

13 A Yeah. Yes, sir. Like in the process of me wanting
14 to go -- I was pushing towards my trial, I didn't really
15 have like a lot of information as who was being
16 subpoenaed, witnesses, none of that stuff or everything.
17 I'm just finding out as we go along. So a lot of
18 information was being withheld from me, but that's just
19 that.

20 THE COURT: They told you what the State was
21 prepared to prove; didn't they?

22 A Basically, yes, sir.

23 THE COURT: Okay. Well, you know, I hear that a
24 lot, more lately than I did the first part of my years
25 as judge. Seems to be that's the new approach. But I

1 heard you say you went to high school. You didn't
2 finish any college.

3 A Oh, no, sir.

4 THE COURT: You've never been to law school.

5 A No, sir.

6 THE COURT: You've never tried a case in your life.

7 A No, sir.

8 THE COURT: If you read any law, it's been limited,
9 I assume. You haven't read it for a specific purpose to
10 prove something or to take any type of test of quiz.

11 A No, sir.

12 THE COURT: Obviously, your lawyers have. And one
13 of the things that I've often said, and I used to tell
14 my clients that I represented, I'll be happy to sit down
15 and share with you all you want, but the bottom line is,
16 you hired me because you really are not in a position to
17 represent yourself, and you shouldn't represent
18 yourself. And I can't expect, nor should you expect,
19 that you and I would always agree on anything, but you
20 have a right to expect me to honor the oath that I took.
21 And that is to represent you zealously and within the
22 confines of the law. You understand that.

23 A Yes, sir.

24 THE COURT: And do you know of anything your lawyers
25 have done or not done in following that oath?

1 A Well, I mean, it's like -- it's like I say -- guess
2 they did all right, you know. It's just my situation.
3 It's not really that I'm focusing on so much about them.
4 It's just --

5 THE COURT: We're going to hear about those facts in
6 a minute, and I'll be in even a better position to talk
7 with you, because I know very little about this case,
8 other than what I've read and what has been shared with
9 me in status conferences. I know you have prior -- some
10 convictions, which certainly have to be factored in when
11 you're planning a strategy. You understand that; don't
12 you?

13 A Yes, sir.

14 THE COURT: You're also dealing with an area that,
15 when I first started this job, and I still have a strong
16 feeling about this, because it's just my feeling, I
17 don't think it's exactly fair that they ought to be able
18 to prove burglary first by putting in evidence of prior
19 convictions, because I think it has a tendency of
20 swaying a jury. You understand that; don't you?

21 A Yes, sir.

22 THE COURT: Well, the fact that I feel that way, and
23 maybe your lawyer feels that way, I don't know, I've
24 never talked with him about it, but I know I do, but the
25 Supreme Court's made it clear, and they've had numerous

1 opportunities. That's really a non-issue. It's been
2 decided. That's proper. State's not doing anything
3 wrong, because the law is that they have the burden of
4 proving every element of the crime, and that is one of
5 the elements.

6 And so, we could -- if it was a DUI, you could admit
7 to jurisdiction, but it's not a jurisdictional issue.
8 It's an element of the crime. So, notwithstanding
9 opinions or feelings, you understand that's the law.
10 And your lawyers have to comply with that, too, because
11 they took an oath to do that. You understand that.

12 A Yeah, I understand, sir.

13 THE COURT: Obviously, the fact you had a co-
14 defendant was going to testify against you, that's
15 another negative factor for you. May not mean anything,
16 but that's something that you have to content with. You
17 understand that. Your lawyers can't control that
18 either. You realize that?

19 A Yes, sir.

20 THE COURT: Okay. Mr. Bell, it's obviously from my
21 conversations with you earlier about this case, you're
22 prepared to try this case on his behalf.

23 MR. BELL: Yes, sir.

24 THE COURT: And you've examined the State's case and
25 were prepared to try to attack those areas where there

1 was some area to attack.

2 MR. BELL: Yes, sir, that's correct, I'm prepared.

3 THE COURT: It wasn't a lot, but there were some.
4 And I think you'd indicated or intimated that there were
5 some issues that may arise.

6 MR. BELL: Yes, sir.

7 THE COURT: And you've discussed that strategy with
8 your client?

9 MR. BELL: Yes, sir.

10 THE COURT: But he's elected, after fully talking
11 with you, to go forward with this plea today. Is that
12 true, sir?

13 MR. BELL: That's correct.

14 THE COURT: You have fully advised him of his rights
15 that we've just discussed?

16 MR. BELL: I have.

17 THE COURT: Do you believe he fully understands what
18 he's doing?

19 MR. BELL: He certainly does.

20 THE COURT: And do you believe it's a decision that
21 he makes freely, voluntarily, knowingly, and
22 intelligently?

23 MR. BELL: Yes, sir.

24 THE COURT: Based on your investigation, based on
25 your preparation, do you concur with his decision to

1 enter the guilty plea?

2 MR. BELL: Your Honor, I respect his decision.

3 THE COURT: Okay. And I understand that. I mean,
4 we obviously are giving up an unknown.

5 MR. BELL: Yes, sir.

6 THE COURT: And that's what you do. The jury may
7 not -- the jury may not find you guilty, but you're
8 taking a chance, and you're putting yourself, throwing
9 yourself on the mercy of the Court, is what you're
10 doing. Is that correct, Mr. Holmes?

11 A Yes, sir. That's what I'm doing, sir.

12 THE COURT: And that's what you choose to do.

13 A Yes, sir.

14 THE COURT: Anybody threatened you in any way or
15 promised you anything to get you to do this?

16 A No, sir.

17 THE COURT: Are you entering your plea based on what
18 you know the State's presented, and what you know,
19 because you're guilty of this offense. Is that correct?

20 A Yes, sir.

21 THE COURT: Listen to the facts as the solicitor
22 tells me those facts, please. Solicitor, if you would.

23 MS. BANNON: Thank you, your Honor. On March 4,
24 2011, Port Royal Officer Able was patrolling when he
25 encountered Mr. Holmes walking down beside the road,

1 about midnight. He offered to give Mr. Holmes a ride.
2 And Mr. Holmes offered up his bag to let him search for
3 weapons prior to getting into the car. Officer Able saw
4 inside this bag a bent butter knife, wire cutters, Allen
5 wrenches, along with two black gloves with gold
6 lettering and Jesus. It's a very distinctive pattern on
7 his gloves.

8 Fast forward about two-and-a-half hours later, 911
9 gets a call from Mr. Holmes' wife, who lives at
10 Street, Town Apartments, Apartment , which is here
11 in Port Royal. It's an apartment building. And she
12 told 911 that someone was breaking into her neighbors'
13 house, Apartment . That apartment belonged to a
14 lady, Mrs. Snitchler, who was notified of this hearing
15 today, and was cooperative, and was going to come to the
16 court. She just has a job where she couldn't make it
17 today for this plea. She had just moved down here to
18 the area, and unfortunately, was spending the night at a
19 friends' house that night.

20 Law enforcement arrives. They do a dog track. Dog
21 track finds a T.V. that was stolen out of the apartment.
22 A PlayStation, as well as Mr. Holmes' iPod, his library
23 card, and several other pieces of identifying
24 information with the stolen items from the house, as
25 well as the distinctive gloves that I spoke of earlier.

1 Mr. Holmes had a no trespass notice at these apartments
2 due to fights he'd gotten into with his wife.

3 He comes up to law enforcement. He willingly speaks
4 with them, at which he states he was hanging at his
5 wife's apartment with Mr. Bryce DeBerry, the co-
6 defendant, who stated his cooperation in testifying
7 against Mr. Holmes at trial.

8 And Mr. Holmes stated that they were smoking
9 marijuana, and they decided to break into this house.
10 He served as a look-out, while Mr. Deberry broke in.
11 Mr. Deberry's version, of course, is that he served as a
12 look-out, and Mr. Holmes was the one who was breaking
13 in. Given how the items were located and found, the
14 State gives credence to Mr. DeBerry's version over Mr.
15 Holmes' version.

16 Once Mr. Holmes was arrested and jailed, he then
17 placed a phone call to Mr. Deberry, at which time he
18 told him to stay low, the police were looking for him,
19 because of what they had done.

20 THE COURT: Are those facts correct, sir?

21 A No.

22 THE COURT: What's not correct?

23 A A lot -- a lot of it is incorrect.

24 THE COURT: Well, tell what's not correct.

25 A First, --

1 THE COURT: Let me change it around.

2 A Yes, sir.

3 THE COURT: Tell me what is correct that makes you
4 guilty.

5 A What makes me guilty is that I know that in South
6 Carolina it's the hands of one the hands of all. And
7 being involved with anyone doing a crime, which was
8 stupid, because I didn't even have to be involved with
9 that.

10 THE COURT: Well, you had to be involved.

11 A No, I say I didn't have to be involved.

12 THE COURT: Oh, I see, didn't have to be.

13 A It's like I was just trying to look out for a
14 friend, man. And I guess it turned around and backfired
15 me. It wasn't really like much that I really wanted to
16 do. I really tried to talk him out of not doing it at
17 first, but ain't so much a person can do. So me -- far
18 as me being -- catching a ride with him and him bringing
19 me home, which I did have a trespassing.

20 THE COURT: Let me just tell you something. Part of
21 the law that I would charge on the hand of one the hand
22 of all, your lawyer and I talked about mere presence,
23 but the State's got to prove more than you were just
24 there. They've got to prove that you were part of this
25 deal; that you knew what was going down; and you some

1 way participated in some actions you took to facilitate.
2 What you're telling me now is, I kept trying to tell him
3 no, no, no, no, no.

4 A No, more or less, I'm not saying -- I ain't never
5 saying I didn't know.

6 THE COURT: Well, what are you telling me?

7 A More or less, I knew what was going on. You know,
8 like, I -- I knew. I knew what was happening.

9 THE COURT: You take issue with that, and as I
10 understand, each one says the other went in the house,
11 but no question, then, you were the look-out. Or did
12 you go into the house?

13 A Oh, no. I mean, I never went inside the house. My
14 wife's staying right next door to this lady.

15 THE COURT: Were you the look-out?

16 A Basically, yes, sir.

17 THE COURT: Well, I mean, no basically. You know
18 what I mean by that; don't you?

19 A Yeah, I was watching out for him.

20 THE COURT: Okay. This is what you choose to do,
21 sir, to enter this plea?

22 A I really -- really don't got a choice, your Honor.

23 THE COURT: Oh, yes, you do. Oh, yes, you do, sir.
24 You know, I tell people all the time, I don't know of
25 anything that I do day in and day out that's more

1 important than this conversation that we've just had
2 thus far. And sometimes, if you sit in here, some days
3 in Charleston I've done 30 or 40 pleas, and that same
4 conversation takes place each time.

5 Sometimes you get really caught up in it and you
6 just don't think about it. But every time that I start
7 finding my self moving in that direction, I sort of
8 pinch myself, and say wait a minute, you're dealing with
9 something that's unique to this country; unique to this
10 world. In a lot of places, you wouldn't have the luxury
11 you have here. And the luxury is this. You may know
12 you're guilty, just as you're telling me right now, but
13 it's still your right to make the State prove that guilt
14 beyond a reasonable doubt. You don't have to prove your
15 innocence. That's what I asked when I ask you that.
16 It's really significant. So, oh, yes, you do have
17 options.

18 There are twelve persons who went through a number
19 of questions and who, I believe, truthfully answered
20 those questions, that said I'll be fair to both sides,
21 either by expressing that or not. Because what they
22 said, in essence -- you heard the last question I ask
23 them.

24 A Yes, sir.

25 THE COURT: Is there anything that would give you

1 any concern about your ability to make a commitment to
2 both sides. That's you and to the State, to be fair and
3 impartial. And each one of those persons never stood to
4 that. So, they said, yes, we can be fair and impartial.
5 I believe that, and I see it every day. So, oh, yes,
6 you do have an option, sir.

7 The jury's coming back at 9:30, so that's not a
8 problem. The only way they're not coming back is if you
9 convince me that you want to plead guilty. And quite
10 frankly, you're getting close to not convincing me
11 that's what you want to do.

12 A Oh, I do want to plead guilty, cause I already know
13 that I can get more time if I get found guilty.

14 THE COURT: Oh, no, no, no. I understand that, but
15 you have to understand something. I appreciate that.
16 And I was a lawyer and everybody knows that. I mean, we
17 dance around it in this state, and I think it's kind of
18 silly. That's my personal opinion. That's not my legal
19 conclusion. That's just my personal feeling about it.

20 In the federal system, you actually get points, I
21 believe, I think you still do, for entering a guilty
22 plea. Positive for you. You get points mentally here,
23 but for some reason we have to be careful and we can't
24 say are you pleading guilty to avoid punishment.

25 Because really and truly, doesn't mean a thing. I'll

1 tell you this right now. I can give you life
2 imprisonment. You understand that?

3 REPORTER'S NOTE: No answer by defendant.

4 THE COURT: And I'll tell you this. I had -- not
5 life imprisonment, but I've given a maximum sentence
6 before on a guilty plea. So it's not just -- that's
7 just not the way -- now, does everybody that's ever
8 practiced criminal law know that the best opportunity
9 that you have for the best sentence is through a guilty
10 plea? Sure. We all know that. But that's nothing --
11 there's no guarantee here. You understand that?

12 A Yes, sir.

13 THE COURT: The only reason you're going to plead
14 guilty here today is not to get a lower sentence with
15 me, because I'm just going to not take it, and we'll let
16 the jury make its decision. The reason that you're
17 going to have to convince me is because you don't want a
18 trial because you're guilty.

19 A Yes, sir.

20 THE COURT: And there's no question about it and
21 you're ready to accept your punishment.

22 A Yes, sir.

23 THE COURT: But if you think you're getting some
24 special benefit by doing this, --

25 A No.

1 THE COURT: -- then you need to withdraw your plea
2 right now.

3 A That ain't what I thought, sir.

4 THE COURT: Okay. All right. So no question in
5 your mind you were a participant with your understanding
6 of the hand of one is the hand of all.

7 A Yes, sir, I was.

8 THE COURT: Okay. I find the plea to be freely,
9 voluntarily, knowingly, and intelligently made. I find
10 that Mr. Holmes has had the benefit of competent
11 counsel. And while he's indicated he's not totally
12 satisfied, he can't articulate anything specifically
13 that they did or didn't do. The Court has had
14 conversation with Mr. Bell before and is familiar with
15 his dealings. And I find, therefore, his plea to be
16 knowingly and intelligently made, and he has had the
17 benefit of competent counsel.

18 Solicitor, is there anything else that you wish to
19 add on behalf of the State? I'll be happy to hear about
20 his record, please.

21 MS. BANNON: Yes, your Honor. If I may, I'm going
22 to hand up certified priors of his two --

23 THE COURT: Okay.

24 MS. BANNON: -- of his two prior burglary second
25 convictions.

1 THE COURT: Okay. Yes.

2 MS. BANNON: Going back, in 2002, he has a stolen
3 vehicle. 2004, criminal conspiracy. One burglary
4 second. Possession of another stolen vehicle. 2006,
5 petty larceny. 2008, grand larceny, value greater than
6 \$5,000.00. A point-and-presenting. An old ABHAN. The
7 old ABHAN. And the other burglary second that I've
8 already handed up, your Honor.

9 THE COURT: Okay. They've handed me two, Mr.
10 Holmes, you were convicted -- you are the same Quincy
11 Holmes that was convicted of burglary on July the 22nd
12 of 2008, and sentenced to five years.

13 A Yes, sir, I am.

14 THE COURT: Is that you?

15 A Yes, sir.

16 THE COURT: And another sentence that was handed
17 down by Judge Gregory in 2004, for burglary second, in
18 which he sentenced you to two years. Is that correct?

19 A Yes, sir.

20 THE COURT: I would like to make both of these
21 collectively Court's Exhibit 1 for purposes of the plea,
22 to be retained with all other pleadings in the clerk's
23 file.

24 COPIES OF DEFENDANT'S PRIOR
25 CRIMINAL RECORD MARKED COURT'S

1 EXHIBIT 1 COLLECTIVELY.

2 THE COURT: All right. Anything else about his
3 record, Solicitor, that you wish to add, other than
4 those?

5 MS. BANNON: No, your Honor. However, the State
6 does feel that, given this act, that he was -- had a no
7 trespass for this location due to issues with his wife,
8 and the fact that it was so blatant, and that he did
9 break into the house right next door to his wife, the
10 State feels that this is particularly egregious, given
11 his young age to get a burglary first, both at night and
12 because of his prior record, the State does feel that
13 Mr. Holmes really is a career criminal, and that his
14 profession appears to be stealing things from others and
15 burglarizing.

16 THE COURT: Okay. Thank you very much. I'll be
17 happy to hear from you, Mr. Bell. Thank you so much,
18 sir.

19 MR. BELL: Thank you, your Honor. In mitigation,
20 Mr. Holmes is still a very young man. The most time
21 he's ever been sentenced to at the Department of
22 Corrections is a five-year term of imprisonment.
23 Obviously, the Court may reflect that that didn't make
24 strong enough impression upon Mr. Holmes. But I don't
25 think the facts of this burglary are particularly

1 egregious. There was no one at the home. It did occur
2 in the night time. There were some items, a T.V., some
3 games, a PlayStation.

4 And I understand you can't restore that person who's
5 been burglarized to a feeling of security that may have
6 existed before, but there's no violence here. I
7 understand it's classified as a violent crime, however,
8 I don't see that side of Mr. Holmes. He can be a very
9 charming, interesting, and bright fellow. And he's just
10 made some bad decisions, you know, in his life, and
11 particularly this night with Mr. DeBerry, which seemed
12 sort of spontaneous and awfully dumb for someone who
13 should have been -- who I know to be more intelligent,
14 and who, you know, has had experience before with law
15 enforcement.

16 But at any rate, I know he wants to take
17 responsibility for his actions. What's most saddening
18 to him is that he realizes he's going to be separated
19 from his daughter, who's seven months old. Is that
20 right?

21 And your Honor, I did want to address picking the
22 jury. He was telling me the whole time that he did not
23 get to see his daughter last night. He knows he's going
24 away for a long period of time, regardless of what the
25 Court sentences him to, and that, you know, he was

1 hoping to go home tonight to not only be with his wife
2 and daughter, maybe at some neutral location, but also
3 he's had other family events lately. His sister had a
4 heart attack in Atlanta -- or here locally. His mother
5 came from Atlanta to visit with her. He wanted to have
6 family here in mitigation. I'm sorry that we didn't
7 coordinate that as maybe I should have, so that we could
8 have gone forward without any delay. But that was the
9 only thing.

10 There wasn't really any question but that Mr. Holmes
11 was going to plead guilty tomorrow morning. And so, I
12 hope the Court will consider that. It was more of a
13 personal thing, not any sort of ambivalence or anger
14 about the process. He knew what he was facing. He knew
15 he was going to plead guilty at the appropriate time.
16 We do ask that he be credit -- or be given credit for
17 admitting what he did, and particularly before we even
18 have to have this jury come back.

19 I don't think we've damaged the process a whole lot
20 by taking an hour and picking a jury. He was able to
21 make up his mind more quickly, you know. And we have
22 rough days like this in court where everything doesn't
23 go smoothly, and we don't get all our ducks lined up in
24 a row, but you know, Mr. Holmes, I think, is a
25 redeemable fellow. I know your hands are tied in terms

1 of a 15-year sentence, which would be far and away -- I
2 think Quincy did an actual two-and-a-half on a five-year
3 sentence. So this would represent a monumentous thing
4 in his life, regardless of whether it's 15 or something
5 north of that. But we would ask, since he is taking
6 responsibility for his actions, and we would ask that,
7 because he's not a hardened criminal, and this is the
8 most serious consequence he's ever faced, that the Court
9 please see any mercy that it may be able to bestow on
10 Mr. Holmes.

11 And he may want to address the Court --

12 THE COURT: Certainly.

13 MR. BELL: -- briefly, as well. Or as especially
14 regarding family.

15 THE COURT: Be happy to hear from you, sir.

16 A Thank you. Yeah, I wasn't -- I wasn't the best
17 person in the world. Some things have changed my mind.
18 One, I got married. Two, I just had my first child.
19 She's about to be seven months. So, while I was home,
20 due to me being on bond, I did have some moments with
21 her, and I appreciate that more than ever. But you
22 know, I just really know that I got to man up to my
23 situation.

24 I know my past and my record is rough and it's
25 previous. I mean, everything I do seem like I'm always

1 in and out of jail. So, you know, by me going in and
2 out, never really learned nothing. Not much. Now, it's
3 my life, man, you know. But I can be the man -- I can
4 be the man that I was in the past, if I'm going to try
5 to raise her, so I guess it do come a time in life where
6 people got to change. So I'm just accepting my
7 responsibilities as a man.

8 THE COURT: Okay.

9 A My family, my sister, them got -- they not here
10 today, cause she just went to emergency room last night.
11 They didn't get home till 4:00 o'clock, so that's why I
12 didn't get a chance to see my child. More -- more and
13 more every day do I know, and I'm trying to become a
14 better person. If this what it take, that's what it
15 took.

16 THE COURT: Okay. Well, I hope that when you finish
17 this, that you continue with that quality and put it
18 into practice, and that is to be a changed person.
19 Because if you're going to be a father, you're going to
20 have to demonstrate by your actions how you expect your
21 children to live. Because I have children, I have
22 grandchildren, and they're looking at me. They're not
23 listening -- I hope they listen a little bit, but they
24 more particularly are watching what I'm doing. And
25 that's how, if you want to be an example, you've got to

1 do more than just talk the talk; you've got to walk the
2 walk. And I hope, because you and I both would have to
3 agree, you haven't done that up till this point.

4 A No, I have not. I really haven't. I'm -- I don't
5 know what it took for me to change, you know.

6 THE COURT: I understand. We all make mistakes in
7 life, but you can't continue that course of conduct.

8 A No, I can't.

9 THE COURT: You understand that what we're doing
10 today has some potential future consequences for you,
11 and first of all this is considered a most serious
12 offense? Do you understand that? Do you understand
13 what that means?

14 A Potential consequences?

15 THE COURT: Yes, potential consequences. If you get
16 another serious offense, you're gone for life.

17 A Oh, yeah, I understand that.

18 THE COURT: You understand.

19 A Yes, sir.

20 THE COURT: You understand that this is a non-
21 paroleable offense.

22 A No, I don't -- I never knew that.

23 THE COURT: You didn't? So you want to talk to him
24 and --

25 A No, it's not --

1 THE COURT: No, no. You talk to your lawyer,
2 because I'm going to ask you if you want to continue.
3 It means that you will serve a minimum of 85 percent of
4 any sentence I impose. Furthermore, there is a
5 community supervision program that you have to
6 successfully complete, and it's two years that you have
7 to be on probation, basically. And if you fail to
8 comply with probation, then they can -- a judge can
9 sentence you up to a year until you satisfy the balance
10 of your sentence, that is, the remaining 15 percent of
11 the time. So you understand that?

12 A Yes, sir.

13 THE COURT: Still want to plead guilty?

14 A Yes, sir.

15 THE COURT: Still want to me to accept your plea?

16 A Yes, sir. Please.

17 THE COURT: Okay. Is there anything else you wish
18 to add?

19 A Yeah. I mean, yes, sir. I'm sorry.

20 THE COURT: That's all right. I'm not offended by
21 that.

22 A They -- I don't know like it was from being where
23 that if I get locked up for the -- for that amount of
24 time, will I be able to support my child. I mean,
25 there's no way, like, --

1 THE COURT: You mean is there a place?

2 A Is there jobs that work, I mean, you know, where I
3 can get a job and while I'm back there if I have to be
4 back there?

5 THE COURT: I will tell you that, to answer you
6 question, I'd have to go back to practicing law, because
7 I had clients where that was a question I had to answer.
8 And I'm prohibited from doing that. Once I became a
9 judge, that's part of the oath that I took that I would
10 not practice law.

11 But I would tell you, given the nature of this
12 crime, I don't know of any programs. I'm not saying
13 there won't be one. If they do, that would be a great
14 positive for this state and for persons who are in your
15 position to have an opportunity to start earning a
16 living and get back into the system. Whether or not
17 we'll get there, you don't want to hear me pontificate
18 about that. I promise you.

19 A When I get my -- excuse me. When I get my time
20 served where I --

21 THE COURT: Yes, sir, you sure will. How much time
22 does he have?

23 MR. BELL: I think approximately 14 months.

24 THE COURT: Okay, well, I'll give him --

25 MS. BANNON: I calculated it out to 393 days.

1 THE COURT: I'm going to give him 14 months. That's
2 what I'm putting, and they'll give you that. So I'm
3 writing it.

4 The sentence of the Court, Mr. Holmes, is that you
5 be committed to the Department of Corrections for a term
6 of 18 years. I give you credit for 14 months. Good
7 luck, sir.

8 MR. BELL: Thank you, your Honor.

CERTIFICATE OF REPORTER

MAY 21, 2012 TRANSCRIPT OF GUILTY PLEA

STATE OF SOUTH CAROLINA

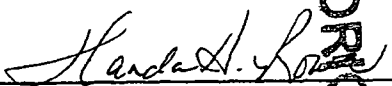
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing May 21, 2012 Transcript of Guilty Plea is a true, accurate, and complete record of the proceedings had and evidence introduced and/or admitted at said proceeding in the case of State versus Quincy Holmes, Beaufort County, Court of General Sessions, Case Number 2011-GS-07-00657.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature March 21, 2012.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

FORM 5

STATE OF SOUTH CAROLINA)
County of Beaufort)

IN THE COURT OF COMMON PLEAS

Quincy Holmes #303469)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

13 JAN - 9 PM 3:54
CLERK OF COURT
BEAUFORT COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Beaufort County
3. Name(s) of co-defendant(s) (if any) Bryce DBerry
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011G30700657

(b) _____
(c) N-A

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

(a) 5/21/12 - Committed to 18 years

(b) _____
(c) N-A

6. Check whether a finding of guilty was made:

after a plea of guilty negotiated for fifteen years.

(b) after a plea of not guilty N-A

(c) after a plea of nolo contendere N-A

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

No

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

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

i. _____
ii. _____
iii. N-A

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

i. _____
ii. _____
iii. N-A

(c) the date of each such result:

i. _____
ii. _____
iii. N-A

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

i. _____
ii. _____
iii. N-A

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

(a) did not have enough time before transfer

- (b) Counsel did not inform of a right to appeal.
- (c) N-A

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

- (a) Failure to investigate, prepare for trial, or request continuance
- (b) Failure to inform of a defense [Robinson v. State 308 S.C. 361 417, SE 298]
- (c) IN effective assistance of Counsel

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

- (a) Lawyer was appointed, but never corresponded during my 4 month T/
- (b) waiting to take me to trial, while under his discretion, never legal visit or
- (c) legally advised me to take negotiated plea sentence, when it was NOT!

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

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

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

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

(b)
(c) NA

10 (a). Ineffective assistance of counsel. 6th. Amendment Right Violation.

(b). Denied effective assistance of appellate counsel. 6th. Amend. ment Right Violation.

(c). Denied a fair trial. 14th. Amendment Right Violation.

11 (a). Counsel failed to investigate, prepare for trial, inform of a defense, or ask for a continuance to do so.

(b). Counsel did not inform of a right to appeal thereby denying the right to effective assistance of appellate counsel.

(c). Counsel advised Applicant to accept a nego plea for 15 years which was then not honored by the Court. Applicant received 18 years @ sentencing. Counsel did not object, or appeal.

12 (a)
(b)
(c)
(d) NO

13 (a) i.
ii.
iii.
iv. NA

(b) i.
ii.
iii. NA

You may wish to use the information on this copy in your PCR application on Page #3. That's up to you.

Weekly v. Jones, 56. F.3d. 889 (8th Cir. 1995).

Failure to investigate insanity defense has no ~~strategy~~ ^{Strategy} value
^754B'

Friedman v. U.S., 588. F2d. 1010 (5th Cir. 1979).
Trial Counsel's failure to subpoena certain witnesses at the government's expense on behalf of his indigent client required an evidentiary hearing to resolve claim of ineffective assistance of Counsel.

^627^

Code v. Montgomery, 799. F2d 1481 (11th Cir. 1986).
Trial Counsel's failure to conduct a pre-trial investigation, or interview/subpoena alibi witnesses, and move for a continuance to do so amounted to ineffective assistance of counsel, and warranted a new trial.

^103^

U.S. v. Tucker, 716. F2d. 576 (9th Cir. 1983).
Trial counsel's failure to interview Government's witnesses, and identify, or interview witnesses who would've corroborated Defendant's testimony constitutes ineffective assistance of counsel.

Wade v. Armontrout, 798. F2d. 304 (8th Cir. 1984).
Trial counsel's failure to conduct a pretrial investigation, failed to interview Prosecution's witnesses, constituted ineffective assistance of counsel claim.

^100^

U.S. v. ~~Johnson~~ ^{Gray}, 878. F2d. 702 (3rd Cir. 1989).
Trial counsel's failure to hire an investigator to track down potential witnesses amounted to ineffective assistance of counsel.

^4C^

Harris by and through Ramseyer v. Wood, 64 F3d, 1432 (9th Cir, 1995).

Trial Counsel's failure to conduct pretrial interviews, and investigations constituted ineffective assistance of Counsel.
^568.H^

Hollins v. Estelle, 569 F Supp. 146 (W.D. Tex, 1983).

Trial Counsel's failure to conduct pretrial interviews, and investigations constituted ineffective assistance of counsel.
^535.B^

U.S. v. Fisher, 477 F2d, 300 (4th Cir. 1973).

Trial counsel's failure to investigate, and properly prepare for trial amounted to ineffective assistance of counsel.

N-A

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

N-A

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

N-A

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

i. _____

ii. _____

iii. _____

iv. _____

N-A

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. _____

ii. _____

iii. _____

N-A

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

i. _____

ii. _____

iii. _____

N-A

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

N/A

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? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

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

i. James Bell

ii. Public Defender's Office

iii. (STREET address) PO Box 1128
1905 Duke Street - PO Box 1128 -
Beaufort, S.C. 29901.

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

i. _____

ii. _____

iii. _____

19. State clearly the relief you seek in filing this application: ^{Trial}
Equal & Fair opportunity for ~~trial~~ OR Resentences under
Fair grounds of understanding:
Re-sentence: Sentence set aside or vacated
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 Beaufort)

VERIFICATION

I, Quincy Holmes, 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 31ST
 day of December, 2012.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 1/24/2018

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

I, Quincy Adams, 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.


Applicant

SWORN or affirmed to and subscribed before me this
31ST day of December 2012


Notary Public

My Commission Expires: 1/24/2018

46 STATE OF SOUTH CAROLINA)
)
COUNTY OF Beaufort)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Quincy Holmes (SCDC #303469) Plaintiff(s))
)
vs.)
)
State of South Carolina)
)
Defendant(s))

2013-CP-07-55

13 JAN -9 PM 3:54
CLERK OF SUPERIOR COURT
SOUTH CAROLINA

(Please Print)
Submitted By: Quincy Holmes (SCDC #303469)
Address: L.C.I. Edisto, A.
Ridgeville, S.C. 29472

SC Bar #:
Telephone #:
Fax #:
Other:
E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

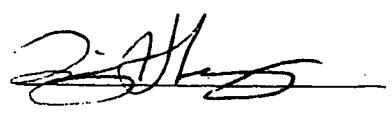
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20__-CP-_____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | Torts - Personal Injury
<input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| Inmate Petitions
<input checked="" type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Other (799) | Administrative Law/Relief
<input type="checkbox"/> Reinstatement Driver's License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Administrative Law Judge (980)
<input type="checkbox"/> Public Service Commission (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Sexual Predator (510) | | |

Submitting Party Signature: 

Date: 12-31-12

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

13 FEB 25 PM 3:48
BEAUFORT COUNTY, S.C.
CLERK OF COURT

IN THE COURT OF COMMON PLEAS

2013-CP-07-0055

Quincy Holmes, #303469,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 9, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the March 2011 term of the Beaufort County Grand Jury for burglary- first degree (2011-GS-07-0657). Applicant was represented by James Bell, Esquire.

On May 21, 2012, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable R. Markley Dennis to confinement for a period of 18 years. The Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective assistance of counsel.
 - a. Failure to investigate, prepare for trial, or request a continuance
 - b. Failure to inform of a defense
 - c. Failure to inform of a right to appeal
 - d. Counsel advised applicant to accept a negotiated plea for 15 years which was not accepted by the court. Applicant received 18 year sentence. Counsel did not object or appeal.

III.

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

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

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

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

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

IV.

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

V.

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

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: ALRMS
ATTORNEYS FOR RESPONDENT

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

February 22, 2013.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

13 FEB 25 PM 3:48 IN THE COURT OF COMMON PLEAS
JANE ROSENEAU
BEAUFORT COUNTY, S.C. 2013-CP-07-0055
CLERK OF COURT

QUINCY HOLMES, #303469)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

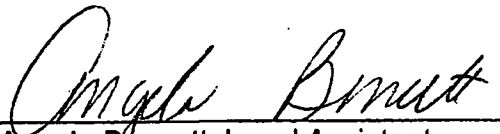
STATE OF SOUTH CAROLINA,)

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:

**Jane Matthews Zwerner, Esquire
19 Middleton Gardens Place
Bluffton, South Carolina 29910**

DATED this 22nd day of February, 2013



Angela Bennett, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF BEAUFORT) CASE NO.: 2013-CP-07-00055

QUINCY HOLMES,)
)
 APPLICANT,)
)
 VS.)
)
 STATE OF SOUTH CAROLINA)
)
)
)
)

POST CONVICTION RELIEF HEARING

held before the Honorable Deadra L. Jefferson
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Beaufort County Courthouse
 Beaufort, South Carolina
 on Monday, August 26, 2013, Commencing at 10:07 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE APPLICANT: Charles T. Brooks, III, Esquire
Attorney at Law
309 Broad Street
Sumter, South Carolina

FOR THE STATE: Ashleigh R. Wilson, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

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EXHIBITS

[None]

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-628-8313

MIA PERRON, CVR-CM-M

PROCEEDINGS

1
2 THE COURT: This is Quincy Holmes vs. the State
3 of South Carolina, 2013-CP-07-55. It's before the
4 Court on an application for post conviction relief
5 which was filed on January 9th of 2013. The State
6 filed its return -- it is dated February 22nd, 2013.
7 I don't have a file copy. I would assume it was filed
8 shortly thereafter.

9 The State is represented by Ashley Wilson. The
10 applicant is represented by Mr. Charles Brooks.

11 It appears that he was sentenced by Judge Dennis
12 on 5/21/12, a charge of burglary first degree, to
13 eighteen years. And that conviction was not appealed.

14 His grounds for ineffective assistance are
15 failure to investigate, prepare for trial, or request
16 a continuance, failure to inform of the defense,
17 failure to inform of right of appeal, and that his
18 lawyer advised him to accept a negotiated plea for
19 fifteen years, which was not accepted by the Court,
20 after which he received an eighteen-year sentence and
21 counsel did not object or appeal.

22 Mr. Brooks, are you ready to proceed?

23 MR. BROOKS: Yes, ma'am.

24 THE COURT: Okay. And have you explained to
25 your client that the consequences of the relief he's

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requesting is a new trial and not a re-sentencing?

MR. BROOKS: I have, Judge.

THE COURT: And have you explained to him -- on a burg first, what is the range of penalty?

MR. BROOKS: Fifteen to life.

THE COURT: That's what I thought. Okay.

Does he have any other record?

MR. BROOKS: Give me one minute, Your Honor.

THE COURT: Okay.

[Whereupon, Mr. Brooks and Mr. Holmes confer]

MR. BROOKS: My client understands that he has a -- he suspects he may have another strike on his record, that basically for all intents and purposes if he does get his PCR, he could face life without parole, potentially.

THE COURT: And he's well aware of that?

MR. BROOKS: Well aware of that. He says he still wants to go forward.

THE COURT: Okay. I just wanted to make sure he's eyes wide open.

MR. BROOKS: Yes, ma'am.

THE COURT: All right. Thank you, sir. You may take your seat.

Is the State ready to proceed?

MS. WILSON: Yes, Your Honor.

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1 THE COURT: Okay. You may call your first
2 witness, Mr. Brooks.

3 MR. BROOKS: We call Mr. Holmes to the stand.

4 THE COURT: Sir, if you would come to the stand
5 to be sworn.

6 [Whereupon, Mr. Holmes comes forward]

7 THE COURT: Go ahead and swear the witness]

8 THE CLERK OF COURT: Raise your right hand,
9 please.

10 [Whereupon, Mr. Holmes is duly sworn by the
11 clerk of court as follows: do you swear to tell the
12 whole truth and nothing but the truth, so help you
13 God]

14 THE WITNESS: Yes, ma'am.

15 THE CLERK OF COURT: Okay. You can sit down.

16 [Whereupon, Mr. Holmes takes the witness stand]

17 MR. BROOKS: Are you ready, Judge?

18 THE COURT: You may proceed.

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QUINCY HOLMES,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q. Mr. Holmes --

A. Yes, sir.

Q. All right. You know you're here for your post conviction relief; is that correct?

A. Yes, sir.

Q. And you understand that what you get if you win is basically go back and have a new trial?

A. Yes, sir.

Q. And that's what you want to do?

A. Yes, sir.

THE COURT: Sir, I need you to speak up for me, please.

A. Yes, sir.

MR. BROOKS: And remember you've got to speak up. This lady sitting right here in front of you is the court reporter and she has to take down everything that you say. Do you understand?

THE WITNESS: Yes, sir.

Q. [Mr. Brooks] Okay. Now, you had Mr. Bell as your lawyer?

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1 A. Yes, sir.

2 Q. And he was court appointed to represent you?

3 A. Yes, sir.

4 Q. And you raised allegations in your PCR about
5 ineffective assistance of counsel?

6 A. Yes, sir.

7 Q. Okay. And you said you wanted to tell the judge
8 why you should have your guilty plea overturned and start
9 over?

10 A. Yes, sir.

11 Q. What are you complaining about Mr. Bell's
12 representation?

13 A. Mr. Bell, he failed to inform me of -- or build
14 a defense, any kind of defense, in my -- me pursuing a
15 trial. And me -- with me being in the county jail for the
16 fourteen months period of time, never legal visit me,
17 never consulted with me or my family on the outside.

18 I end up bonded out. And my first roll-call
19 date I was notified that he was my public defender at the
20 time. But my bondsman told me that I had a different
21 public defender and that my first roll call date was my
22 trial date, which I wasn't aware of at all. He never
23 talked to me.

24 And failure to investigate: you know, he just
25 ain't looked into nothing. And if he says he did, but he

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1 never talked to me about any of these things. But he put
2 it on record.

3 Q. He put it on record during the plea?

4 A. Yes, sir.

5 Q. Because you said you started out potentially
6 going to trial; is that right?

7 A. Yes, sir.

8 Q. And then it turned into a guilty plea?

9 A. Yes, sir.

10 He informed me that the negotiated plea that I'm
11 holding right here was printed out and everything was
12 already printed out. And after my bond got revoked, he
13 told me this was a negotiated plea and that I could sign
14 for the fifteen.

15 Q. So you thought you were getting fifteen?

16 A. Yes, sir.

17 Q. If you had gotten fifteen by Judge Dennis, would
18 you be here asking for your --

19 A. No. No, sir.

20 Q. You wouldn't be here at all asking for that?

21 A. No, sir.

22 Q. You wouldn't be asking for a new trial if Judge
23 Dennis had given you fifteen instead of eighteen?

24 A. No, sir.

25 Q. Okay. Now, I have to ask this, please. Okay?

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1 You're saying that you were okay, then and now, August 26,
2 2013, you would be comfortable if you had gotten fifteen
3 years by Judge Dennis?

4 A. Yes, sir.

5 Q. You wouldn't be asking for a PCR?

6 A. No, sir.

7 Q. Okay. And then Judge Dennis ended up giving you
8 eighteen?

9 A. Yes, sir.

10 Q. That's a difference of three years.

11 A. I know.

12 Q. But you understand that if we convince Judge
13 Jefferson to give you a PCR to grant you a new trial, you
14 could go back and face life? You would be giving up life
15 for what you have a beef is three years? You understand
16 that?

17 A. Yes, sir.

18 Q. Is that what you want to do?

19 A. Yes, sir.

20 Q. Okay. Now, your public defender, Mr. Bell,
21 basically he promised you that you were going to get
22 fifteen years. And that is the essence of your
23 allegation?

24 A. That was his legal advice, for me to take the
25 fifteen years, a negotiated plea. And I figured that was

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1 the best option for me.

2 Q. Okay. And you only got to talk to him that day
3 in court?

4 A. I seen him two different times. When I first
5 bonded -- when I bonded out, my first roll call date was
6 my trial date. I seen him then. I asked the judge for a
7 continuance. He gave me a thirty-day continuance. Within
8 that time I was trying to find some money to come up with
9 a new lawyer and had to squeeze in consulting with my
10 public defender that I -- that's my first time meeting
11 him. I met him on the next month on my trial date, and
12 that's when I got my time. My next time I went to court,
13 I got -- I caught my time, my sentence.

14 Q. And, here again, basically that's what you have
15 an issue with is what Judge Dennis sentenced you to?

16 A. I have an issue with his performance.

17 Q. Okay. Tell the Court what your issues are
18 regarding his performance.

19 A. I felt like I was in the county jail for all
20 that period of time. You know, to build a defense and
21 come consult with me and have me at least some kind -- let
22 me know what kind of direction we're going and what kind
23 of direction I was going to go in. He never gave me the
24 opportunity. He never gave me the opportunity to explain
25 nothing to him. I didn't have really no chance, Your

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1 Honor. But I was trying to pursue just fighting him. And
2 his last legal advice was to take the negotiated plea for
3 fifteen, which was incorrect.

4 Q. All right. And you're here on PCR. Let's just
5 -- let's talk about it. You said Mr. Bell didn't talk to
6 you as much, didn't investigate properly, didn't sit down
7 with you and build a defense. He didn't do any of those
8 things; is that correct?

9 A. Yes, that's correct.

10 Q. Did you know what you were facing? Did he
11 explain the sentence parameters, minimum and maximum? Did
12 he explain that to you?

13 A. I knew what I was facing before I even spoke
14 with him.

15 Q. Okay. And what other complaints do you have
16 with Mr. Bell that we haven't covered?

17 A. That's basically pretty much everything that I'm
18 trying to fit in, as far as I can remember, you know.
19 This --

20 Q. Take your time. This is your one bite of the
21 apple so --

22 A. Just his -- just his performance all together,
23 you know, it --

24 Q. His performance? Are you saying --

25 A. It was --

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1 Q. -- performance was not good?

2 A. It wasn't good at all.

3 At least he -- I felt like, you know, within --
4 I had two months on bond, I had fourteen months in the
5 county. It was more convenient for you to do anything for
6 me. I can't come to you. I don't know who you is. He
7 ain't consorted to my family, let me know nothing. But my
8 day at trial, now you -- it's the first time I seen you.
9 And my bondman, Larry Bottison, [phonetic] told me that I
10 had Helen Roper as representation. So that was a mixup
11 right there.

12 So when I showed up for my roll-call date, he
13 was there. And that was supposed to be my trial date,
14 which I haven't heard of anything. So it kind of caught
15 me off balance. And I had him request for a continuance,
16 and which the judge granted a thirty-day continuance.

17 Q. Okay. So the judge -- you were getting ready to
18 go to trial, the judge granted a thirty-day continuance.
19 How many times did you talk to -- or meet with your lawyer
20 between that thirty days?

21 A. None.

22 I was trying to get a new lawyer. I was -- my
23 only other option was to try to find a new lawyer like on
24 the street, a lawyer-lawyer, and get rid of him and see if
25 I could go and get a long continuance or some time to

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1 really build a defense or any kind of -- you know, because
2 I ain't legal. I don't know. So, I mean, I just didn't
3 have no confidence with him at all.

4 Q. Okay. Is there anything else you want to tell
5 the judge here about why you feel your lawyer was
6 ineffective and why you should have your plea overturned?

7 A. I've pretty much said enough.

8 Q. Now, I'm going to ask you one more time. And I
9 don't want you to get mad with me. Belabor the point.
10 You're saying that you would have been okay if you had
11 gotten the fifteen-year sentence?

12 A. Yeah. If I had a got fifteen years, I would
13 have laid down, man, and --

14 Q. You wouldn't be coming back for this PCR?

15 A. No, sir.

16 Q. And you understand you got eighteen?

17 A. I understand that.

18 Q. A difference of three years. And that's an
19 issue for you; right? That's what you're upset about?

20 A. Yeah.

21 I'm upset -- I'm upset about that and also just,
22 you know, the opportunity of at least, you know, some
23 legal -- good legal advice.

24 Q. I got you. I'm just asking you from a results
25 standpoint.

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You said you would just lay down --

A. Yes, sir.

Q. -- if you had gotten fifteen, which you thought you were going to get?

A. Yes, sir.

Q. So for the difference of three years, you're asking this judge to give you a new trial, about which you understand that you could get the rest of your life in prison?

A. Yes, sir.

Q. It means that much to you?

A. Yes, sir.

MR. BROOKS: Okay. No other questions.

THE COURT: Any questions for the witness?

MS. WILSON: Thank you, Your Honor.

Is it okay if I stand here?

THE COURT: Yes, ma'am. That's fine.

MS. WILSON: How are you doing, Mr. Holmes?

THE WITNESS: Fine. How about yourself?

MS. WILSON: Good. Thank you.

CROSS-EXAMINATION

BY MS. WILSON:

Q. And can you recall again about how many times you met with your attorney before you pled guilty?

A. One time.

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1 Q. One time.

2 And do you recall reviewing any discovery, or
3 any evidence that the State had against you, with Mr.
4 Bell?

5 A. I had -- I obtained a discovery pack from my
6 first public defender, which was Ian Dysach, which I fired
7 him. And then I was appointed a new representation and
8 ever since -- ever since that appointment, I never seen
9 nobody else. But I did have a discovery pack from my
10 first public defender.

11 Q. So you did have a packet?

12 A. Yes, ma'am.

13 Q. And do you recall if you went over that with
14 Mr. Bell?

15 A. I never did.

16 Q. And do you recall discussing the defenses you
17 could have presented at trial with him?

18 A. No. No, ma'am.

19 Q. Did you get any -- give him any witnesses or
20 leads to investigate your case?

21 A. No, ma'am.

22 Q. Did he discuss with you any plea offers made by
23 the State?

24 A. The fifteen negotiated plea.

25 Q. And when he discussed that plea offer with you,

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1 did you indicate you wanted to accept it? Or did you
2 reject the offer?

3 A. At first I didn't want to accept the plea. I
4 didn't. I didn't accept the plea myself.

5 After my trial got started, Judge Dennis had
6 revoked my bond, I guess put me in custody of the State.
7 And after I went into the county and came back to the
8 Court, then I took the plea then and he said everything
9 was the same way it was, as far as it being negotiated and
10 everything I was on the paper. So I signed for a
11 negotiated.

12 Q. And so it was your decision, ultimately, to
13 plead guilty?

14 A. Excuse me?

15 Q. It was your decision, ultimately, to plead
16 guilty?

17 A. Yes, ma'am.

18 Q. And do you recall telling the judge that you
19 were actually guilty?

20 A. No.

21 I didn't never recall telling him I was actually
22 guilty. I recall telling him that I accept the
23 responsibility for the crime.

24 Q. Do you recall agreeing with the facts that the
25 State presented at the plea?

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1 A. Yes, ma'am.

2 He ran everything down to me the best way he
3 knew how. And I understood what he was saying.

4 Q. And do you recall waiving your constitutional
5 rights, like your right to a jury trial, right to confront
6 witnesses, your right to remain silent, and things like
7 that? Did you recall waiving those?

8 A. Yes, ma'am.

9 Q. Do you recall telling the judge that you were
10 satisfied with your attorney's representation?

11 A. I told him I was not satisfied with his
12 representation.

13 Q. Okay. And did you tell the Court why you
14 weren't satisfied?

15 A. I don't remember if I said anything. But I was
16 trying to squeeze a whole bunch in at one time.

17 Q. And do you recall the Court putting on the
18 record that your plea was indeed not negotiated?

19 A. After the judge notified the solicitors about
20 the negotiated plea, yes, everything -- I was right there.
21 And I understood everything that was said. So, yeah, he
22 did do that, also.

23 Q. Okay. I think you misunderstood what I said.

24 Do you recall the Court putting on the record
25 that the plea was not negotiated? Do you recall that?

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A. [Indicates affirmatively]

Q. Okay. Do you recall the Court advising you about the potential sentence you could face? That you could face a sentence of fifteen to life? Do you remember the judge telling you that?

A. Yes, ma'am.

Q. Do you also recall there being some issue with your sentencing sheet and the fact that negotiated was marked on your sentencing sheet accidentally? Do you recall that?

A. I don't think -- I don't recall that at all.

Q. Okay. Do you recall the Court telling you that you would be pleading straight up?

A. Open plea?

Q. Uh-huh.

A. Yes, ma'am.

Q. You recall that?

A. [No response]

Q. And so, essentially, you were getting -- when Mr. Brooks was questioning you, you were talking about what your problems were with trial counsel was representation. And so essentially what you're saying is that he didn't meet with you frequently and that's why you think you should be entitled to post conviction relief?

A. [No response]

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1 Q. Do you want me to ask you again?

2 A. Meeting with me means consulting with me, right,

3 and --

4 Q. Right.

5 A. -- building a defense and everything, right?

6 Q. Right.

7 A. Yeah. He didn't do that.

8 MS. WILSON: Okay. Thank you.

9 THE WITNESS: You're welcome.

10 THE COURT: Any redirect for the witness?

11 MR. BROOKS: No, ma'am.

12 THE COURT: Sir, you may step down.

13 [Whereupon, Mr. Holmes is excused and exits the
14 witness stand]

15 THE COURT: Mr. Brooks, you may proceed.

16 MR. BROOKS: Judge, that's the applicant's case.

17 THE COURT: The State may proceed.

18 MS. WILSON: Yes, Your Honor. The State would
19 call Mr. James Bell.

20 THE COURT: Mr. Bell, if you would come forward
21 and be sworn.

22 MR. BELL: Yes, Your Honor.

23 [Whereupon, Mr. Bell comes forward]

24 THE COURT: Go ahead and swear the witness.

25 THE CLERK OF COURT: Raise your right hand,

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please.

[Whereupon, Mr. Bell is duly sworn by the clerk
of court as follows: do you swear to tell the truth,
the whole truth and nothing but the truth, so help you
God]

THE WITNESS: I do.

[Whereupon, Mr. Bell takes the witness stand]

MS. WILSON: Good morning, Mr. Bell. Thank you.

THE COURT: Mr. Bell, please state your full
name --

THE WITNESS: Good morning.

THE COURT: -- for the record. If you would
state your full name for the record.

THE WITNESS: Thomas James Bell, III.

THE COURT: Thank you, sir.

You may proceed.

MS. WILSON: Thank you.

THE COURT: You're welcome.

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JAMES T BELL, III,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. WILSON:

Q. Mr. Bell, about how long have you been practicing law?

A. '94. So that's seventeen years or --

Q. Do you recall about how much of that time was spent practicing criminal law?

A. About twelve years with the Beaufort County Public Defenders Office.

Q. And were you appointed to represent Mr. Holmes?

A. Not originally. As he stated, Mr. Dysach of my office was appointed and had the case, to my recollection, for some six to eight months, at which point Ms. Campbell was going to designate a new public defender. I believe there was some delay in there eventually -- not a terribly long delay, a couple of weeks -- and then I was appointed.

Q. Okay. Do you recall about how long before Mr. Holmes pled guilty that you were represented -- were appointed to represent him?

A. Probably around six months.

Q. And do you recall about how many times you met with him prior to his trial?

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1 A. If I'm not mistaken -- as he stated, I did meet
2 with him once with the discovery when he was incarcerated.
3 He would eventually bond out. But before that happened, I
4 did -- it may have been after his bond was revoked. I
5 just, you know, do not recall when that was. But I did do
6 a jail visit where we went through all the discovery and
7 left.

8 Q. Did you -- during these visits, you reviewed the
9 discovery. Did you talk to him about the case and any
10 possible defenses that you could present for him?

11 A. Well, I discussed mere presence.

12 Q. And is that something that you thought you could
13 present on his behalf at trial?

14 A. I thought it was an imperfect mere-presence
15 defense because he had made some statements to the police.
16 However, it was a situation where one of the facts in
17 question was who was outside of the house and who was
18 inside of the house and whether the person outside of the
19 house had criminal knowledge of that or was simply there.
20 I said that was, you know, basically the defense that we
21 would present because he admitted to being present.

22 Q. And do you think that you could have presented
23 any other defenses on his behalf?

24 A. None that I -- none that I could see.

25 Q. And did you file the Brady or Rule 5 motions on

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1 Mr. Holmes's behalf or did his prior attorney?

2 A. My office filed it as a matter of course.

3 Q. And it's your testimony that you reviewed that
4 with im?

5 A. The Rule 5?

6 Q. Yes.

7 A. I'm not sure whether I reviewed the Rule 5 with
8 him. We did discuss all of his rights.

9 Q. You discussed all the -- I'm sorry?

10 A. His rights.

11 Q. Rights.

12 Prior to Mr. Holmes pleading guilty, did you
13 discuss the elements of the charges he was facing and what
14 the State had to prove?

15 A. Yes, I did.

16 Q. Did he give you his version of the facts?

17 A. Yes, he did.

18 Q. And can you briefly characterize the State's
19 evidence against Mr. Holmes?

20 A. Well, there was -- on the night in question, he
21 had had some prior police contact several hours prior to
22 the burglary being reported. And some -- and an officer
23 gave him a ride to a location, an apartment building,
24 without placing him under arrest or anything of that
25 nature, and he noticed some distinctive gloves that

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1 Mr. Holmes was wearing. Those gloves were later recovered
2 outside the home in that -- near that location. I think
3 there was a library card, or some sort of ID, located
4 outside and I believe some other identifying material.

5 Mr. Holmes' girlfriend lived -- or common-law
6 wife; I don't want to mischaracterize that -- lived next
7 door to the victim in this case. Mr. Holmes made a number
8 of statements. The most unfortunate thing about -- an
9 unsettling thing about the trial was that the Port Royal
10 police had an audiotape that was completely inaudible, of
11 no value, and that we could have used had it been -- had
12 we been able to hear it. Whether -- you know, we would
13 have been able to challenge whether the assertions made in
14 the police report were true or not. Some of those
15 assertions were that Mr. Holmes admitted to being there,
16 and kind of went back and forth about whether he was
17 involved and whether he was not involved. But,
18 ultimately, it was said to admit to [phonetic] police that
19 -- his involvement in this.

20 Q. Did he give you any potential witnesses or leads
21 to investigate?

22 A. No.

23 Q. Did you undertake any investigation in the case?

24 A. No, ma'am.

25 Q. Do you feel like you needed to or you had

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1 something to investigate?

2 A. No, I didn't -- I didn't see any -- other than
3 going to the location and physically viewing it, which I
4 did not do, I didn't see anything else that I needed to
5 ascertain or view.

6 Q. Did you review the police reports and the
7 statements in the case?

8 A. Yes, I did.

9 Well, the statements were alleged by the police.
10 There were no written statements by Mr. Holmes. But the
11 statements of witnesses, yes.

12 Q. Did you enter into any plea negotiations on
13 Mr. Holmes' behalf?

14 A. There had been an offer of fifteen years.

15 Q. And you conveyed that offer to Mr. Holmes?

16 A. I did.

17 Q. And what was his response to that offer?

18 A. He rejected that offer.

19 Q. And was this prior to trial?

20 A. This was prior to trial.

21 Q. And did you receive any offers after that --
22 after that was rejected?

23 A. Well, we picked a jury and I believe came back
24 the next day when the jury was to be sworn and that was
25 the point at which Mr. Holmes decided to enter a guilty

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1 plea. But at that point the plea offers were off the
2 table.

3 Q. Did you explain that to Mr. Holmes?

4 A. Yes.

5 Q. And did he understand that he was pleading
6 straight up without any recommendations or negotiations?

7 A. Yes.

8 Q. And prior to Mr. Holmes pleading guilty, did you
9 inform him of the consequences of pleading guilty?

10 A. Yes.

11 Q. And did you inform him of the constitutional
12 rights he would be waiving by pleading guilty?

13 A. Yes, I did, particularly the right to a jury
14 trial, the right to confront or cross-examine any
15 witnesses in the case, and his right to remain silent
16 during trial and that that particular right could not be
17 used against him and the jury would instruct the -- I
18 mean, the judge would instruct the jury accordingly.

19 Q. And did he ever indicate he didn't understand
20 something during the plea proceedings?

21 A. Well, not to me. We never had to stop and
22 speak, unless we did briefly. I've read the transcript.
23 But there were some questions that -- additional questions
24 from the usual colloquy that Judge Dennis went into. But
25 I don't think I ever had to explain anything further.

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1 Q. Okay. And do you recall there being some
2 discrepancy about negotiated being marked on the
3 sentencing sheet?

4 A. Yes.

5 And, you know, that was obviously an oversight
6 on my part and the solicitor's part. That's not what was
7 discussed, because it was a straight-up plea. And I think
8 the transcript reflects that. And that did need to be
9 changed.

10 Q. And so I believe -- you can testify to this.
11 But was it ultimately changed or marked out on the
12 sentencing sheet by the judge?

13 A. Yes, it was.

14 Q. Okay. And do you think ultimately it was
15 Mr. Holmes' decision to plead guilty?

16 A. I do.

17 Q. While you were going forward for trial, did you
18 feel like you were prepared for trial?

19 A. Yes, I was.

20 MS. WILSON: Thank you.

21 THE COURT: Any cross-examination of the
22 witness?

23 MR. BROOKS: Mr. Bell?

24 THE WITNESS: Yes, sir?

25 MR. BROOKS: How are you doing today?

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THE WITNESS: Fine. Thanks.

CROSS-EXAMINATION

BY MR. BROOKS:

Q. Do you recall talking to your client about that offer of fifteen years?

A. Yes.

Q. Did you explain to him the protocol that if it was rejected that it would no longer be on the table?

A. Yes.

Q. And the consequences of such?

A. Yes.

Q. You didn't put in for an appeal for him, did you?

A. I did not.

Q. Okay. Do you acknowledge that he requested you do so?

A. I don't recall whether he did or not. There was nothing about the plea that I thought necessary to appeal. But, you know, if he asked me to and I failed to do that, I don't recall that.

Q. Did you --

A. Ordinarily, I would inform someone of their right to appeal. That's my ordinary practice.

Q. Do you acknowledge only meeting with him one time after that continuance was granted?

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1 A. I thought it was two times. We did have a short
2 period of time -- he had been bonded out, to kind of
3 further elaborate, and had not called my office, had not
4 had any contact with me to schedule any kind of legal --
5 or visit where -- appointment where he could come in and
6 ask me anything at all that he wanted. Once his bond was
7 revoked, we did have time to go through everything.

8 Q. Was his bond revoked on that same day his
9 continuance was granted?

10 A. I'm not sure whether one continuance was granted
11 and we tried it the following month. That was my
12 recollection, and if I'm in error -- I simply know I did
13 the jail visit. So if he says that I didn't, then we
14 disagree on that point. I thought it was revoked and he
15 was in jail and it was tried the following month, but I
16 could be mistaken.

17 MR. BROOKS: Beg the Court's indulgence, Your
18 Honor.

19 [Whereupon, Mr. Brooks and Mr. Holmes confer]

20 Q. [Mr. Brooks] Now, do you recall explaining to
21 Mr. Holmes that this was an open plea?

22 A. Yes.

23 He understood that once we had selected a jury
24 that all plea offers were off the table. I did tell him
25 that I would be asking for, you know, the least amount of

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1 time the judge could give him, which was fifteen years.
2 And the judge ultimately did not do that, obviously.

3 Q. Did you tell him that the plea was off the table
4 prior to jury selection?

5 A. Yes.

6 Q. And you do recall telling him that?

7 A. Yes.

8 MR. BROOKS: Beg the Court's indulgence, Your
9 Honor.

10 [Whereupon, Mr. Brooks and Mr. Holmes confer]

11 MR. BROOKS: No other questions, Judge.

12 THE COURT: Any redirect of the witness?

13 MS. WILSON: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. WILSON:

16 Q. Mr. Bell, you testified that you don't
17 specifically recall about Mr. Holmes' appeal but you
18 testified that it's your general practice to inform the
19 defendant about his right to appeal; is that correct?

20 A. That's correct.

21 Q. Isn't it also your general practice to file a
22 notice of appeal if one is -- if an appeal is requested?

23 A. If one had been requested, I would have, yes.

24 Q. And, also, is it your testimony that you had
25 enough time to discuss with Mr. Holmes the case before you

1 went to trial?

2 A. I believe I did.

3 MS. WILSON: Thank you.

4 MR. BROOKS: No other questions, Judge.

5 THE COURT: I have a question.

6 And then you-all can ask questions as a result,
7 if I'm not clear on this issue.

8 EXAMINATION

9 BY THE COURT:

10 Q. Did you explore with your client whether he had
11 any possible defenses to this incident and did he provide
12 you with any witness' names, or otherwise, for you to
13 investigate?

14 A. He did not.

15 And as I said, the only foreseeable defense that
16 I could see would be --

17 Q. Mere presence?

18 A. -- is mere presence. And, you know, in the
19 course of the trial, attempt to get the judge to charge
20 the jury in that manner.

21 Q. But he did not provide you with any witness'
22 names, or otherwise, for you to pursue or investigate?

23 A. No, he --

24 Q. Is that your testimony?

25 A. No, he did not.

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1 Q. And would it have benefitted you at all to speak
2 with his family about this case?

3 A. Possibly.

4 Q. Okay. Tell me what you mean by that.

5 A. If they had things to tell me, you know, they
6 had the opportunity to contact me, as he did. But I don't
7 ordinarily go and try to ferret out everyone's family
8 members, to consult with them, because I represent him.

9 Q. Exactly. And I think my question may not have
10 been as clear as I intended it to be.

11 A. Pardon me.

12 Q. Did he tell you anybody to talk to in his family
13 that could have facilitated his defense?

14 A. No, ma'am.

15 THE COURT: Okay. Does the applicant have any
16 questions as a result of the Court's questions?

17 MR. BROOKS: No, ma'am.

18 THE COURT: Any from the State as a result of
19 the Court's questions?

20 MS. WILSON: No, Your Honor.

21 THE COURT: Any objection to the witness being
22 excused, or is he needed for other hearings?

23 MS. WILSON: He's needed for other matters.

24 THE COURT: I wish we could excuse you,

25 Mr. Bell, but --

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1 MS. WILSON: Oh. He can be excused, Your Honor.

2 THE COURT: He can? This is the last case.

3 MR. BELL: Thank you, Your Honor.

4 THE COURT: Thank you, sir. You're excused.

5 [Whereupon, Mr. Bell is excused and exits the
6 witness stand]

7 THE COURT: Okay. Does the State have any
8 further witnesses?

9 MS. WILSON: Nothing further from the State.

10 THE COURT: Anything further from the applicant?

11 MR. BROOKS: Nothing further, Judge.

12 THE COURT: I have reviewed the plea transcript
13 in this matter, as well as the application and the
14 return of the State. And without belaboring the
15 limited time that we have available to us, I can
16 discern nothing in the record that indicates the
17 applicant could meet his burden of proof, in other
18 words, showing that his counsel was ineffective and
19 that but for that deficient performance he would have
20 insisted on going to trial. The gravamen of his
21 claims are that his counsel did not investigate any
22 possible defenses and did not adequately go over his
23 case with him. I have not heard anything up to this
24 point that would rise to that level.

25 It appears that at some point he was offered a

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1 negotiated plea of fifteen years. But as we all know,
 2 once you reach a certain point in the trial process,
 3 those offers are often off the table. And it appears
 4 that that's what happened in this instance. And from
 5 the transcript it appears that he understood, based on
 6 the trial court's colloquy, that he was pleading
 7 straight up, that there was no question about the fact
 8 that the negotiated box on the plea sheet was checked
 9 inadvertently. And there is a great -- the Court goes
 10 into great discussion or lengthy discussion with him
 11 about that in the course of the plea colloquy. And
 12 that can be found more specifically at page 4 and 5 --
 13 pages 4 and 5 of the transcript.

14 It appears that he had some discussion with the
 15 Court about his dissatisfaction with his attorney but
 16 he never could specify or articulate what it was he
 17 was specifically dissatisfied with. It seemed more a
 18 general dissatisfaction of the situation he found
 19 himself in and that he was not in a better posture in
 20 terms of receiving a more beneficial sentence.

21 And so based on those very brief observations,
 22 the application for post conviction relief is denied.

23 The State will provide the Court with a proposed
 24 order within ten days of today. Or do you need
 25 fifteen days, Ms. Wilson?

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1 MS. WILSON: I would appreciate fifteen days,
2 Your Honor.

3 THE COURT: Okay. Within fifteen days of today.
4 She will provide Mr. Brooks with a copy of that
5 proposed order so that he can make or request any
6 changes to that order prior to it being finalized by
7 the Court. And I'm giving her leave to make any other
8 findings of fact and conclusions of law consistent
9 with the record.

10 And as Mr. Brooks is well aware, as well as
11 Ms. Wilson, I'll make my own changes to the order, as
12 well.

13 Thank you very much.

14 MS. WILSON: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 [HEARING CONCLUDES AT 10:45 A.M.]

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C E R T I F I C A T E

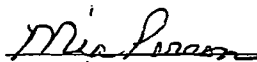
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the PCR Hearing held before the Honorable Deadra L. Jefferson, on Monday, August 26, 2013.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 6th day of February, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

Quincy Holmes, #303469,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-07-0055

ORDER OF DISMISSAL

2013 NOV 14 PM 3:00
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Charles T. Brooks, III, Esquire
Ashleigh R. Wilson, Esquire
Thomas James Bell, III, Esquire
August 26, 2013
Susan "Mia" Perron

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 9, 2013. The Respondent made its Return on February 22, 2013. An evidentiary hearing into the matter was convened on August 26, 2013 at the Jasper County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. The Applicant's plea counsel, Thomas James Bell, III, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Beaufort County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application, and Respondent's Return thereto.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Beaufort County. The Applicant was indicted at the March 2011 term of the Beaufort County Grand Jury for Burglary-First Degree (2011-GS-07-0657).¹ Thomas James Bell, III, Esquire, represented the Applicant. The Applicant pled guilty as indicted. On May 21, 2012, the Honorable R. Markley Dennis sentenced the Applicant to eighteen (18) years confinement. The Applicant did not appeal the plea or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

- 1. Ineffective Assistance of Counsel.
 - a. Failure to investigate, prepare for trial, or request a continuance.
 - b. Failure to inform of a defense.
 - c. Failure to inform of the right to appeal.
 - d. Counsel advised the Applicant to accept a negotiated plea for fifteen (15) years which was not honored by the court.

At the hearing, Applicant waived all grounds for relief except ineffective assistance of counsel based on the allegations listed in his application.

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 his or her 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

¹ Burglary in the First Degree is a "felony punishable by life imprisonment. For purposes of this section, "life" means until death. The court, in its discretion, may sentence the defendant to a term of not less than fifteen years." S.C. CODE ANN. § 16-11-311 (1995).

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(2003).

The Applicant testified he was represented by James Bell, Esquire. The Applicant testified counsel did not build a defense for trial and did not visit or consult with him prior to trial. The Applicant testified he learned counsel represented him at roll call. He testified he was in the county jail for fourteen (14) months, during which time counsel never consulted with him, met with him only one (1) time, and never gave him the opportunity to explain anything to him. He testified counsel's performance was poor and counsel never consulted with his family.

The Applicant further testified he was told by counsel that his plea was for a negotiated sentence of fifteen (15) years. The Applicant testified he initially did not want to accept the plea, but after trial started and his bond was revoked he decided to accept the plea offer. He testified further he thought that he would receive a fifteen (15) year sentence. The Applicant testified he knew the potential sentence he was facing before speaking with counsel but that counsel advised him to take and promised he would receive the fifteen (15) year plea negotiation. The Applicant further testified he recalls the Court stating during his guilty plea that there were no negotiations. He also recalled the Court advising him of the potential sentence and that his plea would be straight up.

Plea counsel, James Bell, Esquire testified that he has been practicing law since 1994 for nineteen (19) years, of which he spent twelve (12) years practicing criminal law. Counsel testified originally another attorney represented the Applicant and that there was some delay not exceeding a few weeks between the relief of the Applicant's former attorney and counsel's appointment. Counsel testified he was appointed approximately six (6) months prior to the guilty plea. Counsel testified that when the Applicant bonded out of jail he never called his office to schedule any appointments to discuss the case. Counsel testified that once the Applicant's

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bond was revoked he had the opportunity to go over everything with him. Counsel testified further the Applicant never provided him any witnesses or issues to investigate prior to trial. Counsel testified it may have been beneficial for him to speak with the Applicant's family, but he does not usually consult with his clients' family members.

Counsel testified he met with the Applicant during his incarceration, reviewed all discovery with him, discussed his constitutional rights, range of penalty, the elements of the charges he was facing, and what the State was required to prove. Counsel testified he discussed with the Applicant his version of the facts and possible defenses. Counsel testified he discussed mere presence with the Applicant, but thought it was an imperfect defense because the Applicant had made statements admitting his presence at the scene. Additionally, detectives recovered distinctive gloves, an ID, and a library card outside the victim's home that could link the Applicant to the scene of the crime. Although Counsel would have challenged the veracity of the statements noted in the police report, the police's audio tape recording was completely inaudible. Therefore, Counsel testified, the Applicant had no other viable defenses.

Counsel testified that, although the former public defender filed Brady and Rule 5 motions on the Applicant's behalf, counsel's investigation of the Applicant's case entailed review of the discovery file, including all police reports and witness statements. Counsel testified he did not see anything else to investigate other than going to the scene of the burglary. Counsel testified he entered into plea negotiations with the State and the Applicant was offered a fifteen (15) year plea. He testified he conveyed this offer to the Applicant, who thereafter rejected the plea offer. He testified he told the Applicant if he rejected the offer and a jury was selected and sworn, all plea offers would no longer be available and would be "off the table." He further testified that the Applicant understood the consequences of rejecting the plea offer.

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Counsel testified he had enough time to discuss the case with the Applicant to be prepared for trial. Counsel testified he was prepared for trial. He further testified that it was his recollection that he had met with the Applicant two (2) times. He testified that he remembered the case being continued on one occasion and then tried one (1) month later. He further testified they proceeded to trial, picked a jury, and when they returned the second day of trial, the Applicant decided to plead guilty. He testified that prior to trial, he explained to the Applicant that all deals were off the table, the plea was not negotiated, and the State would make no recommendations as to his sentence. He testified he explained to the Applicant the concept of an open plea, which the Applicant understood, and told him that he would ask the Court for the fifteen (15) year minimum sentence. Counsel testified he informed the Applicant of the consequences of pleading guilty and advised him of his constitutional rights. Counsel testified it was the Applicant's decision to plead guilty. He testified the Applicant never indicated he did not understand anything during the plea proceedings. He testified there appeared to be a discrepancy on the sentencing sheet that he did not discuss with the Applicant because Judge Dennis corrected the sentencing sheet and asked the Applicant additional questions to make sure he understood the difference between a negotiated and straight up sentence. (Tr. 4:3-5:23).

Counsel testified he did not file an appeal on the Applicant's behalf. He testified that, although it is his ordinary practice to advise his clients of their appeal rights and file a notice of appeal, if taken, he did not recall the Applicant requesting an appeal. He testified that nothing about the guilty plea would constitute an appealable issue.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application

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by a preponderance of the evidence. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). 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." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at

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2068). 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, 52, 106 S. Ct. 366, 366 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Lockhart, 474 U.S. at 52, 106 S. Ct. at 366; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

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) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). 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. Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009) (citing Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000)). See Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may be attacked through only a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

This Court finds that Counsel was not ineffective. Counsel properly advised the Applicant of the consequences of his guilty plea. This Court finds the Applicant's testimony that Counsel told him he would receive a fifteen (15) year sentence if he pled guilty after the commencement of trial is not credible. This Court finds credible Counsel's testimony that the Applicant rejected the State's initial plea offer of fifteen (15) years prior to trial. This Court also

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finds credible Counsel's testimony that he discussed with the Applicant that all offers would be "off the table" if he proceeded to trial and that he discussed with the Applicant that any plea would be straight up and without recommendation or negotiation.

This Court finds that Counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant. During his conference with the Applicant, Counsel discussed the pending charges, range of penalty, the elements of the charge and what the State was required to prove, the Applicant's constitutional rights, the Applicant's version of the facts, and possible defenses or lack thereof. The Applicant acknowledged that he was guilty of Burglary. (Tr. 16:17-20). The record reflects the Court advised the Applicant of the range of penalty and the potential sentence he was facing. (Tr. 5:24-6:3), his right to a jury trial (Tr. 7:15-18), his right to remain silent (Tr. 8:8-17), and his right to confront witnesses against him. (Tr. 7:19-8:7). The Applicant told the Court that he was not under the influence of alcohol or any medications that would impair his capacity to understand the plea proceedings, nor was he overcome by any mental illnesses or emotional problems that would affect his analytical and decision making skills. (Tr. 8:18-10:14). The Applicant told the Court that he was not promised anything or threatened in any way to plead guilty. (Tr. 16:14-16). Although the Applicant indicated that he was not entirely satisfied with his attorney, after extensive questioning, the Court deduced that the Applicant was merely unhappy with his situation and could not articulate any specific complaints about his attorney's services. (Tr. 10:15-14:19; 24:11-13). After a full discussion with the Court, the Applicant clearly understood that he was not entering into a negotiated plea. (Tr. 4:1-5:25).

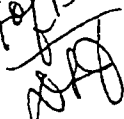
This Court finds and the record reflects the Applicant's guilty plea was entered freely, voluntarily, intelligently, and with a full knowledge of the consequences of the guilty plea. (Tr.

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24:8–17). The record reflects the Applicant was advised by the Court that his plea was straight up and without negotiation. (Tr. 4:3–5:23). There appeared to be some discrepancy on the Applicant’s sentencing sheet about whether the plea was with or without negotiation, but, ultimately the Applicant was made aware by the Court that there was an error on the sentencing sheet and that he would be pleading without negotiation or recommendation. (Tr. 5:13–23). The Applicant was then advised of the possible sentence he was facing. (Tr. 5:24–6:3). This Court finds the Applicant failed to carry his burden of proving Counsel was ineffective and that his claim is without merit.

This Court finds that trial counsel was not ineffective for failing to conduct a thorough investigation of the case. “[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (citing Edwards v. State, 392 S.C. 449, 710 S.E.2d 60, 64 (2011)). “Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” Porter v. State, 368 S.C. 378, 385–86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, “a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Wiggins v. Smith, 539 U.S. 510, 521–22, 123 S. Ct. 2527, 2535 (2003) (quoting Strickland, 466 U.S. at 690–91, 104 S. Ct. at 2066).

This Court finds Counsel adequately investigated the Applicant’s case prior to trial. This Court finds counsel provided credible testimony that he reviewed the police reports and witness

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statements in the Applicant's case and saw no need for further investigation. This Court also finds the Applicant has failed to show what counsel would have discovered had he investigated the case further. Counsel testified that the Applicant's defense would have only "possibly" benefitted by Counsel's discussing the case with the Applicant's family and only if his family could have offered Counsel any leads. This Court finds this allegation is supported only by mere speculation as to result and is wholly without merit. This Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective for failing to investigate.

This Court finds that Counsel was not ineffective for failing to inform the Applicant of possible defenses. This Court finds Counsel provided credible testimony that he discussed mere presence as a possible defense with the Applicant and the lack of any other defenses. This Court finds the Applicant also failed to show how Counsel's alleged failure to advise him of possible defenses affected his decision to plead guilty. This Court finds Counsel properly advised the Applicant on all possible defenses prior to trial. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving Counsel failed to inform him of possible defenses.

This Court finds that Counsel was not ineffective for failing to file a notice of appeal of the Applicant's guilty plea. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). The Court instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly

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relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving trial counsel failed to file an appeal on his behalf. The Applicant provided no evidence that the Applicant requested an appeal from Counsel after his guilty plea. Counsel provided credible testimony that it was his general practice to advise his clients of his right to appeal and that had the Applicant requested, Counsel would have filed a notice of appeal on his behalf. This Court also finds there is no evidence that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal the guilty plea. This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving Counsel was ineffective for failing to file a notice of appeal on the Applicant's behalf.

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 Counsel's testimony credible and the Applicant's testimony not credible. This Court finds that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. 2052, 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65, Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 543 (4th Cir. 1977)). This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This

Court finds that Counsel's representation did not fall below an objective standard of reasonableness.

Ultimately, this Court finds the Applicant had a full understanding of the consequences of his guilty plea at the time of the plea proceeding. Therefore, this Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving his guilty plea was not entered freely and voluntarily. Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test specifically that Counsel failed to render reasonably effective assistance under prevailing professional norms. See Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that Counsel's performance was deficient. Therefore, this Court need not address whether the Applicant was prejudiced by Counsel's representation. See id. The Applicant's complaints concerning Counsel's performance are without merit and are denied and dismissed.

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 evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof. Therefore, all allegations are hereby denied and dismissed.

CONCLUSION

Based on the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations occurring before or during his guilty plea and

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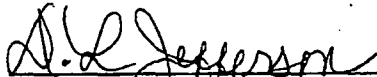
sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by Counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order 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 served and filed.

IT IS THEREFORE ORDERED:

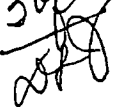
- 1. That the application for post-conviction relief be denied and dismissed with prejudice; and
- 2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6th day of November, 2013



 The Honorable Deadra L. Jefferson
 Presiding Judge

Charleston, South Carolina.
 At Chambers

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WITNESSES

S. Williams/PRPD

DOCKET NO. 2011GS0700657

The State of South Carolina

County of Beaufort

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

Defendant

COURT OF GENERAL SESSIONS

March Term 2011

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

1261056

THE STATE

vs.

Quincy Holmes

ACTION OF GRAND JURY

FILED

Burt Williams

Foreperson of Grand Jury APR 21 2011

VERDICT

Indictment for

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

Defendant

Witness:

SC Code: 16-11-0311

CDR Code:0079

C.C.C. P.L.S. and G.S.

Foreperson of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

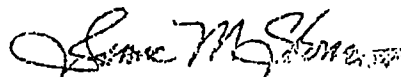
INDICTMENT
2011GS0700657

At a Court of General Sessions, convened on March 24, 2011, the Grand Jurors of Beaufort County present upon their oath:

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

That in Beaufort County, South Carolina, on or about March 4, 2011, the Defendant, Quincy Holmes, did enter the dwelling of Theresa Snitcher, located at _____, without consent and with the intent to commit a crime therein. That, in addition, entry occurred at night and/or when the defendant had two prior convictions for burglary. ; in violation of Section 16-11-311 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

STATE OF SOUTH CAROLINA 15 to life
 COUNTY OF Beaufort
 STATE VS.
Quincy Holmes
 AKA:
 Race: B Sex: M Age: 27
 DOB: SS#:
 Address:
 City, State, Zip:
 DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0700657
 A/W#: I261056
 Date of Offense: 3/4/2011
 S.C. Code § : 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

Bannon, Jim 77414 SC Bar# James Bell 7057
SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 14 months
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fcc: \$ _____
 Payment Terms:
 Set by SCDPPPS

PTUP _____ days/hours Public Service Employment

Recipient: _____
 *Fine: _____ \$

Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.20
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Other: Certified - A True Copy
Kristy Taylor
 Jerr Ann Roseaneau - Clerk of Court
 Beaufort County, SC - Kristy Taylor

Clerk of Court/ Deputy Clerk Kristy Taylor
 Court Reporter: Wanda Rose
 SCCA217 (03/2011)

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.
 Presiding Judge R. Markley
 Judge Code: 2069
 Sentence Date: 5/21/12