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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

ERIC LEE GRAHAM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000284

APPENDIX

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2) COURT OF GENERAL SESSIONS
COUNTY OF PICKENS) 2011-GS-39-1294 - 1295
3)
4)
5 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
6)
-vs-)
7 Eric Lee Graham)

8
9 January 28, 2013
Pickens, South Carolina

10 B E F O R E:

11 THE HONORABLE EDWARD W. MILLER, Judge.

12 A P P E A R A N C E S

13 DOUG RICHARDSON, Esquire
14 Assistant Solicitor
Attorney for the State

15
16 PERRY D. DELOACH, JR.
Attorney for the Defendant

17
18 CAROLINE HISKELL
19 Thirteenth Circuit Court Reporter
20
21
22
23
24
25

I N D E X

(There were no exhibits or witnesses presented).

State versus Eric Lee Graham

1 P R O C E E D I N G S

2 (Donald Kinard, Eric Lee Graham, Robert
3 Fraser, Donnie Lee Goode, Michael James Franks pled guilty
4 within this plea group.)

5 THE CLERK: 2013-GS-23-289, the State versus
6 Eric Lee Graham, pleading to attempted armed robbery,
7 2011-GS-39-1294, pleading to assault and battery by mob
8 third degree, 2011-GS-39-1298, pleading to burglary second
9 degree violent, 2011-GS-39-1295, pleading to failure to
10 stop for a blue light no injury or death first offense.

11 Raise your right hand.

12 ERIC LEE GRAHAM, having been duly sworn,
13 testified as follows:

14 Thank you.

15 THE COURT: You got any jail days on them?

16 MR. RICHARDSON: Yes, Your Honor. 265 on
17 Mr. Graham. That's a sum of both his Pickens and
18 Greenville time. We don't oppose him getting credit for
19 all of that.

20 THE COURT: In the last 24 hours have you had
21 any drugs, alcohol or medication?

22 DEFENDANT GRAHAM: No, sir.

23 THE COURT: Have you ever been treated for
24 substance abuse or mental illness?

25 DEFENDANT GRAHAM: Yes, sir.

State versus Eric Lee Graham

1 THE COURT: What?

2 DEFENDANT GRAHAM: Bi-polar and paranoid
3 schizophrenia.

4 THE COURT: You're not on medication?

5 DEFENDANT GRAHAM: No, sir.

6 THE COURT: Are you supposed to be?

7 DEFENDANT GRAHAM: No, sir.

8 THE COURT: Really. Paranoid schizophrenia
9 and you're not on medication?

10 Who's your lawyer?

11 DEFENDANT GRAHAM: (Inaudible).

12 THE COURT: Any competency issues?

13 MR. RICHARDSON: For the record, we did have
14 him evaluated for both Blair and McNaulty and he came back
15 both competent and criminally responsible. I can pass up
16 a copy of this report.

17 THE COURT: Each of you accept for Mr. Franks
18 has an indictment that has not been presented to the grand
19 jury. You have an absolute right to require the State to
20 present those cases to the grand jury where they would
21 have to prove more probably than not that a crime was
22 committed and you did it. You want to give that right up
23 which would allow you to go forward today.

24 DEFENDANT GRAHAM: Yes, sir.

25 THE COURT: Mr. Graham, you're here on

State versus Eric Lee Graham

1 2013-289 out of Greenville County. You understand you
2 have an absolute right to require the State to present
3 this case in Greenville County which is where the offense
4 occurred. Do you want to give that right up and proceed
5 with the case today here?

6 DEFENDANT GRAHAM: Yes, sir.

7 THE COURT: This indictment alleges that you
8 did in Count 2 in Greenville County July 9th of 2012 armed
9 with a deadly weapon or alleging you were while using a
10 representation of a deadly weapon you took by force or
11 intimidation money and a bank debit card from Earnest
12 Hall, pleading to attempted armed robbery. It carries 20?

13 MR. RICHARDSON: Yes, 0 to 20.

14 THE COURT: This is a Violent Offense, no
15 parole. It's a Most Serious Offense. If you get
16 convictions for two or more Most Serious Offenses, you're
17 eligible for life in prison without parole. Do you
18 understand that?

19 DEFENDANT GRAHAM: Yes, sir.

20 THE COURT: You are also here on 2011-1294
21 alleges you did in Pickens County November 25, 2010
22 unlawfully participate as part of a mob that inflicted
23 serious bodily harm upon Jesus Lepoda Azoda(ph). Assault
24 and battery by mob in the third degree carries up to a
25 year on jail, do you understand that?

State versus Eric Lee Graham

1 DEFENDANT GRAHAM: Yes, sir.

2 THE COURT: You are also here on 2011-1298
3 alleges you did in Pickens County September 14, 2010
4 unlawfully enter the dwelling of Daniel Jones and Jessica
5 Chambers in Liberty, South Carolina, pleading to burglary
6 second Violent. It carries 15 years, do you understand
7 that?

8 DEFENDANT GRAHAM: Yes, sir.

9 THE COURT: It's a Serious Offense. Do you
10 understand that? Three convictions for Serious Offenses
11 you're eligible for life in prison without parole. You
12 understand that?

13 DEFENDANT GRAHAM: Yes, sir.

14 THE COURT: You're also here on 2011-1295
15 alleges you did in Pickens County September 14, 2010
16 unlawfully fail to stop for a police vehicle when signaled
17 to do so by blue lights or a siren. That carries up to
18 three years, do you understand that?

19 DEFENDANT GRAHAM: Yes, sir.

20 THE COURT: Understanding the nature of the
21 charges against you and the maximum possible punishment,
22 how do you want to plead?

23 DEFENDANT GRAHAM: Guilty.

24 THE COURT: Is that your free and voluntary
25 decision?

State versus Eric Lee Graham

1 DEFENDANT GRAHAM: Yes, sir.

2 THE COURT: Do you each understand you have
3 an absolute right to a trial by jury where you would be
4 presumed innocent unless and until the State could prove
5 you guilty beyond a reasonable doubt of each and every
6 element of each offense that you are charged with? You
7 would have a right to confront and cross-examine the
8 witnesses and the evidence put up against you by the
9 State. You would have the right to compel in court all
10 relevant and competent evidence in your own defense or you
11 could remain silent. Your silence can not be held against
12 you and you could never be made to incriminate yourself.

13 Do you understand all those rights?

14 DEFENDANT GRAHAM: Yes, sir.

15 THE COURT: Do you want to give up all those
16 right to enter this plea?

17 DEFENDANT GRAHAM: Yes, sir.

18 THE COURT: Are you guilty, Mr. Graham?

19 DEFENDANT GRAHAM: Yes, sir.

20 THE COURT: Are you totally satisfied with
21 your attorney, Mr. Graham?

22 DEFENDANT GRAHAM: Yes, sir.

23 THE COURT: Have you had enough time to review
24 the evidence the State has against you?

25 DEFENDANT GRAHAM: Yes, sir.

State versus Eric Lee Graham

1 THE COURT: Tell me about it.

2 MR. RICHARDSON: Regarding Mr. Graham, as I
3 mentioned earlier he was evaluated and declared competent
4 and criminally responsible. I'm handing up those reports
5 from the evaluating physician.

6 DEFENSE COUNSEL (Unidentified): I have
7 information I would like to inform the Court of. His
8 Greenville charges, he is represented by Larry Cooke. I
9 have spoke with Mr. Graham this morning. I have informed
10 him that I have no reviewed his Greenville charges at all.
11 I have not looked at the file. He has spoken with
12 Mr. Cooke previous to this plea. I represent him only on
13 his Pickens charges. I informed him that based on the
14 resources available to me from the South Carolina
15 Department of Corrections that the plea offered by the
16 State would not extend the time that he got on the charges
17 that me and the solicitor here in Pickens had worked and
18 that I could not guarantee that.

19 I just want to make it clear to Mr. Graham
20 that I do not represent him on the Greenville County
21 charges. I am merely standing in for Mr. Cooke.

22 THE COURT: You talked to Cooke about it?

23 DEFENDANT GRAHAM: Yes, sir.

24 THE COURT: What do you want to do?

25 DEFENDANT GRAHAM: I want to run it

State versus Eric Lee Graham

1 concurrent.

2 THE COURT: What are they recommending?

3 MR. RICHARDSON: Five years on the attempted
4 armed robbery, 12 years on the burglary, 3 years on the
5 failure to stop consecutive for a total of 15.

6 DEFENSE COUNSEL: It's my understanding,
7 Judge, based on the people I talked to at SCDC it would be
8 almost the exact same amount of time.

9 THE COURT: You're kidding.

10 DEFENSE COUNSEL: That's what I've been
11 informed of.

12 MR. RICHARDSON: We shared the same
13 calculation with the solicitor in the Greenville office
14 and that's the best we can figure.

15 THE COURT: 15 years consecutive total.

16 MR. RICHARDSON: Yes, sir.

17 THE COURT: Will max out the same as a five
18 year 85 percent?

19 MR. RICHARDSON: Yes, sir. The five years
20 will be actually a little less, I think.

21 DEFENSE COUNSEL: And regardless, Judge, even
22 if your concerns is that the Pickens charge will be
23 longer, my only concern is that since we're talking to him
24 today that would not extending and we're confident that
25 that's not happening.

State versus Eric Lee Graham

1 THE COURT: I don't think it would. We might
2 have to talk to Ms. Ford about that. She may know.

3 MS. FORD: I was not listening. I apologize.

4 THE COURT: The State is recommending 12 on
5 one charge, three consecutive, none of those are Violent,
6 right?

7 MR. RICHARDSON: Yes, the burglary is.

8 THE COURT: Twelve on a Violent burglary,
9 three consecutive on a failure to stop or whatever it was,
10 straight time, and he's pleading to five years on
11 attempted murder and they say concurrent that the max out
12 date for attempted murder is approximately the same as the
13 combination of the other one.

14 MR. FORD: I would believe. I've done
15 (inaudible) on people who have received consecutive
16 sentences and not get finished the first sentence and
17 they're in the Department of Corrections for consecutive
18 sentences.

19 THE COURT: Okay.

20 MR. RICHARDSON: Judge, I will speak with the
21 office of general counsel at SCDC and get what the date
22 will be.

23 THE COURT: You understand nobody can make
24 you go forward without your lawyer from Greenville?

25 DEFENDANT GRAHAM: Yes, sir.

State versus Eric Lee Graham

1 THE COURT: Had you talked to him?

2 DEFENDANT GRAHAM: Yes, sir.

3 THE COURT: And what was his advice to you?

4 DEFENDANT GRAHAM: He told me to go ahead and
5 get took care of and go ahead and plead today.

6 THE COURT: Okay. Tell me the facts.

7 MR. RICHARDSON: Regarding the Pickens
8 charges on September 14, 2010, the defendant Eric Lee
9 Graham along with his brother Charles Graham unlawfully
10 entered the dwelling of Daniel Jones and Jessica Chambers
11 here in Pickens County with the intent of committing a
12 crime. Once inside they accomplished that crime by
13 assaulting the residents including breaking a beer bottle
14 over the male occupants head. He suffered cuts to his
15 head from that.

16 Approximately 30 minutes later -- I would
17 also add that Ms. Chambers was 22 weeks pregnant at the
18 time but luckily the baby was healthy and didn't suffer
19 any consequences from this assault. Approximately 30
20 minutes later on the same date, Easley Police attempted a
21 traffic stop with blue lights on a red Honda driven by the
22 defendant. They were not aware of the burglary at the
23 time. They were just pulling them over for faulty
24 equipment. He fled. He sped off making several turns and
25 eventually crashing the car into a tree. The defendant

State versus Eric Lee Graham

1 driver fled but was ID' d as the driver by his brother
2 Charles Graham also the co-defendant in the prior burglary
3 who was a passenger.

4 On November 25, 2010 while housed at the
5 Pickens County Detention Center he participated in a mob
6 which included Chance Cox, Bruce Lloyd and Donnie Campbell
7 that inflicted serious bodily harm on Jesus Aldona.
8 Aldona suffered serious injuries and had to be transported
9 by EMS. We're reducing that to assault and battery third
10 degree from a second.

11 He does have a prior record, Judge, but the
12 recommendation in this case is 12 years on the burglary,
13 three years on the failure to stop to be consecutive for a
14 total of 15 and the assault and battery by mob just to be
15 concurrent in there.

16 THE COURT: Let me just ask you this, why
17 didn't you give him 15 on the burglary second?

18 MR. RICHARDSON: In all candor, Judge, it was
19 a negotiation between myself and defense counsel to give
20 him an earlier parole date on the non-violent charge.
21 That was the original plea offer, but this is what we
22 agreed to as part of the recommendation. It's essentially
23 three months earlier parole eligibility at this point.

24 DEFENSE COUNSEL: It's not much different,
25 Judge, but the way we did calculate it he did get a little

State versus Eric Lee Graham

1 bit off of his parole date.

2 THE COURT: Mr. Graham, just so you
3 understand they can make these calculations but that is no
4 guarantee that your parole eligibility date will be what
5 you heard. Do you understand that?

6 DEFENDANT GRAHAM: Yes.

7 THE COURT: You should not enter this plea
8 based on that, do you understand that?

9 DEFENDANT GRAHAM: Yes, sir.

10 THE COURT: Are you entering this plea
11 because you're guilty?

12 DEFENDANT GRAHAM: Yes, sir.

13 THE COURT: And you fully understand that
14 these predictions are not -- you can not take them to the
15 bank, do you understand that? You can not rely on them to
16 be accurate, do you understand that?

17 DEFENDANT GRAHAM: Yes, sir.

18 THE COURT: And you still want to go forward?

19 DEFENDANT GRAHAM: Yes, sir.

20 THE COURT: What do you want to tell me?

21 DEFENSE COUNSEL: Your Honor, just to follow
22 up I discussed this with Mr. Graham extensively in jail.
23 We were making predictions on how much time he would do
24 but SCDC controlled that and I could not make definite
25 statements on how long he would do.

State versus Eric Lee Graham

1 Your Honor, Mr. Graham, is 29 years old. He
2 was born in North Carolina. He is now living in the
3 Upstate, Judge. He works for Confluence Water Sports or
4 he did before he got arrested and I believe he'll have a
5 job there when he gets out. Is that correct?

6 DEFENDANT GRAHAM: Hope to.

7 DEFENSE COUNSEL: And Judge, based on the
8 plea negotiations from the State and the Greenville County
9 charge, we would just ask Your Honor to follow the
10 recommendations.

11 THE COURT: What do you do over there?

12 DEFENDANT GRAHAM: Molding.

13 THE COURT: I'm going to go along with it.
14 Twelve years on the burglary second, three on the failure
15 to stop consecutive to the burglary second, five on the
16 attempted armed robbery concurrent and I just gave him
17 time served on the ---

18 MR. RICHARDSON: Your Honor, if you would
19 like me to put the facts for the attempted armed robbery,
20 I didn't put those on. We just did Pickens first.

21 THE COURT: You better tell me about that.

22 MR. RICHARDSON: Yes, sir. That is based on
23 an incident from July 9th, 2012. The defendant and victim
24 went to a motel on Augusta Road to meet a girl. At some
25 point in time he held a knife to the victim's throat and

State versus Eric Lee Graham

1 tell him to give him all of his money. That occurred
2 within Greenville County and those are the facts of the
3 attempted armed robbery.

4 THE COURT: Is all that true?

5 DEFENDANT GRAHAM: Yes, sir.

6 THE COURT: You went to see a girl?

7 DEFENDANT GRAHAM: Yes, sir.

8 THE COURT: And then you robbed her?

9 DEFENDANT GRAHAM: No, I robbed the guy.

10 THE COURT: The girl was with a guy?

11 DEFENDANT GRAHAM: No, me and him went to go
12 see a girl and while we was there I robbed him.

13 THE COURT: Just happenstance. What kind of
14 drugs are you doing?

15 DEFENDANT GRAHAM: Meth.

16 THE COURT: You know how bad that stuff is
17 for you?

18 DEFENDANT GRAHAM: Yes, I do. I've been
19 trying to get help my whole life and every time I get in
20 trouble they send me back to the Department of
21 Corrections. The ATU program in the Department of
22 Corrections is so backed up, I never got the help. It's
23 not really no drug treatment.

24 THE COURT: Here you are, you'll 29. I don't
25 know when they told you you're going to get out but you're

State versus Eric Lee Graham

1 a full-grown man, aren't you?

2 DEFENDANT GRAHAM: Yes, sir.

3 THE COURT: I'm not putting you on probation
4 but you know what you can do? You can get help on your
5 own. Even I ordered you to do it, it would never happen,
6 you would never get off the stuff unless you make the
7 decision to do it. So if you're serious about it, you
8 stand up, man up to it, and go get help. Do you
9 understand?

10 DEFENDANT GRAHAM: Yes, sir.

11 THE COURT: Good luck.

12 ---END OF TRANSCRIPT RECORD---

13

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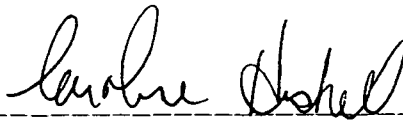
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25

State versus Eric Lee Graham

1
2 I, the undersigned, Caroline Hiskell, the
3 Official Court Reporter for the Thirteenth Judicial
4 Circuit of the state of South Carolina, do hereby certify
5 that the foregoing is a true, accurate, and complete
6 transcript of record of all the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of General Sessions
9 Court, South Carolina, 28th of January, 2013.

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

12
13
14 

15 Caroline Hiskell
16
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STATE OF SOUTH CAROLINA

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINACOUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

2013 JUN 13) A 9:17

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

ERIC LEE GRAHAM

v.

305817

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORRECTIONAL INST.
2. Name and location of Court which imposed sentence PICKENS COUNTY
3. Name(s) of co-defendant(s) (if any) CHARLES DEWAYNE GRIFFAM
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-3901-295
 - (b) 2011-GS-3901-294
 - (c) 2011-GS-3901-298
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2011-GS-3901-295- 1/28/13 3yrs CONSECUTIVE TO 2011-GS-3901-298
 - (b) 2011-GS-3901-294- 1/28/13 1yr TIME SERVED

(c) 2011-GS-390-298 - 1/28/13 12 YES

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

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

(a) My attorney didn't do it AFTER I SAID TO DO SO.

(b) _____

(c) _____

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 (b) X
 (c) X

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

- (a) STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 2064-74, 80 L. Ed.
 (b) WOODLAND V. COLLINS, 898 F.2d 1027 (5th Cir. 1990)
 (c) SCOTT V. WANNWRIGHT, 698 F.2d 427, 429-30 (11th Cir. 1983)

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

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. W/

iv. _____

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

i. _____

ii. _____

iii. W/

iv. _____

(c) the disposition thereof:

i. _____

ii. W/

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. 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) _____

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? NO
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO, They didn't Appeal
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

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. Daniel J. Farnsworth Jr., / Po Box 8719, Greenville, SC 29604 / PMA
- ii. Kerry B. Delosch Jr. / PMA Sentencing,
- iii. _____

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

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

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

Motion of Reconsideration

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

NO

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

2013-CP-39-

761

23

I, 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.

Eugene Keck

SWORN to and subscribed before me this 10
day of June, 2013

Eugene Keck (L.S.)
Notary Public

My Commission Expires:

April 4, 2016

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2013 JUN 13 A 9:17

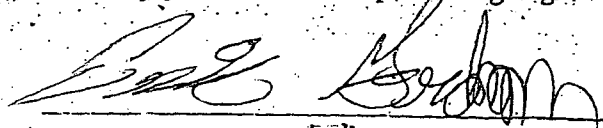
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

2013-CP-39-

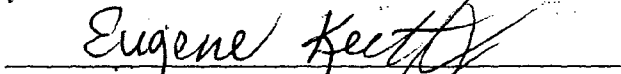
761

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

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


Applicant

SWORN or affirmed to and subscribed before me this
10 day of June, 2013.


Notary Public

My Commission Expires: April 4, 2016

2013 JUN 13 A 9:17

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

EXTENSION 5

25

11.

A. 2d 674 (1984)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2013 JUN 13 A 9:25

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
Eric Lee Graham,)
S.C.D.C. No. 305817,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-39-0761

RETURN

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2013 OCT 17 PM 2 18

In response to the post-conviction relief application filed June 13, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Applicant was indicted at the September 2011 term of the Pickens County Grand Jury for second-degree assault and battery by mob (2011-GS-39-1294), failure to stop for a blue light (2011-GS-39-1295), and first-degree burglary (2011-GS-39-1298). Perry D. DeLoach, Jr., Esquire represented the Applicant.

On January 28, 2013, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant time-served for third-degree assault and battery by mob and twelve years for second-degree burglary. Judge Miller levied a three year sentence for failure to stop for a blue light and ordered it to be consecutive to the sentence for second-degree burglary. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Pickens

County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the plea transcript.

II.

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

1. Ineffective assistance of counsel.

III.

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

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel.

First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

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

By: 
Attorneys for Respondent

Oct. 14, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2013-CP-39-0761

ERIC LEE GRAHAM, 305817)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

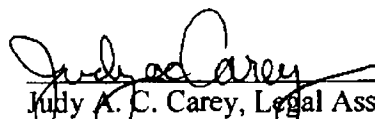
AFFIDAVIT OF SERVICE BY MAIL

2013 OCT 17 PM 2 18
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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:

**Eric Lee Graham, 305817
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210**

DATED this 14th day of October, 2013.


Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS

ERIC LEE GRAHAM,)
)
 PLAINTIFF,)
)
 -VS-)
)
 STATE OF SOUTH CAROLINA,)
)
 DEFENDANT.)
 _____)

2013-CP-39-0761

DECEMBER 18, 2013

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

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

MILLS ARIAIL, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

INDEX

[illegible]

Eric Lee Graham -vs- State of South Carolina (2013-CP-23-0761)
Exhibits

3

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 **DECEMBER 18, 2013**

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

4 THE COURT: Ms. Ratigan.

5 MS. RATIGAN: Thank you, Your Honor. May it
6 please the court. This is the case of Eric Lee Graham
7 versus The State of South Carolina. The docket number
8 is 2013-CP-39-0761. Your Honor, this is the case that
9 we carried over from Monday in Pickens. Mr. Graham was
10 indicted for second degree assault and battery by a mob,
11 failure to stop for a blue light, first degree burglary.
12 He also waived presentment on a Greenville charge of
13 attempted armed robbery. He was represented on these
14 charges by Mr. DeLoach.

15 On January 28th of 2013, he pled guilty before
16 Judge Miller. He received concurrent sentences of time
17 served for third degree assault and battery by a mob,
18 five years for attempted armed robbery, twelve years for
19 second degree burglary. Judge Miller then levied a
20 consecutive sentence of three years for failure to stop.
21 He ordered that to be consecutive to the second degree
22 burglary sentence. Mr. Graham did not file an appeal.
23 The state is ready to proceed.

24 THE COURT: Mr. Ariail.

25 MR. ARIAIL: Yes, Your Honor, we're ready to

1 proceed. I call Mr. Graham to the stand.

2 THE CLERK: Mr. Graham, please place your left
3 hand on the bible and raise your right hand.

4 You do solemnly swear or affirm that the testimony
5 you're about to give in this case will be the truth, the
6 whole truth and nothing but the truth, so help you God?

7 THE WITNESS: Yes, ma'am.

8 THE CLERK: Thank you. Please state your full
9 name for the record.

10 THE WITNESS: Eric Lee Graham.

11 THE CLERK: Thank you. You may be seated.

12 **ERIC LEE GRAHAM,**

13 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **DIRECT EXAMINATION**

15 **BY MR. ARIAIL:**

16 Q. Mr. Graham, you filed a PCR application in this
17 case; correct?

18 A. Yes, sir.

19 Q. And your attorney -- I guess there were two
20 attorneys at one time, Mr. Farnsworth and Mr. DeLoach;
21 correct?

22 A. Yes, sir.

23 Q. Okay. And the main one you dealt with was Mr.
24 DeLoach; correct?

25 A. Yes, sir.

1 Q. Okay. And you're filing this PCR saying he was
2 ineffective and it prejudiced you in your case; is that
3 correct?

4 A. Yes, sir.

5 Q. Now, you pled, I think, to three different things
6 here; assault and battery by a mob, and that would have
7 involved a jail incident over at Pickens County
8 Detention Center; correct?

9 A. Yes, sir.

10 Q. You also pled to a burglary second; is that right?
11 Burglary second degree?

12 A. Yes, sir.

13 Q. Okay. And then a failure to stop for a blue
14 light; correct?

15 A. Yes, sir.

16 Q. Okay. Now, as part of this you narrowed it down.
17 You're not arguing there was any ineffective assistance
18 of counsel in regards to your plea involving the assault
19 by a mob; correct?

20 A. Yes, sir.

21 Q. Or the failure to stop for a blue light?

22 A. Yes, sir.

23 Q. We're just concentrating on the burglary charge?

24 A. Yes, sir.

25 Q. Okay. And as part of this you went and you pled

1 guilty to them; is that correct?

2 A. Yes, sir.

3 Q. Okay. And there was a recommendation in this case
4 based on that?

5 A. Yes, sir.

6 Q. Okay. Now, from my understanding and my
7 discussions with you, what you're concerned about is
8 that you didn't have full understanding of, I guess, the
9 investigation behind the burglary second; is that right?

10 A. Yes, sir.

11 Q. Okay. And tell me, I guess, Mr. DeLoach came on
12 and represented you and I guess had certain -- how many
13 conversations did you have with him?

14 A. Approximately four or five.

15 Q. Four or five?

16 A. Yes, sir.

17 Q. Were you incarcerated the entire time?

18 A. Yes, sir.

19 Q. So you never were out of jail?

20 A. No, sir.

21 Q. Okay. So how long were you incarcerated over
22 there at the detention center?

23 A. At Greenville whenever he came to see me?

24 Q. Yeah?

25 A. For approximately seven months.

1 Q. Seven months?

2 A. Yes, sir.

3 Q. So I guess you got charges, stayed in, he came
4 down, how many, three or four times is what you said?

5 A. Yes, sir.

6 Q. Okay. Did y'all discuss the discovery in the case
7 at that time?

8 A. No, sir.

9 Q. He didn't bring -- did he bring you any discovery
10 down in regards to this burglary second?

11 A. The only thing he brought me was the file, and
12 which I sent you.

13 Q. Okay. The file that you sent me was, I guess, ---

14 A. It was basically just warrants and two statements.

15 Q. Right. Those were the statements of the
16 individuals who are alleging that you had committed the
17 burglary; right?

18 A. Yes, sir.

19 Q. So they were -- were they eyewitnesses to this?

20 A. They were supposedly the victims. I ---

21 Q. Okay. The victims in the case. Did you discuss
22 with him any type of, I guess, information he had about
23 what the victims were saying other than the statements?

24 A. No, sir.

25 Q. Did you discuss the statements with him?

1 A. Yes, sir. Several times. And he stated that that
2 wasn't strong enough for a jury to find on.

3 Q. Okay. So he was telling you that he didn't think
4 that they were going to be successful on their testimony
5 alone?

6 A. Yes, sir.

7 Q. Okay. Now, I know part of these allegations
8 indicate that your brother was involved, too; is that
9 right, Charles Graham?

10 A. Yes, sir.

11 Q. Okay. Now, did you have a discussion with Mr.
12 DeLoach in regards to what his testimony was going to be
13 or, you know, how that could affect you?

14 A. Yes, I did.

15 Q. Okay. What did y'all discuss in regards to that?

16 A. I told him that my brother was willing to testify
17 that I was not there, that I was not part of what he
18 committed.

19 Q. Okay.

20 A. And he went to talk to my brother, supposedly.

21 Q. Okay. So he had a conversation with your brother?

22 A. That's what he said.

23 Q. Okay. Did he tell you what your brother said?

24 A. No, sir.

25 Q. Now, you also discussed with him -- I think you've

1 raised with me a few times about other than evidence,
2 what other evidence was there. And I guess you were
3 saying you were concerned there was no fingerprints or
4 other, you know, other evidence that they had besides
5 the two victims and your brother?

6 A. Yes, sir.

7 Q. Did you discuss any of that with him?

8 A. As far as in?

9 Q. Lack of evidence, lack of fingerprints?

10 A. It was never -- I asked him was there any other
11 evidence and he never really answered.

12 Q. Did you ask him to investigate or look at certain
13 things?

14 A. Yes, sir. I asked him and I also asked Dan
15 Farnsworth, Jr.

16 Q. Okay. And what were those things you asked him to
17 look at?

18 A. I asked him to check into my alibi saying that
19 where I was at my grandma's, which since then my
20 grandma's passed away, to go back and check the
21 surveillance footage at Ingles where I had picked up my
22 brother after I received the call.

23 Q. Okay. Did he tell you -- I mean, did you get any
24 information about if he went and did that or looked at
25 that?

1 A. No, sir.

2 Q. Okay. Now, I know -- I think you came up -- you
3 had a plea offer in this; correct?

4 A. Yes, sir.

5 Q. Okay. And you came up and I guess it was the
6 fifteen years?

7 A. Yes, sir.

8 Q. It was twelve with a consecutive three; correct?

9 A. Yes, sir.

10 Q. Did you discuss that plea offer with him?

11 A. Yes, sir. And the first time that I was
12 transported to Pickens County, I was like, no, I don't
13 want to go through with it because I ain't guilty. So
14 he took me back -- I was sent back to Greenville County.

15 Q. Okay.

16 A. Approximately a few weeks later, maybe a month
17 later, I was took back. And again, I hesitated. And he
18 told me if I didn't take the fifteen years, don't
19 contact him, he was tired of me wasting his time, he
20 would see me when trial started. So I felt that I -- if
21 I didn't take it I felt I wouldn't get the full
22 representation I was entitled to under the Sixth
23 Amendment.

24 Q. Okay. I know we've discuss, and I've tried to go
25 through as many items here, what other aspects or items

1 are you saying that he was ineffective in regards to
2 your -- regards to his representation of you?

3 A. That's basically it. The lack of investigation,
4 the misleading me.

5 Q. So you're saying now that you were not the one,
6 you weren't with your brother, and you didn't commit
7 that burglary?

8 A. No, sir.

9 Q. Okay.

10 MR. ARIAIL: Your Honor, I have no further
11 questions.

12 **CROSS EXAMINATION**

13 **BY MS. RATIGAN:**

14 Q. So you went over the warrants and the statements
15 with your attorney?

16 A. Yes, ma'am.

17 Q. Okay. Did you go over any of the police reports?

18 A. Yes, ma'am.

19 Q. Okay. But you say there wasn't any kind of
20 forensic evidence like fingerprints or anything like
21 that?

22 A. No, ma'am. There was nothing that I seen in
23 there. And I asked for things to be further
24 investigated.

25 Q. Okay. And did you tell Mr. DeLoach you were

1 innocent?

2 A. Yes, ma'am.

3 Q. And you testified today you felt Mr. DeLoach
4 mislead you. How did he do that?

5 A. Well, he told me that the jury wouldn't buy that,
6 so I felt that he was forcing me to take the plea. And
7 which he told me that with me being a habitual offender,
8 if I took it to trial I was looking at a life sentence.
9 That they wouldn't believe my brother because he was my
10 brother.

11 Q. Okay. So you felt that he mislead you and that
12 kind of forced you into pleading guilty?

13 A. Yes, ma'am. And he told me that if I didn't take
14 the fifteen years not to contact him because that was
15 the second time I had been transported and he was tired
16 of me wasting his time.

17 Q. But didn't you tell Judge Miller that you were
18 satisfied with Mr. DeLoach?

19 A. Ma'am?

20 Q. Didn't you tell the judge that you were satisfied
21 with your attorney?

22 A. Yes, ma'am. And we spoke on that and he told me
23 that that's the only way that I would be able to take the
24 plea, is I had to go along with the recommendation, go
25 along with everything.

- 1 Q. So Mr. DeLoach told you, you had to say yes?
- 2 A. Ma'am?
- 3 Q. So Mr. DeLoach told you had to say yes, that you
- 4 were satisfied?
- 5 A. No. He told me that I had to answer to the
- 6 questions ---
- 7 Q. Okay.
- 8 A. --- in order to take the plea.
- 9 Q. So were you lying to the judge when you said you
- 10 were satisfied?
- 11 A. Yes, ma'am. And I wasn't even on my medication.
- 12 Q. Okay.
- 13 A. And there's plenty in my transcript and in my
- 14 mental health file that I had mental health problems.
- 15 Q. Right.
- 16 A. And I was not under the care of my medication.
- 17 Q. Okay. And you're saying today that you're
- 18 innocent of all these charges? Well, pardon me, you're
- 19 innocent of the second degree burglary?
- 20 A. The burglary and ---
- 21 Q. Yes.
- 22 A. Yes, ma'am.
- 23 Q. Okay. But you did tell the judge you were guilty?
- 24 A. Yes, ma'am. Because I was -- that's what I was
- 25 told I would have to do in order to plead guilty to the

Eric Lee Graham -vs- State of South Carolina (2013-CP-23-0761)
Perry Butler DeLoach, Jr. - Direct Examination by Mr. Ariail

15

1 burglary -- I mean to the failure to stop for blue light
2 and the assault at the jai.

3 Q. Okay. So again, you lied to the judge just so you
4 could go ahead and plead guilty?

5 A. Yes, ma'am. I don't really know nothing about the
6 law like that.

7 Q. Okay.

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

9 MR. ARIAIL: Nothing further, Your Honor.

10 THE COURT: All right. Thank you. You can
11 step down.

12 MR. ARIAIL: Your Honor, I call Mr. DeLoach to
13 the stand.

14 THE CLERK: Mr. DeLoach, please place your
15 left hand on the bible and raise your right hand.

16 You do solemnly swear or affirm that the testimony
17 you're about to give in this case will be the truth, the
18 whole truth and nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Please state your full
21 name for the record.

22 THE WITNESS: Perry Butler DeLoach, Jr.

23 THE CLERK: Thank you. You may be seated.

24 **PERRY BUTLER DELOACH, JR.,**

25 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

1

DIRECT EXAMINATION2 **BY MR. ARIAIL:**

3 Q. Mr. DeLoach, how are you doing today?

4 A. Good.

5 Q. Good. You've heard Mr. Graham testify in this
6 case and I want to go back through a little bit of the
7 specifics in regards to him. You represented him -- I
8 guess you were with Mr. Farnsworth at the time; correct?

9 A. I was an associate at the firm.

10 Q. Okay. And you got the case, I guess there were --
11 were there two Pickens County cases and there was one
12 Greenville County case that Mr. Cooke had; is that
13 right?

14 A. He had several others. He had at least two other
15 charges, I believe. But he had four or five Pickens
16 charges. And then Mr. Cooke represented him on an
17 attempted armed robbery in Greenville that I didn't even
18 talk with Eric about until the day of the plea. I did
19 not represent him on that charge. I made a point that I
20 was merely standing in for Mr. Cooke.

21 Q. Okay. So the charges you were representing him on
22 were the failure to stop for a blue light, burglary
23 second and the assault by a mob?

24 A. Correct. And there were a couple other charges
25 that were dismissed.

1 Q. Okay. And you went forward. And as you've heard
2 Mr. Graham say, he had no issues with the assault by a
3 mob or the failure to stop for a blue light. His
4 concern was the burglary second. As part of that -- and
5 what he's concerned about is the investigation. Can you
6 tell us, how many discussions did you have with him in
7 regards to the evidence surrounding that burglary
8 second?

9 A. I probably went down -- he was in the old jail. I
10 would -- he said four to five. I'd say it was more like
11 six to seven times to the old jail to discuss the case
12 with him. We discussed all the charges including the
13 burglary or burglary first. I informed him of my
14 meeting with Mr. Cleveland, the prosecutor, how they
15 were going. We took him up to Pickens County on two
16 different occasions. The first time he backed on the
17 plea. And the second time he contacted me and said he
18 wanted to speak with me again about taking a plea. So I
19 went down and talked to him again. He said at this time
20 he was -- he wanted to take the plea that he had
21 previously turned down and so we went back up there to
22 plea.

23 Q. Okay. And when you went down to talk to him, did
24 you take the discovery and discuss it with him?

25 A. I gave -- Mr. Farnsworth gave him a copy of the

1 full file. And then I gave him a second copy of the
2 full file.

3 Q. Okay. The whole time you were on this case, I
4 guess you were with Mr. Farnsworth's office?

5 A. Correct.

6 Q. Okay. So y'all gave him two sets of discovery.
7 Did he have one while he was in the jail down there?

8 A. Yes.

9 Q. As part of this burglary second, and I'm going to
10 go through, what was the evidence that you looked at, I
11 guess, that you felt concerned about if he went to
12 trial?

13 A. Both victims gave -- knew Mr. Graham and they gave
14 -- they testified that -- or gave statement that he was
15 the one, him and his brother, Charles Graham, had come
16 in the house, pulled them out of bed and beat them and
17 robbed them, from my recollection. It's been back in
18 January that he pled guilty. And in addition to that,
19 Mr. Charles Graham, his brother, the co-defendant, had
20 already pled guilty. During his plea colloquy, he
21 admitted that Mr. Graham was on the scene.

22 Q. Okay. Did you have -- and I heard Mr. Graham
23 indicate that you had talked with his brother and his
24 brother said he was going to testify that Eric was not
25 with him?

1 A. I went down to SCDC and visited with Charles
2 Graham. Charles's statement to me was that he would --
3 that his brother was not there. He said, however, I
4 want you to relay a message to Eric for me. He said,
5 tell him to do the right thing. I read that verbatim to
6 Eric. I said, your brother said he's going to testify
7 that you were not there. I explained to him what the
8 prosecutor would cross him with reference to bias, him
9 being the brother, and with the transcript from the
10 prior plea. And that's what Mr. Cleveland indicated to
11 me he was going to cross examine him on.

12 Q. Okay.

13 A. I took the statement from Mr. Charles Graham to
14 Mr. Cleveland. It didn't affect him. He said he was
15 going to trial.

16 Q. Okay. So Charles Graham had already pled guilty
17 prior to Mr. Graham's trial?

18 A. Correct.

19 Q. Okay. In regards to other evidence that was out
20 there, we've got two victims, we've got Mr. Graham, I
21 guess, Charles Graham. Was there any other evidence,
22 fingerprints, other statements, eyewitnesses, anybody
23 else that was -- that you thought was relevant in this
24 case?

25 A. No.

1 Q. Okay. Did you discuss with him the -- I guess the
2 lack of fingerprint evidence or other issues; things
3 that would help him, I guess?

4 A. I told Mr. Graham that we had a very good chance
5 at trial. I told him I wouldn't give any of my clients
6 more than a fifty/fifty surety, but I thought it was a
7 fifty/fifty situation. I said, based on his prior
8 record and the nature of the charge, he was looking at
9 life if he went to prison. I didn't know if he would
10 get that, but I thought it would be significantly
11 higher. We discussed the plea offer. He indicated to
12 me that he wanted to take the plea offer rather than
13 take his chances at trial.

14 Q. Okay. So he understand the, I guess, the maximum
15 he was looking at if he went to trial on this thing?

16 A. Correct.

17 Q. Okay. And you still had a plea offer on it. Did
18 he ever get close to, I guess, going on the trial
19 docket?

20 A. Yes. We went up there to plead guilty. It took a
21 little bit to get Baker to keep it off the trial docket
22 initially, or Mr. Cleveland. We went up there to plead
23 guilty the first time and Mr. Graham changed his mind
24 and said he wanted to go to trial, at which time I told
25 Mr. Cleveland that we had changed our mind, to put the

1 case on the trial docket. It wasn't until a couple of
2 weeks later that Mr. Graham contacted my office and said
3 that he had changed his mind and wanted to take the plea
4 offer.

5 Q. Okay. Now, at the end of his testimony here he
6 says -- he indicated that he was, I guess, not on his
7 medication at that time when he did the plea. Do you
8 remember or can you recall if there were any issues with
9 him understanding what was going on during that time?

10 A. Not at all. Like I said, I met with Eric on
11 multiple occasions, at least seven different times at
12 the jail, I would thing. I never had any concern about
13 his understanding what was going on.

14 Q. Okay. He was actually evaluated for that, too;
15 correct?

16 A. Correct. He was sent off to the MH early in our
17 association.

18 Q. Okay.

19 MR. ARIAIL: Your Honor, I have no further
20 questions.

21

CROSS EXAMINATION

22 **BY MS. RATIGAN:**

23 Q. By the time that you represented Mr. Graham, had
24 Mr. Farnsworth already filed discovery or did you need
25 to file discovery motions?

1 A. No. He had filed for discovery. Had already
2 given a copy to Mr. Graham.

3 Q. And did you go through that discovery material
4 with Mr. Graham?

5 A. Yes. We went through it. And I think his concern
6 is there wasn't a whole lot, but it was mainly the
7 eyewitness testimony and the statements.

8 Q. Did you review with him basically, you know, what
9 the state would have to prove to prove that he was
10 guilty, the elements?

11 A. Correct. Yes.

12 Q. And did you explain to him the sentence range?

13 A. I did.

14 Q. Did you discuss with him any possible defenses?

15 A. Yes. In fact, I told him that I thought I had a
16 better-than-average chance at trial. I think I told him
17 fifty/fifty.

18 Q. Did you ever discuss with him an alibi defense?

19 A. We discussed the alibi situation. And that was --
20 I can't sit here under oath now and say that that was
21 fully investigated by the time he called me and said he
22 wanted to take the plea agreement. We were still
23 preparing for trial when he called me and said he wanted
24 to accept the plea.

25 Q. Did he ever tell you anything about a videotape

1 from the Ingles that he wanted you to look into?

2 A. I do not recall any statement about the Ingles. I
3 do recall him talking about his grandmother.

4 Q. Is there anything further -- strike that. So were
5 you in the process, since it was on the trial docket, of
6 kind of gearing up to investigate and get ready for
7 trial?

8 A. Yes. That's what we were doing. When we left
9 Pickens the first time, I began preparing for trial.

10 Q. Now, when you met with Mr. Graham to kind of
11 explain what would happen at the guilty plea hearing,
12 did you tell him the type of questions the judge would
13 ask him?

14 A. Yes. I told him how a plea colloquy went, yes.

15 Q. Did you ever tell him how to answer the questions?

16 A. Absolutely not.

17 Q. Did you ever tell him to be untruthful in order to
18 get the plea to go forward?

19 A. I always tell all my clients the same thing, which
20 is, whatever you say as long as it's truthful.

21 MS. RATIGAN: Beg the court's indulgence.

22 That's all I have, Your Honor.

23 MR. ARIAIL: Nothing further, Your Honor.

24 THE COURT: All right. Thank you. You may
25 step down, Mr. DeLoach.

1 MR. ARIAIL: That's our case, Your Honor.

2 MS. RATIGAN: Your Honor, the state would rest
3 on the record and Mr. DeLoach's testimony.

4 THE COURT: All right. I'll review the file
5 and issue an order.

6 MS. RATIGAN: Thank you, Your Honor.

7 MR. ARIAIL: Thank you, Judge.

8

9 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings had and evidence
8 introduced in the trial/hearing of the captioned case,
9 relative to appeal, in the Common Pleas Court, Pickens
10 County, South Carolina, on the 18th day of December,
11 2013.

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

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

16 June 11, 2014

17

18

19

20

A handwritten signature in cursive script that reads "Susan Danette Hanks". The signature is written in dark ink and is positioned above a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
Eric Lee Graham,)
S.C.D.C. No. 305817,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-39-0761

ORDER OF DISMISSAL

(22)
MB
CLERK OF COURT
JAN 2014
PICKENS COUNTY
COURT CLERK

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 13, 2013. The Respondent made its return on October 14, 2013. An evidentiary hearing into the matter was convened on December 18, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Perry D. DeLoach, Jr., Esquire. The Court had before it the transcript of the guilty plea hearing, the Pickens County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Applicant was indicted at the September 2011 term of the Pickens County Grand Jury for second-degree assault and battery by mob (2011-GS-39-1294), failure to stop for a blue light (2011-GS-39-1295), and first-

1
[Signature]

degree burglary (2011-GS-39-1298). He was represented by Perry D. DeLoach, Jr., Esquire.

On January 28, 2013, the Applicant pled guilty.¹ The Honorable Edward W. Miller sentenced the Applicant to concurrent sentences of time-served for third-degree assault and battery by mob and twelve years for second-degree burglary. Judge Miller levied a three year sentence for failure to stop for a blue light and ordered it to be consecutive to the sentence for second-degree burglary. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.

At the PCR hearing, the Applicant proceeded upon allegations of ineffective assistance of plea counsel and involuntary guilty plea. The Applicant clarified that he was only proceeding upon allegations related to his second-degree burglary conviction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

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

¹ The Applicant also waived presentment and pled guilty to a Greenville County charge of attempted armed robbery (2013-GS-23-0289). Judge Miller sentenced him to five years, concurrent to the Pickens County sentences.

Ineffective Assistance of Counsel/Involuntary Guilty Plea

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

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

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he met with plea counsel four or five times at the jail. The Applicant stated plea counsel did not review the discovery materials but later admitted they

reviewed items such as the warrants, statements, and police reports. The Applicant stated plea counsel said the statements were not strong enough for a jury "to bite on." The Applicant stated he and plea counsel discussed his brother (who was his co-defendant) and that a witness would say the Applicant was not involved. The Applicant stated he asked plea counsel to look into an alibi - that he was at his grandmother's house that day and later picked up his brother at an Ingles. The Applicant stated he discussed the State's fifteen-year plea offer with plea counsel and said he did not plead guilty the first time he was brought into court. The Applicant stated plea counsel told him that, if he did not take the fifteen-year offer he would go to trial. The Applicant stated he felt that he had to plead guilty. The Applicant stated he lied to the plea judge when he stated he was satisfied with counsel and guilty of the charges.

Plea counsel testified he was an associate of the Applicant's original attorney. Plea counsel testified the original attorney had already filed discovery motions. Plea counsel testified he met with the Applicant six or seven times at the jail and that they discussed: the discovery materials, elements, potential sentences, and possible defenses. Plea counsel testified both victims knew the Applicant and gave statements implicating him and his brother. Plea counsel testified he visited the Applicant's brother (who had already plead guilty and was incarcerated), and the brother said the Applicant was not there but that he should tell the Applicant to "do the right thing." Plea counsel testified he passed this information along to both the Applicant and the assistant solicitor. Plea counsel testified he and the Applicant discussed a possible alibi but he did not recall how much he investigated this once the Applicant decided he wanted to plead guilty. Plea counsel testified he told the Applicant that he believed there was a 50/50 chance of winning and trial and that the Applicant decided he wanted a plea offer. Plea counsel testified the Applicant was brought to the courthouse to plead guilty on two occasions. Plea counsel

testified that, after the Applicant balked at the first plea hearing, the State put the case on the trial docket and the Applicant decided he wanted to plead guilty again.

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

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly investigate or prepare his case. Plea counsel testified that discovery motions had been filed in this case and that he (and the original^{ly} attorney) had given copies of the discovery materials to the Applicant. Plea counsel testified he met with the Applicant six or seven times at the jail and that they discussed the elements of the charges, the sentencing ranges, and possible defenses. Plea counsel testified he and the Applicant discussed his brother/co-defendant. This Court finds plea counsel's testimony is credible. This Court finds plea counsel properly investigated and prepared this case and that the Applicant has failed to demonstrate what else plea counsel could have done that would have affected the outcome of his case. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial).

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly investigate and pursue an alibi defense. Plea counsel testified they discussed an alibi

defense but that he did not know if he fully investigated this avenue once the Applicant decided he wanted to accept the plea recommendation. This Court finds this was a valid strategic decision. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, this Court finds the Applicant has failed to set forth any credible evidence or testimony to substantiate his claim that he had an alibi in this case. Without such evidence, this Court cannot speculate as to whether there could have been a viable alibi defense. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (emphasis in original).

This Court finds the Applicant failed to meet his burden of proving plea counsel coerced him into accepting the State’s plea recommendation and pleading guilty. The Applicant and his attorney discussed the fifteen-year plea offer from the State and the Applicant decided to accept this offer. After the Applicant balked at the first plea hearing, plea counsel testified the State put the case on the trial docket. Plea counsel testified he had begun to prepare the case for trial. Plea counsel testified, however, that the Applicant subsequently decided to plead guilty. The Applicant admitted to the plea judge both that he was guilty and that the facts recited by the solicitor were true. (Plea transcript, p.7; p.15). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty and was satisfied with counsel. (Plea transcript, p.7). This Court finds the Applicant’s testimony at the PCR hearing that he lied to the plea court during the plea colloquy is not credible. This Court finds there is no evidence in

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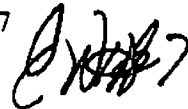
the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel's performance.

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

All Other Allegations

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

7 

2253
MB
CLERK OF COURT
JAN 2014
ROCKINGHAM COUNTY
DISTRICT

CONCLUSION

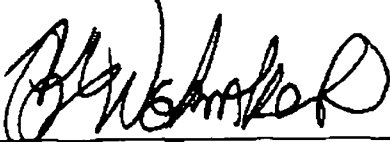
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel's representation.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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 21 day of Jan, 2014.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Pickens, South Carolina.

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF PICKENS

CASE NO: 2013CP3900761

IN THE COURT OF COMMON PLEAS

2014 JAN 23 AM 8 34

Eric Lee Graham (#305817) vs State of South Carolina
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Order of Dismissal

Dated at Pickens, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

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

us:
 mail
 ✓ Eric Lee Graham (#305817) ,
 R. Mills Ariail Jr. 11 North Irvine St., Ste., 11
 Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

MB

emailed
 ✓ Karen Christine Ratigan PO Box 11549 Columbia, SC
 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]

Harold P Welborn, Jr. - Clerk of Court

MB

65

WITNESSES

Christopher Griffin

Pickens County Sheriff's Office

12/6/2010

DOCKET NO. 2011-GS-39-1294

JBC

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

SEP 06 2011 TERM 2011

THE STATE

VS.

ERIC LEE GRAHAM

ARREST WARRANT NUMBER

M385966

WE FILED
SEP 06 2011
ACTION OF GRAND JURY

Deane T. Kins
Foreperson of Grand Jury

VERDICT

3432

Indictment for

ASSAULT AND BATTERY BY MOB SECOND
DEGREE

VIOLATION § 16-03-0210(C)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
ASSAULT AND BATTERY BY MOB SECOND DEGREE

At a Court of General Sessions, convened on

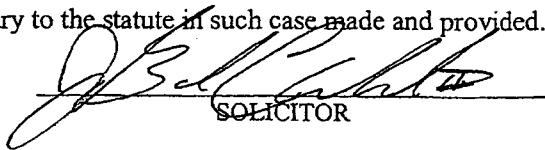
SEP 06 2011

the Grand Jurors of Pickens

County present upon their oath:

That ERIC LEE GRAHAM did in Pickens County on or about the 25th day of November 2010, willfully and unlawfully participate as part of a mob that inflicted serious bodily injury upon Jesus Lozada Aldana. This is in violation of §16-03-0210 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

67

WITNESSES

Jason Lovell

Easley Police Department

9/14/2010

ARREST WARRANT NUMBER
32450FN

TRUE BILL
ACTION OF GRAND JURY
Date SEP 06 2011

Wayne W. Kins
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-39-1295
JBC
The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

SEP 06 2011 TERM 2011

THE STATE

vs.

ERIC LEE GRAHAM

Indictment for

0065

FAILURE TO STOP FOR A BLUE LIGHT

VIOLATION § 56-05-0750(B)(1)

DL SUSPENDS

Did Clerk receive driver's license?
YES _____ NO _____
If no, explain _____

Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
FAILURE TO STOP FOR A BLUE LIGHT

At a Court of General Sessions, convened on

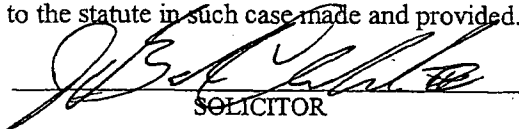
SEP 06 2011

the Grand Jurors of Pickens

County present upon their oath:

That ERIC LEE GRAHAM did in Pickens County, on or about the 14th day of September, 2010, willfully, knowingly, and unlawfully commit the offense of failure to stop for police vehicle in that the said defendant while driving on a road, street or highway of the State did intentionally refuse to stop when signaled to do so by a police vehicle using blue lights and/or siren. This is in violation of §56-5-750 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

00

WITNESSES

Jan Kelley

Pickens County Sheriff's Office

11/20/2010

DOCKET NO. 2011-GS-39- 1298

JBC

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

SEP 06 2011 TERM 2011

THE STATE

vs.

ERIC LEE GRAHAM

ARREST WARRANT NUMBER

1688740

FILED
SEP 06 2011
CLERK OF GRAND JURY

David T. King
Foreperson of Grand Jury

VERDICT

0079

Indictment for

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

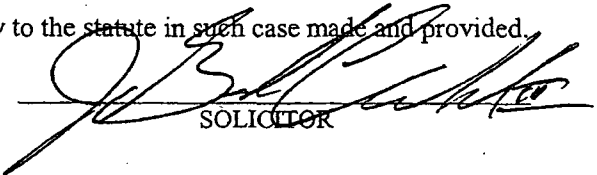
INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on SEP 06 2011 the Grand Jurors of Pickens

County present upon their oath:

That ERIC LEE GRAHAM did in Pickens County, on or about the 14th day of September, 2010, willfully and unlawfully enter the dwelling of DANIEL JONES AND JESSICA CHAMBERS located at [REDACTED], Liberty, SC without consent and with the intent to commit a crime therein and: (1) the crime did occur during the nighttime and/or (2) in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime caused physical injury to a person who is not a participant in the crime, and/or (3) at the time of the unlawful entry ERIC LEE GRAHAM had a prior record of two or more convictions for burglary or housebreaking or a combination of both. This is in violation of §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