

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

R. Lawton McIntosh, Circuit Court Judge

RECEIVED

AUG 12 2014

S.C. Supreme Court

FRANK BOLIN, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002759

APPENDIX

BENJAMIN JOHN TRIPP
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

SUZANNE H. WHITE
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i

GUILTY PLEA HEARING TRANSCRIPT (APRIL 15, 2011).....1

APPLICATION FOR POST-CONVICTION RELIEF.....21

RETURN28

POST-CONVICTION RELIEF HEARING TRANSCRIPT (JUNE 25, 2013).....32

APPLICANT’S EXHIBIT #1 (EMAIL DATED OCTOBER 26, 2010).....73

APPLICANT’S EXHIBIT #2 (LETTER DATED NOVEMBER 2, 2010).....74

ORDER OF DISMISSAL75

APPLICANT’S MOTION TO ALTER OR AMEND83

RETURN AND MOTION TO DISMISS MOTION TO ALTER TO AMEND
DENIAL OF PCR PETITION91

JUDGMENT IN A CIVIL CASE94

CLERK OF COURT RECORDS96

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 FRANK BOLIN, JR.,)
)
 DEFENDANT.)
 _____)

2010-GS-42-03856 & 03858

TRANSCRIPT OF RECORD

APRIL 15, 2011
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE J. MARK HAYES, II

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

PRINA C. TAILOR
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

JAMES A. CHEEK
ASSISTANT PUBLIC DEFENDER

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

WITNESS

PAGE NO.

CERTIFICATE OF REPORTER

20

COURT REPORTER'S NOTE: (The following defendants were qualified by the Court as a group; Frank Bolin, Robert Cole, Barry Fain, Justin Garner, Billy Gilliland, Johnathan Marler, Richard Paddock, Leonardo Porter, Ryan Ross, Scott Smith, Travis Turner, Brandon White, Curtis Wilkie and Terrance Dandy)

EXHIBITS

NO DESCRIPTION ID EVIDENCE

(No Exhibits Were Presented During This Hearing)

1 **THE COURT:** Good morning, gentlemen.

2 **THE GROUP:** Good morning.

3 **THE COURT:** I have been informed that each one of you
4 has one or more matters that are presently pending in the
5 Court of General Sessions. I've also been told that each
6 one of you has expressed a desire or an intent to want to
7 enter a plea to those matters.

8 I need to let you know that as part of every plea that
9 is presented in front of me, we make a recording. This lady
10 that's sitting over here to my right is a court reporter.
11 She's taking down everything that's said.

12 I tell you that because if ever during this process now
13 or later today if you need to speak to me, I need you to
14 speak up loud enough so that both she and I can hear you.
15 If we can't hear you, we cannot accept your plea. Likewise,
16 if ever during this process now or later today you can't
17 hear me, immediately let me know and I will speak up as
18 well.

19 Now in just a few moments I'm going to ask you a series
20 of questions. And I'm going to ask you these questions as a
21 group. But I do not want you to think, nor do I wish for
22 you to conclude that simply because I'm asking you these
23 questions as a group that for some reason these questions
24 are not important because these questions are very
25 important.

1 The questions that I ask you and the answers that you
2 give me to these questions help me decide whether or not I
3 can, in fact, accept your plea. So I need you to listen to
4 the questions. If you need to respond, I'm going to ask
5 that you stand up, just don't speak out, just stand up and
6 let me call on you individually.

7 Now if ever during this process if you want to speak
8 with your lawyer, you just let me know and I'll allow you to
9 talk to your lawyer in private.

10 I'm now going to call the names of everybody that I
11 have been provided. And when I call your name I need for
12 you to stand up and remain standing. After everybody's
13 name's been called and the court reporter has your name
14 down, this lady on this side of the room, the clerk of
15 court, she is going to swear you in. So I need for you to
16 please listen to her and respond out loud when she asks you
17 to do so.

18 We have Frank Bolin, Robert Cole, Barry Fain, Justin
19 Garner, Billy Gilliland, Johnathan Marler, Richard Paddock,
20 Leonardo Porter, Ryan Ross, Scott Smith, Travis Turner,
21 Brandon White, Curtis Wilkie and Dandy Terrance. If you
22 will, please raise your right hand.

23 **MADAME CLERK:** You solemnly swear or affirm the
24 testimony you're about to give will be the truth, the whole
25 truth and nothing but the truth so help you God?

1 **THE GROUP:** Yes, ma'am.

2 **MADAME CLERK:** Thank you.

3 **THE COURT:** You may be seated. Here are the questions.
4 During the last twenty-four hours have you consumed any type
5 of substance that is adversely or negatively affecting your
6 ability to understand what we're doing today? If you have,
7 I need for you to, please, stand at this time.

8 (No response)

9 **THE COURT:** If you have ever received any type of
10 treatment for any type of substance abuse, for drug issues
11 or alcohol issues, I need for you to, please, stand at this
12 time. Yes, sir, on the front row, what's your name?

13 **MR. GARNER:** Justin Garner.

14 **THE COURT:** And, Mr. Garner, did you receive treatment
15 for drugs, alcohol or both?

16 **MR. GARNER:** Drugs.

17 **THE COURT:** And you remember where you received that
18 last treatment?

19 **MADAME COURT REPORTER:** I'm sorry, could you repeat
20 that name?

21 **MR. GARNER:** Owl's Nest in Florence, South Carolina.

22 **THE COURT:** About how long ago was that?

23 **MR. GARNER:** A month and a half, two months ago.

24 **THE COURT:** Was it successful?

25 **MR. GARNER:** Yes, sir.

1 THE COURT: Thank you, sir. You may be seated. Yes,
2 sir, on the end, what's your name?

3 MR. PADDOCK: Richard Paddock.

4 THE COURT: And did you receive treatment for drugs,
5 alcohol or both?

6 MR. PADDOCK: Alcohol.

7 THE COURT: And do you remember where you received that
8 last treatment?

9 MR. PADDOCK: I was attending SADAC classes here in
10 Spartanburg.

11 THE COURT: About how long ago?

12 MR. PADDOCK: February, before my arrest.

13 THE COURT: So you did not complete them?

14 MR. PADDOCK: I was going to the classes when I was
15 arrested. So they weren't completed, no.

16 THE COURT: Thank you, sir. You may be seated. Yes,
17 sir, your name?

18 MR. TURNER: Travis Turner.

19 THE COURT: Mr. Turner, did you receive treatment for
20 drugs, alcohol or both?

21 MR. TURNER: Marijuana.

22 THE COURT: And where did you receive that treatment?

23 MR. TURNER: From LRADAC in Columbia.

24 THE COURT: About how long ago?

25 MR. TURNER: 2004.

1 THE COURT: And was it successful?

2 MR. TURNER: Yes, sir.

3 THE COURT: Thank you, sir. You may be seated. Yes,
4 sir, your name?

5 MR. ROSS: Ryan Ross.

6 THE COURT: And, Mr. Ross, did you receive treatment
7 for drugs, alcohol or both?

8 MR. ROSS: Marijuana.

9 THE COURT: And where?

10 MR. ROSS: Voc. Rehab.

11 THE COURT: About how long ago?

12 MR. ROSS: 2002, somewhere around there.

13 THE COURT: Was it successful at the time?

14 MR. ROSS: Yeah.

15 THE COURT: Thank you, sir. Yes, sir, your name?

16 MR. BOLIN: Frank Bolin.

17 THE COURT: I'm sorry?

18 MR. BOLIN: Frank Bolin.

19 THE COURT: And, Mr. Bolin, did you receive treatment
20 for drugs, alcohol or both?

21 MR. BOLIN: Alcohol.

22 THE COURT: Do you remember where?

23 MR. BOLIN: State hospital in Columbia.

24 THE COURT: About how long ago was that?

25 MR. BOLIN: 2000.

1 **THE COURT:** And was it successful at the time?

2 **MR. BOLIN:** Yes, sir.

3 **THE COURT:** Thank you, sir.

4 If you are satisfied with the work that your lawyer has
5 done for you, I need for you to, please, stand at this time
6 if you're satisfied with the work that your lawyer has done.

7 (Whereupon all defendants stood)

8 **THE COURT:** Let the record reflect that everyone stood.
9 Thank you very much. You may be seated.

10 If you have been threatened in any way or if you have
11 been made any promises in order to get you to make the
12 decision to enter the plea, I need for you to, please, stand
13 at this time if you have been threatened or promised
14 anything.

15 (No one stood)

16 **THE COURT:** If the decision to enter the plea is a free
17 and voluntary decision by you, I need for you to, please,
18 stand at this time if this is a free and voluntary decision.

19 (Whereupon all defendants stood)

20 **THE COURT:** Let the record reflect that everyone stood.
21 Thank you very much.

22 I need for you to understand that under the law you are
23 presumed innocent of any and all of the charges against you,
24 and you are entitled to have a jury trial on any or all of
25 the charges against you.

1 At any jury trial that would take place it would be the
2 State that has the burden of proof. And the State would
3 have to convince all twelve members of a jury that you are,
4 in fact, guilty beyond a reasonable doubt.

5 Now in order to enter a plea, however, you have to give
6 up your right to that jury trial. But if you wish to have a
7 jury trial on any of the charges against you, that is fine.
8 We will simply schedule a jury trial for you. If you wish
9 to have a jury trial on any of the charges that are
10 presently against you I need for you to, please, stand at
11 this time if you wish to have a jury trial.

12 (No one stood)

13 **THE COURT:** In addition to giving up your right to a
14 jury trial there are other very important constitutional
15 rights that you are entitled to, but that you have to give
16 up in order to enter a plea.

17 You have to give up your right to confront and cross
18 examine the State's witnesses. You also have to give up
19 your right to present evidence which you or your lawyer may
20 feel would establish some type of defense to the charge or
21 charges against you. And you have to give up your right of
22 subpoena. And you have to give up your right to remain
23 silent.

24 Now if you understand all of those rights and wish to
25 give them up and go forward with entering the plea at this

1 time, I need for you to, please, stand at this time.

2 (Whereupon all defendants stood)

3 **THE COURT:** Let the record reflect that everyone stood.
4 Thank you very much. You may be seated.

5 Again, if ever during this process any of you wish to
6 speak to your lawyer, you just let me know, and I'll allow
7 you to do so in private.

8 (Whereupon individual defendants were called to plead
9 guilty)

10 **MS. TAILOR:** Your Honor, this is Frank Bolin. He's
11 here on indictments numbered 2010-GS-42-3856 for shoplifting
12 with third subsequent property enhancement and 2010-GS-42-
13 3858 for shoplifting, third, subsequent property
14 enhancement.

15 He's pleading to the charges as they're indicted. And
16 he's pleading without any recommendations or negotiations.
17 And he's here with his defense attorney, Mr. James Cheek.

18 **THE COURT:** You are Mr. Bolin?

19 **MR. BOLIN:** Yes, sir.

20 **THE COURT:** I need to remind you that you remain under
21 oath. Do you understand that?

22 **MR. BOLIN:** Yes, sir.

23 **THE COURT:** And, sir, you intend to enter pleas to both
24 of these charges of shoplifting, third, and subsequent
25 property offense?

1 MR. BOLIN: I need to speak to Mr. Cheek.

2 THE COURT: Okay.

3 (Pause)

4 MR. CHEEK: Yeah, we're doing the probation revocation
5 at the same time, Your Honor.

6 THE COURT: You intend to enter the pleas?

7 MR. BOLIN: Yes, sir.

8 THE COURT: How old are you?

9 MR. BOLIN: Thirty-nine.

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

11 MR. BOLIN: Ninth grade.

12 THE COURT: Did you ever get a GED?

13 MR. BOLIN: Yes, sir.

14 THE COURT: Married, single, divorced?

15 MR. BOLIN: Married, but we're going through a divorce.

16 THE COURT: Children?

17 MR. BOLIN: Yes, sir.

18 THE COURT: How many?

19 MR. BOLIN: Two.

20 THE COURT: How old are they?

21 MR. BOLIN: Twenty and fourteen.

22 THE COURT: Prior to your arrest did you have a job
23 outside the home?

24 MR. BOLIN: Yes, sir.

25 THE COURT: What were you doing?

1 **MR. BOLIN:** Upholstery work.

2 **THE COURT:** Did you ever serve in the military?

3 **MR. BOLIN:** No, sir.

4 **THE COURT:** How long have you been in jail on these
5 charges?

6 **MR. BOLIN:** Eighty-four days.

7 **THE COURT:** Sir, if you would, please listen to the
8 solicitor. She's going to provide us with the facts.

9 **MS. TAILOR:** Yes, Your Honor. On indictment number
10 2010-3858, this incident occurred on May 15th here in
11 Spartanburg County. The Defendant went to the Dollar
12 General located on Paris Bridge Road and took a True Living
13 ten foot blow up swimming pool as well as some health and
14 beauty supplies. The items were all valued at approximately
15 two hundred dollars. And those were not recovered.

16 For indictment number 2010-3856, this incident occurred
17 on 6/1 of 2010. The Defendant went to the Ingles, which was
18 located here in Spartanburg County. The Defendant and his
19 co-defendant filled a shopping cart with various grocery
20 items. They pushed the cart out of the store without
21 paying, and the items were valued at approximately five
22 hundred dollars. And those were not recovered.

23 **THE COURT:** Were you able to hear the solicitor?

24 **MR. BOLIN:** Yes, sir.

25 **THE COURT:** Do you believe that as she stated the facts

1 that's she substantially correct?

2 MR. BOLIN: Yes, sir.

3 THE COURT: And, sir, do you understand that I could
4 sentence you up to ten years on each one of these charges?

5 MR. BOLIN: Yes, sir.

6 THE COURT: And you still wish to enter this plea?

7 MR. BOLIN: Yes, sir.

8 THE COURT: Sir, are you, in fact, guilty of both of
9 these charges of shoplifting, third, and subsequent offense?

10 MR. BOLIN: Yes, sir.

11 THE COURT: Have you been able to hear all of my
12 questions?

13 MR. BOLIN: Yes, sir.

14 THE COURT: Have all of your answers been truthful and
15 honest?

16 MR. BOLIN: Yes, sir.

17 THE COURT: Discovery's been shared with the Defense?

18 MS. TAILOR: It has, Your Honor.

19 THE COURT: Prior record?

20 MS. TAILOR: He has a 1989 receiving stolen goods,
21 1990, grand larceny, 1993, simple possession of marijuana,
22 driving under suspension, two counts of burglary, third
23 degree, shoplifting and simple assault, 1994, petty larceny,
24 grand larceny, one thousand to five thousand, malicious
25 injury to personal property, DUS, second, 2000, obtaining

1 property by false pretenses, petty larceny and possession of
2 schedule I or schedule II drug, 2001, has a shoplifting, one
3 thousand to five thousand, 2002, three counts of
4 shoplifting, less than one thousand dollars, three counts of
5 third subsequent property offense, a petty larceny, forgery,
6 one thousand to five thousand, grand larceny, one thousand
7 to five thousand, has a 2005 shoplifting, 2006, ABHAN,
8 simple assault and battery, and third subsequent property
9 offense.

10 **THE COURT:** He's presently on probation?

11 **AGENT MANIGAN:** Yes, Your Honor. He was before Judge
12 Miller on 2/26 of 2006 for shoplifting, third, under
13 indictment 05-GS-42-366. And he received a sentence of ten
14 years suspended upon the service of six years and three
15 years probation.

16 There was also an assault and battery of a high and
17 aggravated nature under 2005-GS-42-3667. And the sentence
18 was ten years suspended during probation.

19 Your Honor, he has violations of that case for -- under
20 warrant number W-42100324 for failure to report on March 26,
21 2010, April 14th, 2010 and not since that time, by wilfully
22 failing to maintain gainful employment or provide proof
23 thereof, by wilfully failing to pay supervision fee as
24 instructed, being two hundred dollars in arrears as of this
25 date, by wilfully failing to pay a drug test fee, being in

1 arrears of this date, by failing to pay fines as instructed,
2 by wilfully failing to follow the advice and instructions of
3 the agent, by failing to submit to court ordered drug test
4 and by wilfully failing to attend and complete SADAC as
5 instructed.

6 Your Honor, on December the 10th of 2010 we were going
7 to have a violation of probation hearing and the Defendant
8 failed to appear for that. And warrant number W-4211003 was
9 issued and served on the Defendant on April the 12th of this
10 year.

11 THE COURT: Anything ---

12 MR. CHEEK: Your Honor, it's my understanding that the
13 -- there's four years left on that sentence.

14 AGENT MANAGAN: Yes, four years remaining.

15 MR. CHEEK: Four years left on that sentence, Your
16 Honor.

17 THE COURT: Anything from the victims beyond the
18 restitution?

19 MS. TAILOR: There's the restitution order with this.

20 MR. CHEEK: May I approach, Your Honor?

21 THE COURT: I already have it.

22 MS. TAILOR: No, Your Honor, that's all.

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

24 MR. CHEEK: Your Honor, my client acknowledges that he
25 has a substance abuse problem as did his wife, Your Honor,

1 with both of them suffering that addiction and causing them
2 to run afoul of the law in the community as they did on both
3 of these instances.

4 We'd ask the Court to consider that he does need some
5 type of substance abuse counseling. Your Honor, he fully
6 expects that that will happen in the Department of
7 Corrections. He's not approaching the Court for any kind of
8 extended probation. He knows he's violated his probation.

9 He's asking the Court to consider if he will be serving
10 a four year sentence in the Department of Corrections that
11 that will allow a time for assessment, completion and
12 participation in the Addiction Treatment Unit Program. And
13 we respectfully ask the Court to consider a four year
14 sentence or something in that nature and allow him to come
15 back in the community to make the restitution that's owed to
16 the retail establishments, Your Honor.

17 He understands and appreciates that anything the Court
18 would do for him, given his criminal history, would be
19 merciful in this matter. But he's asking -- hoping the
20 Court will look at the fact that four years of his life will
21 be spent in the Department of Corrections, Your Honor.

22 **THE COURT:** Do you agree with what your lawyer just
23 stated?

24 **MR. BOLIN:** Yes, sir.

25 **THE COURT:** Is there anything that you would like to

1 say or would like for me to know or consider?

2 MR. BOLIN: No, sir, except for I just was on -- on
3 drugs. That was the root of the problem.

4 THE COURT: Thank you, sir.

5 (Pause)

6 THE COURT: I'll find that there's a substantial
7 factual basis for the plea. I'll find that the Defendant's
8 decision to enter the plea has been made freely,
9 voluntarily, knowingly and intellectually by him.

10 I'll find that he is in wilful violation of the terms
11 of his probation by having entered these pleas and as
12 outlined to the Court previously by the probation agent.

13 Do a full revocation. Let the time that he's served
14 satisfy whatever monetary obligations it can satisfy. The
15 others will be reduced to a civil judgment. I will allow
16 that to -- that sentence to run -- the probation revocation
17 sentence to run concurrent with the sentences that will be
18 issued in these two cases.

19 The sentence in these two cases, they are concurrent
20 with the probation case as well as with each other. It's a
21 ten year sentence. He'll get credit for the eighty-four
22 days. Restitution has been ordered as indicated by the
23 executed restitution order.

24 I've indicated on the sentencing sheet that he is to
25 receive the Addiction Treatment Unit while he's in the

1 Department of Corrections. Good luck to you, sir.

2 MR. CHEEK: Thank you, Your Honor.

3 MS. TAILOR: Thank you, Your Honor.

4 (Hearing Ended at 10:39 am)

5 (End of Requested Transcript of Record)

1

Certificate of Reporter

2 I, the undersigned, Susan W. Hudgins, Official Court
3 Reporter for the Seventh Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all the
6 proceedings had and evidence introduced in the trial/hearing
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Spartanburg County, South Carolina, on the 15th
9 day of April 2011.

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

12

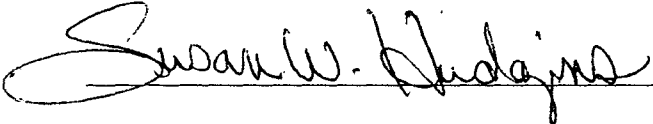
April 5, 2012

13

14

15

16

A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in black ink and is positioned above a horizontal line.

Circuit Court Reporter

DM

2012-CP-42-0993

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of Spartanburg

Frank Bohin Jr. #209881

Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

POST-CONVICTION RELIEF

State of South Carolina

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 herein 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.

FILED
CLERK OF COURT
2012 FEB 14 11:12

1. Place of detention Tyger River CJ, 200 Prison Road
ENOKEE, S.C. 29335
2. Name and location of Court which imposed sentence Seventh Judicial
Circuit, Spartanburg South Carolina 29304
3. Name(s) of co-defendant(s) (if any) Kristy Hess
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-65-42-3856 Shoplifting/Enhancement for 3rd
 - (b) 2010-65-42-3858 Shoplifting/Enhancement for 3rd

2012-CP-42-0993

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/15/11 10 YEARS CONCURRENT
 - (b) 4/15/11 10 YEARS CONCURRENT
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty
 - (b) after a plea of not guilty _____
 - (c) after a plea of not 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. _____
- iii. _____

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

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

(c) the date of each such result:

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

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

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

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

(a) was not made aware by counsel

(b) _____

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2012-CP-42-0993

(c) _____

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

(a) COUNSEL ADVISED ME TO PLED, AND I AM NOT GUILTY

(b) _____

(c) _____

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

(a) I'm not the Person who shoplifted Per the Narrative

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? 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. N/A

ii. N/A

iii. N/A

iv. _____

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

i. N/A

ii. N/A

iii. _____

iv. _____

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2012-CP-42-0993

(c) the disposition thereof:

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

NIA

(d) the date of each such disposition:

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

NIA

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

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

NIA

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. _____

NIA

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

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

NIA

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DELAWARE

2012-CP-42-0993

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) _____ NO
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? NO
- (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? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

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

- i. James Cheeks Bar# 1207
366 N. Church St. Suite 3000, Spartanburg SC, 29303
- ii. Matthew W. Shealy
366 N. Church St. Suite 3000, Spartanburg SC, 29303
- iii. _____

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

- i. Trial
- ii. Pre trial negotiations, Initial Consultation,
- iii. _____

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

Vacate AND REMAND

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

NO

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, FRANK BOLIN JR.

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.

Frank Bolin Jr.

SWORN to and subscribed before me this

day of FEBRUARY 22nd 2012.

[Signature] (L.S.)
Notary Public of SC

My Commission Expires: 1-14-2019

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THOMAS BLACKLEY

2012-CP-42-0993

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

I, FRANK BOLIN JR 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.

[Signature]
Applicant

SWORN or affirmed to and subscribed before me this 22nd day of FEBRUARY, 2012.
[Signature]
Notary Public

My Commission Expires: 1-14-2019

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Frank Bolin, Jr., #209887,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-0993

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 27, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the July 2010 term of the Spartanburg County Grand Jury for shoplifting, \$1000 or less, 3rd or subsequent offense (10-GS-42-3856), and for shoplifting, \$2000 or less, 3rd or subsequent offense (10-GS-42-3858). He was represented by James A. Cheek, Esquire. On April 15, 2011, the Applicant pled guilty as indicted. He was sentenced by the Honorable J. Mark Hayes, II, to confinement for concurrent terms of ten (10) years for each count of shoplifting. Judge Hayes also revoked applicant's probation in full, running it concurrent to the ten year sentences. The Applicant did not appeal his guilty plea, sentence or probation revocation.

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

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Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- 1. Ineffective assistance of counsel in that;
 - a. "Counsel advised me to pled, and I am not guilty."
 - b. "I am not the person who shoplifted per the narrative."

III.

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

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

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

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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.

The Applicant further alleges that he is "not guilty" and is "not the person who shoplifted." Actual innocence is not a cognizable post-conviction relief allegation. The Applicant waived his right to raise innocence as a defense when he pled guilty and waived his right to a jury trial. Therefore the plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975). Further, post-conviction relief is not a proper avenue to challenge the sufficiency of evidence. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974); S.C. Code Ann. § 17-27-20(a)(6). Therefore, the Court should summarily dismiss this allegation.

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V.

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

VI.

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

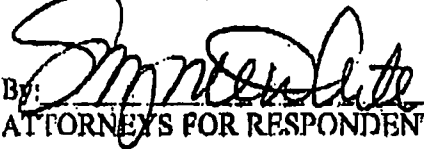
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

January 30, 2013.

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS
2012-CP-42-00993

Frank Bolin, Jr.,
-vs-
The State of South Carolina,
Defendant.

TRANSCRIPT OF RECORD

June 25, 2013
Spartanburg, South Carolina

Ordered: January 9, 2014

Delivered: March 9,, 2014

BEFORE:

The Honorable R. Lawton McIntosh, Presiding Judge.

APPEARANCES:

Ms. Suzanne H. White, Esquire
Assistant Attorney General Appearing for the State

Mr. Shane W. Rogers, Esquire
Attorney Appearing for the Applicant

Pamela Faucette
Circuit Court Reporter

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

I N D E X

Frank Bolin, Jr., PCR	Page:
Ms. White's Recitation of Facts.....	3

W I T N E S S E S

Mr. Frank Bolin, Jr.:	Page:
Direct by Mr. Rogers.....	4
Cross by Ms. White.....	14

Mr. Matthew Shealy, Esquire:	Page:
Direct by Ms. White.....	18
Cross by Mr. Rogers.....	20
Redirect by Ms. White.....	26

Mr. James Cheek, Esquire:	Page:
Direct by Ms. White.....	29
Cross by Mr. Rogers.....	32

E X H I B I T S

Applicant's Exhibits:	Marked:	Received:
1 - (Email dated 10/26/10)	11	11
2 - (Letter dated 11/2/10)	22	22

Respondent's Exhibits:	Marked:	Received:
(None)		

Court's Exhibits:	Marked:	Received:
(None)		

Reporter's Certification.....	41
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Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

1 June 25, 2013

2 (Off-the-Record Comments)

3 (Brief pause while the applicant is brought into the courtroom.)

4 MS. WHITE: Mr. Bolin will be next, Your Honor, Frank Bolin.

5 (Off-the-Record Comments)

6 THE COURT: Ms. White?

7 MS. WHITE: Thank you, Your Honor. This is the case of Frank
8 Bolin, Jr. It's case number 2012-CP-42-0993. He is represented today by
9 Mr. Shane Rogers.

10 Mr. Bolin was indicted in July 2010 for shoplifting third or subsequent
11 of \$1000 or less and shoplifting third or subsequent of \$2000 or less. He
12 pled guilty April 15th, 2011 and received a sentence of ten (10) years to run
13 concurrent on each of those charges.

14 There was also a probation that was revoked in full at the time. And it
15 was also run concurrent with those 10-year charges.

16 He was represented by Mr. James Cheek at the plea. And he has
17 alleged ineffective assistance of counsel and actual innocence. So I'll turn it
18 over to Mr. Rogers at this time.

19 THE COURT: Good morning, Mr. Rogers.

20 MR. ROGERS: Good morning, Your Honor. Thank you. I am
21 here with Frank Bolin today and we are prepared to go forward. And, without
22 wasting more of the Court's time, I'd ask Mr. Bolin to go up to the stand and
23 testify.

24 (The witness stepped forward to be sworn.)

25 (Whereupon,

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FRANK BOLIN, JR.

first being duly sworn, testified as follows:)

(Off-the-Record Comments)

DIRECT EXAMINATION by MR. ROGERS:

Q. Good morning, Mr. Bolin. Can you, please, state your full name for the record?

A. Frank Bolin, Jr.

Q. All right. Mr. Bolin, prior to your incarceration, where did you reside?

A. Spartanburg.

Q. All right. How long did you live in Spartanburg County?

A. All my life.

Q. Okay. You've heard the introduction from the State with regard to your application for PCR. Did you actually file an application in this matter?

A. Yes, sir.

Q. Did you do that in February of 2012?

A. Yes, sir.

Q. What was the basis for you filing your application for PCR?

A. They — when I — I plead, I understood that there was going to be a plea offer. And, during the proceeding, there was never a plea offer made.

Q. Okay.

A. I stopped it during that and there was still no — nothing said about it, so...

Q. All right. Let me go back — back you up just a little bit. Once you incarcerated, did you obtain assistance from the public defenders office for your counsel?

1 A. Yes, sir.

2 Q. All right. Who -- who were the attorneys who you dealt with in the
3 public defenders office?

4 A. I was assigned Matthew Shealy.

5 Q. All right. And, with regard to Matt -- Matthew Shealy, when did you
6 first meet Matthew Shealy?

7 A. I haven't met him till today.

8 Q. Okay. Once you learned that Matthew Shealy was assigned to your
9 case from the public defenders office, how did you communicate with him?

10 A. Through the -- through the request from the county jail and through
11 the postal service.

12 Q. So that is a form that you would fill out and they would give it to the
13 public defenders?

14 A. Yes, sir.

15 Q. Or by way of a letter?

16 A. Yes, sir.

17 Q. All right. Did Mr. Shealy communicate back with you by way of letter?

18 A. Yes, sir.

19 Q. All right. At any point prior to your plea hearing, did you have any
20 indication from Mr. Shealy that there had been a plea offer made by the solicitor's
21 office?

22 A. No, sir.

23 Q. Okay. And, as you indicated, you've never actually met Mr. Shealy in
24 person?

25 A. No, sir.

1 Q. All right. Would you know him if you saw him?

2 A. I think I would. I think I just seen him in the room in there.

3 Q. Okay.

4 A. I think he just came in to talk to somebody in there.

5 Q. All right. Who was the other attorney that was involved from the public
6 defenders office on your behalf?

7 A. James Cheeks [sic].

8 Q. And when did you first meet Mr. Cheeks [sic]?

9 A. I mean, I have met him a -- a -- a few times, but I first met him for him
10 handling this case the night before I went to court.

11 Q. Okay. Do you remember when you actually went before the Court on
12 your plea?

13 A. I don't remember the exact date, no, sir.

14 Q. If I told you it was April 15th, 2011, does that sound approximately right,
15 April 15th, 2011?

16 A. Yes, sir.

17 Q. All right. So it's your indication that, with regard to this matter, you met
18 Mr. Cheek for the first time on the day before, the 14th?

19 A. Yes, sir.

20 Q. Okay. What types of discussions did you and Mr. Cheeks [sic] have
21 with regard to whether not you would enter a plea?

22 A. That -- he told me that -- that it would be like four years run with the
23 probation.

24 Q. And you had -- were currently serving on probation for another charge,
25 correct?

1 A. Yes, sir.

2 Q. All right. And the charges that we're here today on in your PCR is
3 related to or a violation of that probation?

4 A. All -- I went to court on all of it at the same time. They were all
5 handled the same day, yes, sir.

6 Q. Do you know, if under the probation, determines whether you had
7 another four years if you violated the probation? Was that the basis for the
8 concurrent four years?

9 A. Yes, sir.

10 Q. All right. So, when you agreed to enter your plea on the 15th, did you
11 have some understanding that the solicitor would make some type of
12 recommendation as far as sentencing?

13 A. Yes, sir.

14 Q. And, specifically, what was your understanding of what the
15 recommendation would be?

16 A. Everything would run concurrent with the probation violation.

17 Q. For how many years?

18 A. Four years.

19 Q. During the process —

20 **THE COURT:** Just one second. Would you repeat that, please,
21 sir?

22 A. (No response)

23 **THE COURT:** Would you ask — I just need to hear his last
24 response.

25 **MR. ROGERS:** All right.

1 Q. My question to you is, if you can tell us specifically what your
2 understanding was, as you are going into the plea, as to what the
3 recommendation was?

4 A. It was to run concurrent with the four year probation violation.

5 Q. You — you were actually present during your plea hearing, correct?

6 A. Yes, sir.

7 Q. You were there; you could hear the judge, correct?

8 A. Yes, sir.

9 Q. You heard the solicitors as they made their presentation?

10 A. They didn't — they made no recommendation.

11 Q. All right. When you heard the solicitor make comments about no
12 negotiations, no recommendation, did you do anything during that plea?

13 A. Yes, sir. I stopped — I stopped the proceedings and talked to James
14 Cheeks [sic] to the side.

15 Q. All right. Why did you stop the proceeding?

16 A. Because they didn't make the plea offer that I understood was
17 supposed to be made when I went in.

18 Q. So, during the course of the solicitor's presentation during your plea,
19 there was no statement about a concurrent four-year sentence?

20 A. No, sir.

21 Q. Okay. No recommendation at all from the solicitor?

22 A. No, sir.

23 Q. And that's reflected in the transcript as best you understand it?

24 A. Yes, sir.

25 Q. All right. After you stop the proceeding, which is also record — in the

1 record, correct?

2 A. Yes, sir.

3 Q. All right. Did you hear Mr. Cheeks [sic] ever say anything to the Court
4 or to the solicitor with regard to the concurrent four-year recommendation?

5 A. No, sir.

6 Q. All right. Was that ever brought to the Court's attention?

7 A. No, sir.

8 Q. Was there any objection made by Mr. Cheeks at the time with regard
9 to the solicitor not making some type of recommendation?

10 A. No, sir.

11 Q. All right. Did Mr. Cheeks make any comment to you, when you met
12 him on the 14th or during the plea hearing, or prior to it about any type of plea offer
13 the solicitor may have made previously?

14 A. Four years.

15 Q. Other than what you've already discussed?

16 A. No, sir.

17 Q. Okay. Do you remember any discussion with Mr. Cheeks about a plea
18 offer of concurrent sentencing with a five-year cap?

19 A. No, sir.

20 Q. Okay. After stopping the proceedings and then restarting, did you
21 continue with the plea?

22 A. Yes, sir.

23 Q. All right. Was that based on what Mr. Cheeks had told you?

24 A. Yes, sir.

25 Q. What did Mr. Cheeks tell you about your understanding of the

1 recommendation from the solicitor?

2 A. That he had already had handled that.

3 Q. Okay. Did you have any reason to doubt what Mr. Cheeks was telling
4 you at the time?

5 A. No, sir.

6 Q. And did you go along with it based on what he told you?

7 A. Yes, sir.

8 Q. All right. After filing your PCR, have you learned of anything that was
9 troubling to you about Mr. Shealy's representation of you?

10 A. Yes, sir.

11 Q. All right. Tell me specifically what it was that gave you concern.

12 A. When your office was appointed to represent me, you sent me all the
13 files and everything. There was an email in there from Katrina [sic] Tailor where she
14 made a recommendation of I agreed to I think it was \$704 restitution, that she would
15 make a recommendation of five (5) years concurrent sentence and dismiss the
16 charge that I was previously charged with.

17 MR. ROGERS: Your Honor, may I approach the witness?

18 THE COURT: Yes, sir.

19 (Mr. Rogers approached the witness.)

20 Q. (By Mr. Rogers) Mr. Bolin, I'm showing you an email. Do you
21 recognize that document?

22 A. Yes, sir.

23 Q. Is that the document you were just referring to that you were provided
24 with from my office?

25 A. Yes, sir.

1 Q. And do you know where that email came from?

2 A. From judging from it, it was — it originated from Katrina Taylor's
3 computer and was sent to Matthew Shealy's computer. But your office send it to
4 me. It was the first time I was aware of it.

5 Q. All right. So is it your understanding that this document was in the
6 public defenders records, in their file?

7 A. Yes, sir.

8 MR. ROGERS: Your Honor, we would offer this into evidence as
9 App — Applicant's Exhibit 1.

10 MS. WHITE: Your Honor, my only concern is we haven't
11 subpoenaed Matt Shealy because he wasn't representing him at the plea. I
12 would like to have him to be able to come in and respond to anything since
13 apparently was from his email.

14 So I would like to — to be able to get him from across the hall maybe
15 prior to entering this into evidence so that we can have him to confirm this.

16 THE COURT: I'll be glad to let you have him come in and — and
17 testify.

18 MS. WHITE: Okay.

19 THE COURT: I'm going to go ahead and admitted into evidence
20 subject to that.

21 MS. WHITE: Okay.

22 (Whereupon, Applicant's Exhibit Number 1 was marked and
23 admitted into evidence.)

24 MS. WHITE: All right. Thank you, Your Honor.

25 MR. ROGERS: Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 Q. (By Mr. Rogers) Mr. Bolin, prior to receiving this in the mail from my
3 office, had you ever been made aware, by anyone in the public defenders office,
4 that there had been an offer made by the solicitor with a five-year cap?

5 A. No, sir.

6 Q. All right. If you had knowledge of that at the time, would you have
7 agreed to that plea offer?

8 A. Yes, sir.

9 Q. Let's — let's go back just a second. You mentioned that one charge
10 would be dropped. That's noted in this Exhibit 1, that the first — the first count the
11 solicitors have dismissed this case prior upon — upon a prior conversation. You
12 only pled to two charges, correct?

13 A. Yes, sir.

14 Q. All right. Can you just briefly explain to the Court why this charge was
15 being dropped that's referenced in here?

16 A. I was in jail when the crime happened.

17 Q. Okay. So that dealt with a charge that related to something that
18 happened on June 2nd?

19 A. Right.

20 Q. And you were incarcerated in Spartanburg County on June 2nd?

21 A. On June 2nd, yes, sir.

22 Q. So clearly that one was going to be dismissed because it did not
23 involve you, correct?

24 A. Right.

25 Q. But that's not at issue in this case. I just wanted to clear that up with

1 everybody.

2 A. Yes, sir.

3 Q. As a result of your plea hearing, what were you sentenced to?

4 A. Ten (10) years.

5 Q. All right. Double what the cap was that was going to be

6 recommended?

7 A. Yes, sir.

8 (Brief Pause)

9 Q. And just, with regard to the restitution amount, is that the same amount
10 that you were ordered to pay restitution on, approximately \$704?

11 A. I can't swear to that.

12 Q. But the order in the record, with regard to restitution, would reflect what
13 you actually paid?

14 A. Yes, sir.

15 Q. Okay. Your recollection was if — if not the same number, very close
16 to that number?

17 A. Yes, sir.

18 MR. ROGERS: And, Your Honor, I think the Court can take
19 judicial notice of the order of restitution that was filed on April 15th, 2011 has
20 those same amounts in it with regard to the two charges at issue; \$504 on
21 the— filed under the case number ending in 3656, and, then, \$200 on the one ending in
22 of that.

23 And it actually I think was attached to the return that was also
24 submitted with the — by the State.

25 (Brief Pause)

1 Q. (By Mr. Rogers) Mr. Bolin, other — other than this email, did you ever
2 have any discussion with Matthew Shealy with regard to the plea offer?

3 A. No, sir.

4 Q. All right. Did Mr. Cheeks ever bring it up on the 14th or the 15th?

5 A. No, sir.

6 Q. Did you have any knowledge of it prior to entering your plea?

7 A. No, sir.

8 Q. All right. And had you known about it, would you have agreed to the
9 five-year cap?

10 A. Yes, sir.

11 Q. All right. And assuming the Court would have gone along with the
12 recommendation of the solicitor, you would have been sentenced to half of the time
13 you were?

14 A. Yes, sir.

15 Q. Is there anything else you'd like to share with the Court with regard to
16 why you brought this PCR application?

17 A. No, sir.

18 MR. ROGERS: Thank you, Your Honor.

19 THE COURT: Ms. White?

20 MS. WHITE: Thank you, Your Honor.

21 **CROSS EXAMINATION by MS. WHITE:**

22 Q. Mr. Bolin, you had previously been sentenced to at least six prior
23 shopliftings prior to this arrest; is that correct?

24 A. I guess.

25 Q. Okay. So, when they read your record out at your plea, starting in

1 1993, there were some shoplifting arrests until this one and a probation revocation
2 from a 2006 arrest?

3 A. Yes, ma'am.

4 Q. And you have a record that also included burglary, petit larceny, grand
5 larceny, malicious injury to property, numerous other things like that; is that correct?

6 A. Yes, ma'am.

7 Q. Okay. And, when the judge was telling you that you understood he
8 could sentence you up to ten (10) years on each of the charges, and then asked you
9 if you still wanted to enter the plea and you said, "Yes, sir," were — did you not
10 believe the judge that he could sentence you up to ten (10) years or what caused
11 you to say, "Yes, sir," if you are so concerned about this plea?

12 A. Well, I mean, as you just read, it's obvious I've been in front of the
13 Court before. Any time the State has ever made a recommendation, that's a
14 sentence I got.

15 And I was led to believe that I was pleading that day for a four-year
16 concurrent sentence with the probation violation and everything by Mr. James
17 Cheeks.

18 Q. Okay. But you did just acknowledge that the solicitor announced that
19 this was not a negotiated and there were no recommendations on the plea.

20 A. Right.

21 Q. And that's when you said you stopped the plea.

22 A. I stopped to talk to James Cheeks and he assured me that he already
23 had it worked out.

24 Q. Okay. So, again, when the judge said, "You understand I can
25 sentence you up to ten (10) years on each of these, do you still want to go forward,"

1 your statement is that you were just blindly believing or that you thought you were
2 getting four years?

3 A. Yes, ma'am.

4 Q. Okay. And, when the judge asked you if all the answers had been
5 truthful and if you were guilty of the crime and you said, "Yes, sir," was that the
6 truth?

7 A. Without a guilt, I was guilty of the crime, yes, ma'am.

8 Q. Okay. So your allegations that you are not the person that shoplifted
9 and you were not guilty, you are retracting those allegations that you placed in your
10 application?

11 A. I actually never — I actually ever stole anything. I was with the person
12 that did steal anything. And since then I've read it and — and it pretty much makes
13 me guilty.

14 Q. Okay. And your statement is that, when you talked to James Cheek,
15 he promised you a four-year —

16 A. Everything to run concurrent with the probation violation, yes, ma'am.

17 Q. Okay. And — and I want to clarify. You're saying everything to run
18 concurrent with your probation violation. The sentences were run concurrent with
19 your probation violation, were they not?

20 A. No. The probation violation was run concurrent with the ten (10)
21 years.

22 Q. They were all run concurrent together; is that correct?

23 A. To ten (10) years, not a four-year probation violation, yes, ma'am.

24 Q. And maybe it's — maybe it's just a — a — a lack of understanding, but
25 the fact of the sentences running concurrent, that doesn't mean that they end at the

1 same time. That means that they start at the same time and go on. Do you
2 understand that difference?

3 **(Brief Pause)**

4 **A.** A concurrent sentence means you're doing them all at the same time.

5 **Q.** Right, but your probation —

6 **A.** But, of course, the larger number — the larger number would outweigh
7 the smaller number.

8 **Q.** Okay. All right.

9 **MS. WHITE:** That's all I have for this witness, Your Honor.

10 **THE COURT:** Any redirect?

11 **MR. ROGERS:** None, Your Honor.

12 **THE COURT:** Thank you, sir. You may step down.

13 **A.** Thank you.

14 **(Witness complied with the Court's request.)**

15 **THE COURT:** Mr. Rogers, do you have any other witnesses?

16 **MR. ROGERS:** No other witnesses, Your Honor. That's all we
17 have.

18 **MS. WHITE:** Your Honor, if you'll give me a second to step —
19 step across the hall —

20 **THE COURT:** Would you pass me up that email, please?

21 **(Document handed up.)**

22 **THE COURT:** I'm sorry.

23 **(Off-the-Record Comments)**

24 **(Brief Pause while Ms. White steps across the hall to find Matthew**
25 **Shealy.)**

1 (Off-the-Record Comments)

2 MS. WHITE: Your Honor, if he could have a moment to look
3 over the file?

4 (Pause)

5 MS. WHITE: Your Honor, I think we're ready. The State would
6 call Matt Shealy to the stand.

7 THE COURT: Come around, Mr. Shealy.

8 MR. SHEALY: Yes, sir.

9 (The witness stepped forward to be sworn.)

10 (Off-the-Record Comments)

11 (Whereupon,

12 MATTHEW SHEALY, ESQUIRE

13 first being duly sworn, testified as follows:)

14 DIRECT EXAMINATION by MS. WHITE:

15 Q. If you could, state your name for the record.

16 A. My name is Matthew Shealy.

17 Q. Mr. Shealy, where do you work right now or what agency do you work
18 with?

19 A. With the Spartanburg County Public Defenders Office.

20 Q. And do you recall being appointed to represent Mr. Frank Bolin?

21 A. I do.

22 Q. Okay. And you have been shown an email that was sent by one of the
23 assistant solicitors, Prima Tailor, from October 26th, 2010, about eight months prior
24 to or six months prior to that plea in this case regarding a plea offer. Do you recall
25 anything about that plea offer, if you were able to convey that Mr. Bolin?

1 A. It doesn't appear that I was able to. I attempted to, but unfortunately, I
2 couldn't find him.

3 Q. And tell me what you did to try to find Mr. Bolin.

4 A. I received an offer October 26th at 4:00, on a Tuesday. I attempted to
5 call the phone number that I had on November the 1st that the offer was going to
6 expire whenever it hit the trial docket.

7 So that would've taken some period of time, but I called the phone
8 number 237-7549. It rang and went to busy; it wouldn't work.

9 November 2nd, I attempted to write him a -- a letter asking him to
10 contact me. That letter subsequently came back. November 2nd I wrote the letter.
11 The letter came back -- it looks like it was returned November 5th. So that's what
12 happened with that.

13 Q. So, at that point, you had no other contact information for Mr. Bolin
14 other than the address and phone number he had provided the office?

15 A. Correct.

16 Q. And, to your knowledge, ultimately was the plea offer extended? Did it
17 expire? Do you have any information on that?

18 A. I do not. It would have expired at the time the case appeared on the
19 trial docket. Now, obviously, the State can withdraw an offer whenever they feel like
20 it. So, even though it would have expired at its appearance on the trial docket, the
21 State has a right to revoke it if they want to, so...

22 Q. And was this plea offer for a negotiated plea?

23 A. It was not. It was a cap of five (5) it looks like. There was an issue
24 with one of the warrants and Mr. Bolin didn't plea to that. That was dismissed
25 because he had a -- I believe an alibi as to that one.

1 As to the other two, the offer was to plead guilty. Restitution was \$200
2 to Dollar General, according to the offer, and \$504 to Ingles. It would be joint and
3 several with Christie DeNoache (phonetic). And there was a cap of five (5) years on
4 both.

5 Now, obviously, the judge can do whatever he wants with a cap. So,
6 even if he pled to a cap, the judge could have given him whatever he wanted to.

7 **Q.** Okay. And did you — once you had represented him, at what point
8 did Mr. Cheek take over for the representation; do you recall?

9 **A.** Off the top of my head, no, I do not. I assume he was — there was a
10 probation issue. It may be that he was placed in the Department of Corrections and
11 brought back and he took care of it that way. I just — I can't say.

12 **Q.** Okay. And in general do you handle plea issues or, if somebody
13 wants to plead from the jail, how is that normally handled?

14 **A.** Well, it — it depends. Oftentimes Mr. Cheek takes care of it. And,
15 when Mr. Cheek is taking care of it, I get out of the way because he's — he's very
16 good at that.

17 **Q.** Okay. All right.

18 **MS. WHITE:** I think that's all the questions I have at this time,
19 Your Honor.

20 **THE COURT:** Cross examination?

21 **MR. ROGERS:** Thank you, Your Honor.

22 **THE COURT:** Yes, sir.

23 **CROSS EXAMINATION by MR. ROGERS:**

24 **Q.** Mr. Shealy, do you have the copy of your letter from November the
25 2nd?

1 A. I do.

2 Q. May I take a look at it, please?

3 **MR. ROGERS:** Your Honor, can I approach?

4 **THE COURT:** Yes, Sir.

5 **MR. ROGERS:** Thank you.

6 (Document handed to Mr. Rogers.)

7 (Brief Pause)

8 A. I also have the original letter that came back if you would like to see
9 that. That's a conforming (phonetic) copy.

10 Q. (By Mr. Rogers) It's an conforming copy of what you sent and this is —
11 and you've got the original?

12 A. Right. It's in writing as to when we received it. And I assume that,
13 that's accurate, the stamped copy.

14 Q. And that would have been stamped by somebody in the public
15 defenders office saying it had come back?

16 A. Yes — yes.

17 Q. Okay.

18 (Brief Pause)

19 Q. Can I use that as an exhibit or do you need to get a copy of it for a
20 later date?

21 A. No.

22 Q. For your records?

23 A. No, I don't think so.

24 **MR. ROGERS:** Your Honor, I would offer the letter, the original
25 letter that was sent, into evidence as an Applicant's Exhibit.

1 **THE COURT:** With the return receipt attached?

2 **MR. ROGERS:** With — with the envelope and the notation as
3 indicated by the witness.

4 **MS. WHITE:** No objection, Your Honor.

5 **THE COURT:** All right. Admitted without objection.

6 **(Whereupon, Applicant's Exhibit Number 2 was marked for**
7 **identification and admitted into evidence without objection.)**

8 **Q.** (By Mr. Rogers) Mr. Shealy, I'm going to look on your conforming copy
9 so you'll have the exhibit in front of you.

10 **A.** Okay.

11 **Q.** If you would just read along with me. It says, "Mr. Bolin, please
12 contact me as upon receipt of this letter at the above address and the phone
13 number. I have been unable to reach you. Should you have any questions, please,
14 do not hesitate to contact me. Sincerely..." and it's got your signature, correct?

15 **A.** Correct.

16 **Q.** Okay. Nowhere in that letter do you mentioned that there's a plea
17 offer, correct?

18 **A.** No, sir.

19 **Q.** Okay. And you didn't hear any response to your letter, correct?

20 **A.** Correct.

21 **Q.** All right. Because you don't know if it ever actually -- actually got to
22 him —

23 **A.** Correct.

24 **Q.** — because it came back returned?

25 **A.** I actually should say I did get a response, but it was from the post

1 office that it came back.

2 Q. Okay. Did you have any subsequent communications with Mr. Bolin
3 after the November 2nd letter?

4 A. If you'll bear with me.

5 Q. Sure.

6 **(Brief pause while Mr. Shealy examines documents.)**

7 A. It looks like I did.

8 Q. And how did you communicate with him after November 2nd?

9 A. By letter to the department of corrections.

10 Q. What was the date on that?

11 A. It looks like in March of 2011 — well, February of 2011.

12 Q. So in February 2011 he was incarcerated?

13 A. It looks that way, yes.

14 Q. And you knew how to get in touch with him based on your letter ---

15 A. I did or I should have.

16 Q. Do you know if his case appeared on the trial docket at that point in
17 time?

18 A. I can't speak to that.

19 Q. All right. In — in that communication, do you relate to him the
20 settlement offer that you had received by way of email in October?

21 A. If you'll bear with me just one minute.

22 **(Brief pause while Mr. Shealy examines documents.)**

23 A. I'm looking at his letters to me after that (phonetic).

24 **(Brief Pause)**

25 A. It looks like it was in response to a request for discovery. So I sent him

1 some letters to support discovery.

2 Q. You said you were looking at his letters to you.

3 A. Yeah, I'm hunting. It looks like I wrote him a letter on April 4th of 2011
4 letting him know the — the discovery.

5 Q. You referred to an earlier date before when you had communicated
6 with him before April, correct?

7 A. It looks like — well, yeah, and they were his letters to me. It looks like
8 March 3rd I attempted — I sent him a letter explaining to him that I attempted to mail
9 the discovery; it was undeliverable.

10 I attempted to contact him, I couldn't contact him. He had a probation
11 violation. That was the probation issue I was discussing. It looks like Ms. Hodges
12 handle that.

13 Q. And that was March 3rd?

14 A. Yes.

15 Q. And that was your letter back to a request that you had received from
16 him?

17 A. Correct.

18 Q. Do you know what date was on his request to you?

19 A. As to that particular one, there were a number of requests forms. He
20 was asking me to get some — a charge dismissed. He was asking what was going
21 on with that. As I explained, I had gotten a dismissal —

22 Q. Well, let me ask you this: The first request you received, after you got
23 the letter back on November 8th —

24 A. Uh-huh (affirmative).

25 Q. — that didn't get delivered, what was the first request you received

1 for Mr. Bolin while he was incarcerated?

2 **(Brief pause while Mr. Shealy reviews documents.)**

3 A. It looks like in February, 2011. Again, I'm — there are a number of
4 letters in this.

5 Q. And are they on the — the county form or from the detention center
6 form?

7 A. Some of them are, some of them are not.

8 Q. Okay.

9 **(Brief Pause)**

10 Q. But to — to summarize, as early as February of 2011, you knew where
11 Mr. Bolin was; he was incarcerated?

12 A. It looks that way.

13 Q. Okay. And, in any of your correspondence from that point in time
14 where you knew where he was, did you relay the settlement proposal that had been
15 made by the assistant solicitor?

16 A. It doesn't appear that I did.

17 Q. Okay.

18 A. And I would have —

19 Q. And ---

20 A. And I would have thought that I had, but it doesn't appear that I did.

21 Q. And you — and you just said you would — you should have? You
22 agree with that?

23 A. I do, I do.

24 Q. Okay.

25 A. And ordinarily I make a note. Unfortunately, if there's a note on my

1 computer, obviously, I don't have a computer with me.

2 Q. You don't — you don't see anything in the file that says —

3 A. I do not.

4 Q. Okay.

5 (Brief Pause)

6 Q. Do you know if — is there anything in your file that suggests that you
7 — that you mentioned to Mr. Cheek the possibility of a settlement offer that had
8 been made at one point in time?

9 A. No, sir. Now, the way that Mr. Cheek handles those, he speaks with the
10 solicitor's office. The reason for that, again, is once he gets involved in the case, I
11 get out of the way because, again, he's just better at it than I am.

12 Q. Okay. And my — my civil lawyer got out in me; I said settlement
13 offer. Obviously, I meant a plea offer.

14 A. Plea offer, sure.

15 Q. Okay.

16 MR. ROGERS: Nothing further for this witness, Your Honor.

17 Thank you.

18 MS. WHITE: Just one brief follow-up question.

19 REDIRECT EXAMINATION by MS. WHITE:

20 Q. Mr. Shealy, you said that you would have thought you would have sent
21 something to the applicant about the plea offer. What's your general practice when
22 you do get a plea offer from the solicitor's office?

23 A. Well, ordinarily I try to talk to somebody because — for a couple of
24 reasons. One, whenever they're out of jail, we don't know who's opening their mail
25 quite frankly.

1 I've had a number of clients to, for whatever reason, go to their mom's
2 house or their girlfriend's house or the baby's mamma's house (phonetic), or
3 somebody who ought not be reading the mail that I write.

4 That's why I don't talk about a settlement offer in that letter because
5 one, it's -- it's just a bad idea.

6 And, two, if he has questions then, you know, he needs to talk to me
7 about it. And he doesn't need to have conflicting information from various family
8 members. Again, he's got a co-defendant who was his girlfriend at the time, things
9 of that nature.

10 Also, when it's at the jail, again, it's not necessarily the most secure
11 way of delivering information. And ordinarily I would've gone and talked to him. But,
12 again, as to the -- the way that I usually handle people who have probation
13 violations, and these kinds of charges, is I try to wait until the probation violation is
14 taken care of.

15 And the reason for that is, generally speaking, depending on your
16 judge, you can convince them to run it concurrently -- the current charges
17 concurrent with the probation violation.

18 And that way they can hopefully one, get less time. And two, if it's run
19 concurrently, you can deal with all of them expeditiously and get it all wrapped up,
20 which is what appears to have happened here.

21 He got sentenced on the probation violation. Mr. Cheek worked out a
22 -- a deal for him. And a deal for which he was apparently satisfied and he pled
23 guilty.

24 **MS. WHITE:** Okay. Thank you. That's all I have, Mr. Shealy.

25 **THE COURT:** All right. Anything further?

26 **MR. ROGERS:** Nothing, Your Honor.

1 **THE COURT:** Mr. Shealy, I'm going to ask you to do me a favor,
2 if you would.

3 **MR. SHEALY:** Yes, sir.

4 **THE COURT:** When you have an opportunity, check your
5 computer to see if there's any notations on that and make that available to
6 us, please, sir.

7 **MR. SHEALY:** Yes, sir, I will.

8 **THE COURT:** Any objection to that request by either side?

9 **MR. ROGERS:** Your Honor, the — the only issue I would have is,
10 depending on what it is, I'd like to at least have an opportunity to question
11 him —

12 **THE COURT:** By the State?

13 **MS. WHITE:** No objection, Your Honor.

14 **THE COURT:** Do you have no opportunity to do that now or do
15 you —

16 **MR. SHEALY:** I do, Your Honor. I've got my computer right
17 across the hall. I'm in pleas.

18 **THE COURT:** Okay.

19 **MR. SHEALY:** And I don't think I'm —

20 **THE COURT:** Is that asking too much to do to try to do that right
21 now?

22 **MR. SHEALY:** No, sir. I can go on over there. Well, assuming
23 the bailiff will let me in.

24 **THE COURT:** He'll let you in. All right. Thank you, Mr. Shealy.

25 **MR. SHEALY:** Thank you, Judge.

1 (Mr. Shealy step down from the witness stand and left the
2 courtroom.)

3 (Off-the-Record Comments)

4 THE COURT: Ms. White?

5 MS. WHITE: Thank you, Your Honor. Your Honor, we'll go
6 ahead and call Mr. James cheek to the stand.

7 (The witness stepped forward to be sworn.)

8 (Off-the-Record Comments)

9 (Whereupon,

10 MR. JAMES CHEEK, ESQUIRE

11 first being duly sworn, testified as follows:)

12 DIRECT EXAMINATION by MS. WHITE:

13 Q. If you wouldn't mind, please state your name for the record.

14 A. James Cheek.

15 Q. And, Mr. Cheek, can you tell us how you ultimately became — or
16 became the attorney for Mr. Bolin in this case at the plea?

17 A. Yes. My duties with the public defenders office is to make
18 communications with inmates or allow myself to be available to them for
19 communication.

20 My office is actually located in the Spartanburg County detention
21 facility. In line with that, I do two things. I post a sign-up sheet for inmates once
22 they come into the facility, either as new arrest or bench warrants, or for whatever
23 reason they come into the facility.

24 I post one in each pod. I ask them if they want to talk with me about
25 the possibility of a guilty plea. Otherwise, I don't communicate with them.

1 And, when a person signs that form, I go and see them as soon as I
2 can get information about their cases from the office, as well as from the solicitor's
3 office.

4 I generally make it a practice to communicate with the attorney on the
5 case letting them know I'm looking into it so I don't get in their way. And, then, I
6 communicate with the solicitor, generally request a copy of their actual file or their
7 file itself. And, then, I go and interview the client regarding their request that I
8 discuss a guilty plea with them.

9 And that is how I communicated with Mr. Bolin. He signed a sheet
10 indicating he wanted me to come and see him, along with other inmates.
11 And, when I get as much information as I can on various people, I go and interview
12 those people. And that's how I communicated with Mr. Bolin.

13 **Q.** And do you recall, in your communications with him, what — any
14 discussion about potential plea offers or deals or concurrent vs. consecutive or...

15 **A.** Well, in a letter to Mr. Shealy, he indicated — meaning Mr. Bolin —
16 that he wanted to work out something as far as a plea was concerned. His wife was
17 a co-defendant in both of these cases.

18 Her cases remained at the Magistrate Court level. Hers had already
19 been resolved. It's my recollection, both in my first conversation with him as well as
20 his letter, that she already made the restitution. He had monies to show that.

21 With that in hand, I went back to the solicitor and I explained to her
22 that the restitution had already been paid, would she consider re-opening and
23 making the offer again on the cap of five.

24 And my understanding from Ms. Prima — Prima Tailor she said
25 "Absolutely not. The offer had expired. He had plenty of time to respond."

26 And, then, I heard from him and she was not going to remake the

1 offer.

2 What she did agree to do was not oppose anything I might ask the
3 Court for in the actual presentation of the plea and certainly not oppose that we ask
4 the Court to run the current charges in sentencing with any revocation on his
5 probation . And that is what I discussed with Mr. Bolin.

6 Q. Okay. And, at the time that you discussed that with him, did you feel
7 that he understood the possible sentencing range he could receive for these
8 charges?

9 A. Absolutely. Mr. Bolin has a criminal history. He's a very bright man.
10 He was very good in discussing his case with me, asking the questions that would
11 lead to any kind of defense he would offer in the case, wanting to know about some
12 outstanding charges, whether they had been dismissed that he felt that he was not
13 guilty of and that he was actually incarcerated at the time that the officer brought
14 charges against him.

15 And, from everything I could understand from Ms. Taylor, as well as the
16 solicitor's report, those charges had been dismissed .

17 So he had — he had two shopliftings. There was one at Dollar
18 General, the other at I think it was Ingles on Abernathy Highway.

19 Q. Okay. And, when you went before the Court to handle the guilty plea,
20 did you feel or did Mr. Bolin indicate any concerns to you about the plea — going
21 forward with the plea when it was announced there were no recommendations?

22 Had he —

23 A. In —

24 Q. I'm sorry.

25 A. In — in anticipation of presenting the plea, there was some question

1 that he had about whether or not he would get the same four (4) years that he got
2 on the violation of probation. I very clearly made it known to him that it was not
3 going to be opposed, but there was not going to be an offer in his case period.

4 And so, when we went before the Court, I — I told him I would — I
5 assured him I would ask the judge; that it would be brought to his attention that
6 there was a four-year sentence he would be serving at the department of corrections
7 and would he be kind enough to run the same four (4) years and certainly run
8 everything concurrent.

9 And that's what I told Mr. Bolin would be my request to the Court; that
10 he not be given any additional time other than what he was going to be serving
11 already at the department of corrections.

12 But there was never any offer. There was never any promise. There
13 was never any assurance or guarantee regarding any of that other than I would
14 make the request to the Court.

15 Q. Okay.

16 MS. WHITE: Thank you, Mr. Cheek. That's all the questions I
17 have, Your Honor.

18 MR. ROGERS: Mr. Cheek, just a few questions with regard to this.
19 And I want to make sure I'm clear as to what it was that you said you relayed
20 to Mr. Bolin.

21 **CROSS EXAMINATION by MR. ROGERS:**

22 Q. Did I understand your testimony correctly that you went back to the
23 assistant solicitor with regard to the initial plea offer that have been made back in
24 October?

25 A. Yes.

1 Q. All right. Did you ever discuss that initial plea with Mr. Bolin?

2 A. No. I asked her would she make an offer in the case and she said no.

3 Q. Okay. So, when you said you discussed with Mr. Bolin, what you were
4 talking about is you were discussing that she would not object to concurrent
5 sentencing and running the two pending charges at the time with the revocation of
6 probation as concurrent?

7 A. She would not oppose it.

8 Q. Okay.

9 A. She would not recommend it, but she would not oppose it.

10 Q. Okay. So what you're saying is, you — you didn't mention the initial
11 plea to him, though, at that time?

12 A. Well, that did not exist any longer.

13 Q. Okay. How many cases do you handle during a given term on
14 average?

15 A. Oh, that's difficult to say. I would think maybe 50.

16 Q. Okay. In this plea hearing, there were multiple defendants involved,
17 correct?

18 A. At the hearing did I present other cases unconnected with this one?
19 Is that what you're asking me?

20 Q. No. At the time, when Judge Hayes went forward with this plea, were
21 there multiple defendants who went through the questioning initially?

22 A. Correct.

23 Q. All right. And, then, there was kind of break out or separate
24 questioning and presentation of the case by the solicitor with regard to Mr. Bolin,
25 correct?

1 A. Correct.

2 Q. All right. During the portion dealing with Mr. Bolin specifically, when
3 the solicitor made reference to without recommendation or negotiation —

4 A. Correct.

5 Q. — do you recall Mr. Bolin stopping that proceedings at that point in
6 time?

7 A. Yes.

8 Q. And did you all have discussions at that time?

9 A. Yes, we did.

10 Q. What was the nature of your discussion?

11 A. He wanted to know if she were going to agree to the four (4) years. I
12 told him no. That was not — there was not an offer, there was not going to be an
13 offer, but I would assure him that I would request the Court to consider running it
14 concurrent and to not impose a greater sentence other than what he was going to
15 be serving on the violation of probation.

16 Q. Okay. Do you remember when you first —

17 A. And he moved forward.

18 Q. I'm sorry. Do you remember when — — —

19 A. He moved forward with the plea at that time.

20 Q. Do you know when you first met Mr. Bolin?

21 A. I don't know what day it was, but it would have been about a week
22 before I went to see him for the second time.

23 Q. And the second time would've been the —

24 A. It was not, as he testified, the day before or the morning of. I don't do
25 that.

1 Q. Well, was the second visit the day before or the morning of?

2 A. Most probably.

3 MR. ROGERS: Nothing further, Your Honor.

4 THE COURT: Anything further?

5 MS. WHITE: Nothing further, Your Honor.

6 THE COURT: May this witness be excused?

7 MS. WHITE: Yes, Your Honor.

8 MR. ROGERS: No objection.

9 MS. WHITE: Oh — well, for this case, Your Honor, yes, sir.

10 THE COURT: Never mind, never mind. Thank you, Mr. Cheek.

11 MR. CHEEK: Thank you, Your Honor.

12 THE COURT: Anything further, Ms. White?

13 MS. WHITE: And the State has nothing further, Your Honor.

14 THE COURT: Anything further in reply, Mr. Rogers?

15 MR. ROGERS: Your Honor, I do have a — a memo to hand up.

16 And a — a technical matter since the issue has come up with regard to the
17 failure to relay this plea offer.

18 I think technically I probably should amend his application to include
19 that to conform with the evidence I've presented.

20 THE COURT: That's granted.

21 MR. ROGERS: I — I have an original memo, Your Honor, that I
22 probably need to file. I'll be happy to hand it up if you want me to or I
23 can —

24 THE COURT: Go ahead and file that and make it a — a court
25 record in this matter and I'll just get a copy of it.

1 **MR. ROGERS:** All right. And, then, Your Honor, I would go ahead
2 — and I'll hand up a copy of the case that's cited heavily in it, which is —

3 **THE COURT:** Is it *Davie vs. State* (phonetic)?

4 **MR. ROGERS:** It is, Your Honor.

5 **THE COURT:** Okay. I've got that.

6 **MR. ROGERS:** All right. Well, I'll give one to opposing counsel. If
7 you've got it already, I'll ----

8 **MS. WHITE:** I've got it.

9 **MR. ROGERS:** Okay.

10 **MS. WHITE:** And, Your Honor, the State would request an
11 opportunity, since I've not seen the memo and was not informed of the
12 allegations of failure to convey a plea offer, that we would have a chance to
13 also submit a memo.

14 **THE COURT:** Sure.

15 **MS. WHITE:** Thank you.

16 **THE COURT:** All right. And let me just say this: Let me rule —
17 you all can be seated.

18 **(Counsel complied with the Court's request.)**

19 **THE COURT:** As a preliminary matter, I'm not going to address
20 any of the issues of failure to relay the offer by Mr. Shealy.

21 I have to say I have some concerns. The way I'm looking, at what I've
22 heard, Mr. Shealy tried to get in contact with this Defendant, was unable to do
23 so at an address and number provided by the Defendant.

24 So I'm looking at the case from the factors set forth in *Davie*, in
25 addition to the failure of the Defendant to stay in communication with his

1 attorney and make his whereabouts or his address known to his counsel in
2 addition.

3 With that being said, Mr. Cheek, is there any way that you can tell me
4 when this case went on the trial docket?

5 **MR. CHEEK:** Your Honor, I don't have that information; I
6 could —

7 **THE COURT:** Would you give it to Ms. White, please?

8 **MR. CHEEK:** I will, Your Honor.

9 **THE COURT:** And the reason I ask is because, if the offer had
10 been expired prior or hadn't expired prior to Mr. Shealy finding the
11 whereabouts of this Defendant, I think that adds another wrinkle to the
12 evaluation.

13 However, let me check with Mr. Rogers. Your grounds are ineffective
14 assistance of counsel by Mr. Cheek in that he let him go forward or didn't
15 relay a — an offer to him or — I wasn't quite sure what that ground was as to
16 Mr. Cheek.

17 **MR. ROGERS:** Your Honor, with regard to Mr. Cheek, it was the
18 fact that he instructed him that everything had been resolved and taken care
19 of with regard to the concurrent four-year —

20 **THE COURT:** Gotcha.

21 **MR. ROGERS:** — connected with the probation revocation.

22 And, Your Honor, based on *Davie*, I would also submit that Mr. Cheek, as the
23 plea counsel, should have objected and brought to the Court's attention that
24 there was an initial plea that had been made that had not been relayed to my
25 client.

1 **THE COURT:** All right. As to the — the claim against Mr. Cheek,
2 I am denying you petition for the record; that the colloquy is clear.

3 Mr. Bolin was asked all the appropriate question by Judge Hayes. He
4 was made abundantly clear that there was no recommendation or negotiation
5 in this matter.

6 The judge gave him the opportunity to speak with his client, which he
7 decided he would do, and he chose to go forward with his plea. He was
8 advised of his right to a jury trial, yet he decided to go forward after Judge
9 Hayes told him that he could be sentenced to ten (10) years on each of the
10 charges.

11 Therefore, I find that his claim against Mr. Cheek is without merit and
12 denying that.

13 As to the claim of innocence, by your own admission, in the trial record
14 and here today, that is just manifestly without merit. So I'm denying that.

15 I am concerned, however, about the failure to relay the plea offer.
16 Also, obviously, if you were willing to go forward looking at ten (10) years, two
17 separate times concurrently, there's a likelihood you very well may have
18 accepted the five-year offer provided to him especially based on his criminal
19 record.

20 So I want to compare that with his obligation to the State to
21 communicate with Counsel.

22 Now, Mr. Shealy, did you find anything on — in your computer, sir?

23 **MR. SHEALY:** I checked, Your Honor. I couldn't find anything.

24 **THE COURT:** Thank you very much. Thank you for doing that.

25 Is there any reason why Mr. Shealy can't be excused to go back to his pleas?

1 **MR. ROGERS:** No, Your Honor.

2 **MS. WHITE:** No, Your Honor.

3 **THE COURT:** Thank you for being here, Mr. Shealy.

4 **MR. SHEALY:** Thank you, judge.

5 **THE COURT:** All right.

6 **(Whereupon, Mr. Shealy was excused.)**

7 **THE COURT:** All right, anything further from either side?

8 **MR. ROGERS:** (Shakes head negatively.)

9 **THE COURT:** Okay.

10 **MR. ROGERS:** No, Your Honor.

11 **MS. WHITE:** Nothing, Your Honor, as — as long as we have a

12 chance just to read over the memo and ----

13 **THE COURT:** How long — okay. How long do you think you

14 need to do that? I know you've got a busy schedule.

15 **MS. WHITE:** Thirty (30) days? Or is that ---

16 **MR. ROGERS:** It is a very short memo.

17 **MS. WHITE:** Is it? Okay.

18 **THE COURT:** Well, take a look at it and tell me —

19 **MS. WHITE:** Okay.

20 **THE COURT:** And just -- we'll make sure we know what you

21 know, how long she's going to ask for, because you will have to turn anything

22 in you turn it into me, if you do, to Mr. Rogers ----

23 **MS. WHITE:** Sure.

24 **THE COURT:** — at the same time.

25 **MS. WHITE:** Sure. Yes, Your Honor.

1 **THE COURT:** All right. Very well. For the record, all the grounds
2 are denied except for the issue to relate the plea offer. Okay. Thank you all.

3 **MR. ROGERS:** Thank you, Your Honor.

4 **THE COURT:** Ms. White, when you find out the date this matter
5 went on the trial docket, would you also relate that to Mr. Rogers?

6 **MS. WHITE:** I certainly will, Your Honor.

7 **THE COURT:** Okay. Thank you. Mr. Rogers, if you'll give us
8 information, I'll have my law clerk try to do the same thing.

9 **MR. ROGERS:** All right, Your Honor. Thank you.

10 **(Whereupon, the proceeding was concluded.)**

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REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 40, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

March 9, 2014



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

Shealy, Matthew

From: Tailor, Prina
Sent: Tuesday, October 26, 2010 4:00 PM
To: Shealy, Matthew
Subject: Frank Bolln Plea Offer

M121326: Shoplifting 3d → I have dismissed this case per our prior conversations
M121325: Shoplifting 3d
M121340: Shoplifting 3d

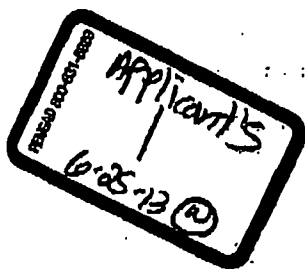
Matt

Restitution in this case is \$200 to Dollar General and \$504 to Ingles. Both amounts are Joint/Several with Co-Defendant Kristy Yanosh. If your client will agree to these amounts, I am willing to make a recommendation of cc sentencing w/ a cap of 5 years. Please contact me after you have discussed this offer with your client.

This offer expires at such time the case appears on a trial docket

Thank you for your attention to this case

Sincerely,
Prina Tailor
Assistant Solicitor
7th Judicial Circuit
ptailor@spartanburgcounty.org
office: 864-596-3858
fax: 864-596-2386



74

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN
CIRCUIT PUBLIC DEFENDER

366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG, SC 29303



TELEPHONE (864) 686-2661
FAX (864) 686-2284
FAX (864) 682-4412

November 2, 2010

Frank Bolin
Po Box 262
Arcudia, SC 29320

RECEIVED
NOV 2 2010
**PUBLIC DEFENDER
OFFICE**

Re: State v. Frank Bolin
Warrant/Ticket No(s): M121326; M121325; M121340

Dear Mr. Bolin:

Please contact me as upon receipt of this letter at the above address and phone number. I have been unable to reach you.

Should you have any questions, please do not hesitate to contact to me.

Sincerely,

Matthew W Shealy
Assistant Public Defender

2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Frank Bolin, Jr. #209887)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

ORDER OF DISMISSAL

This matter comes before the court by way of an application for post-conviction relief filed on February 27, 2012. The Respondent filed its Return on January 30, 2013. An evidentiary hearing on the matter was convened on June 25, 2013, at the Spartanburg County Courthouse. The Applicant was present and represented by Shane W. Rogers, Esquire. Suzanne H. White, Esquire, represented the Respondent, State of South Carolina.

At the hearing, the Applicant testified on his own behalf. Mr. James Cheek and Mr. Matthew Shealy testified on Respondent's behalf. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions. Applicant's records from the South Carolina Department of Corrections, the Return, the plea transcript and submitted memoranda.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the July 2010 term of the Spartanburg County Grand Jury for shoplifting, \$1000 or less, 3rd or subsequent offense (10-GS-42-3856), and for shoplifting, \$2000 or less, 3rd or subsequent offense (10-GS-42-3858). He was represented by James A. Cheek, Esquire. On

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April 15, 2011, the Applicant pled guilty as indicted. He was sentenced by the Honorable J. Mark Hayes, II, to confinement for concurrent terms of ten (10) years for each count of shoplifting. Judge Hayes also revoked applicant's probation in full, running it concurrent to the ten year sentences. The Applicant did not appeal his guilty plea, sentence or probation revocation.

ALLEGATIONS

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

1. Ineffective assistance of counsel in that;
 - a. "Counsel advised me to pled, and I am not guilty."
 - b. "I am not the person who shoplifted per the narrative."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCPP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

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

At the hearing, Applicant proceeded primarily on the issue of Shealy's failure to convey a plea offer from the State for a recommendation of five years concurrent with Applicant's probation revocation. The Applicant testified that on the day he pled, he understood there was a plea offer, but he was never told of the offer by either Shealy or Cheek. Applicant testified that

Cheek informed him that if he pled guilty he would receive a four year sentence run concurrent with his probation revocation. However, at the plea, Cheek never informed the court of any plea recommendations, present or past.

Cheek testified that he represented Applicant at the plea after Applicant indicated from the jail that he wished to meet with Cheek. Cheek testified that in his conversations with Applicant and Applicant's letters to Shealy, Applicant always wanted to plead guilty. Cheek testified that the offer had expired, but the State had agreed to not oppose Cheek's request at the plea. Cheek testified that the Applicant was informed of and aware of the sentencing range for the charges. Cheek also testified that the Applicant asked about a four year deal and Cheek informed him he would ask for a concurrent sentence with the probation revocation, but could not promise anything.

As to any claims that Cheek was ineffective in his representation at the plea or promised the Applicant a four year sentence, this Court finds that the Applicant failed to meet his burden of proof. This Court finds Applicant's testimony to be less credible than the testimony of Cheek in this regard. Additionally, the plea record is clear that Applicant was pleading guilty with no recommendations or negotiations; Applicant was advised of his rights and chose to proceed with the plea. "In the context of a guilty plea, the court must determine whether 1) counsel's advice was within the range of competence demanded of attorneys in criminal cases i.e. was counsel's performance deficient, and 2) if there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty." Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (citing Hill v. Lockhart, 474 U.S. 52, 56-58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)). The Applicant failed to demonstrate that he would not have pled guilty, but for any alleged errors by Cheek. Therefore, this claim is denied and dismissed.

Regarding the Applicant's claim that Shealy failed to convey a plea offer, this Court finds that the Applicant failed to meet his burden of proof. "Counsel's failure to convey a plea offer constitutes deficient performance." Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009). Prejudice is determined on a case-by-case approach in order to determine whether

"[B]ut for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefitted from the offer. Because presumed prejudice is reserved to very limited situations . . . a defendant must show actual prejudice.

However, it is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statements may be sufficient to establish actual prejudice." Davie, 381 S.C. at 613, 675 S.E.2d at 422 (citations omitted).

Shealy testified that he did receive an email from the State (Applicant's Exhibit #1) offering a recommendation of concurrent sentencing with a five year cap if the Applicant agreed to the restitution, but indicating that the offer expired at the time that the Applicant appeared on the trial docket. However, Shealy testified that he could not find the Applicant to convey the offer to him. The email was dated October 26, 2010. Shealy testified that he tried to call Applicant on November 1st and received no answer, then sent a letter to Applicant on November 2nd, which was returned as undeliverable on November 5th of 2010. (Applicant's Exhibit #2). This testimony is supported by the probation officer's testimony at the plea that the Applicant failed to appear for a probation violation hearing scheduled for December 10, 2010. (Tr. p. 16). Further, as Shealy testified, even if the State had made the recommendation to the court, the judge could have rejected the recommendation and sentenced Applicant up to ten years on each charge.

The Court has established that a case-by-case approach is most consistent with and achieves the "ultimate goal of assessing whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefited from the offer." Davie v. State, 381 S.C. 601, 613, 675 S.E.2d 416, 422 (2009). Because presumed prejudice is reserved to very limited situations, a defendant must show actual prejudice. Id.

A recent United States Supreme Court case has clarified the burden on the Applicant in situations of plea offers that were not conveyed. To show prejudice from ineffective assistance of counsel where a plea offer has lapsed or been rejected because of counsel's deficient performance, (1) not only must the Applicant show that they would have accepted the earlier plea offer, but (2) they must also show that the plea would have been entered without the State withdrawing the offer or the trial court refusing to accept it. Missouri v. Frye, 132 S. Ct. 1399, 1409, 182 L. Ed. 2d 379 (2012). "To establish prejudice in this instance, it is necessary to show a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." Id.

This Court finds that the Applicant failed to demonstrate that Shealy was deficient in failing to convey the offer, because this Court finds Shealy's testimony regarding his attempts to contact the Applicant credible. The Applicant failed to make contact with his attorney or provide his attorney with a current address or phone number, which made it unfeasible for his attorney to convey any plea offer to him. Therefore, any prejudice suffered was as a result of Applicant's own conduct. Therefore, the Applicant failed to meet his burden of establishing that Shealy was ineffective in this regard. These claims are denied and dismissed.

SUMMARY

This Court finds that both Shealy and Cheek are experienced attorneys who were prepared for and effectively represented Applicant at his plea. This Court finds Counsel adequately conferred with the Applicant, was thoroughly competent in their representation, and that Counsels' conduct does not fall below the objective standard of reasonableness.

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

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

CONCLUSION

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

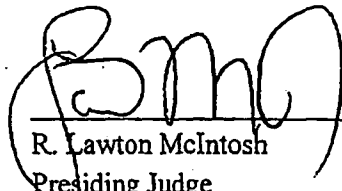
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate

review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 31 day of Oct, 2013.



 R. Lawton McIntosh
 Presiding Judge
 Seventh Judicial Circuit

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
Frank Bolin, Jr. #209887,	)	C.A. No.: 2012-CP-42-0993
)	
Applicant,)	
	)	APPLICANT'S MOTION TO
v.	)	ALTER OR AMEND
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

COMES NOW the above-named Applicant, Frank Bolin, Jr. ("Mr. Bolin" or "Applicant"), by and through his undersigned counsel, who, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, moves the Court to reconsider and to alter or amend the Order of Dismissal filed in this matter. Specifically, the Applicant asserts that the Order should be modified to grant the Applicant's Post-Conviction Relief Application and that the Applicant's plea should be vacated or, at a minimum, a new sentencing hearing should be conducted with the limitation that the sentence should not exceed the original sentence and that the sentencing judge should take into consideration the initial plea offer of concurrent sentencing with a five (5) year cap. This motion is based on the evidence and arguments presented at the evidentiary hearing, the Applicant's Memorandum in Support of Application for Post-Conviction Relief previously filed herein and the evidence and arguments set forth below.

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BRIEF PROCEDURAL HISTORY

Mr. Bolin was indicted on two separate shoplifting counts during the July 2010 term. On April 15, 2011, Mr. Bolin entered a plea to both counts as indicted. James A. Cheek, of the Spartanburg County Public Defender's Office, appeared with Mr. Bolin during the plea hearing. Prior to the plea hearing, Mr. Bolin had communicated with Matthew Shealy, another attorney

with the Spartanburg County Public Defender's Office. Mr. Bolin's plea was accepted by the Honorable J. Mark Hayes, II. Judge Hayes sentenced Mr. Bolin to confinement for concurrent ten (10) year terms on the two shoplifting counts. On February 27, 2012, Mr. Bolin filed his Application for Post-Conviction Relief ("PCR Application") asserting ineffective assistance of counsel. On or about January 30, 2013, Respondent served its Return to Mr. Bolin's PCR Application and requested an evidentiary hearing on the PCR Application. An evidentiary hearing was conducted on June 25, 2013.

An Order of Dismissal was executed by the Honorable R. Lawton McIntosh on October 31, 2013 and subsequently filed with the Spartanburg County Clerk of Court on November 7, 2013. The Applicant's undersigned attorney received a copy of the filed Order of Dismissal on November 13, 2013. The Applicant respectfully asserts that the Order of Dismissal should be altered or amended as set forth herein.

a. The Court's Ruling, As Set Forth In The Order Of Dismissal, Is Improper Given The Evidence And Legal Arguments Previously Presented.

The Applicant respectfully asserts that the Court's ruling, as set forth in the Order of Dismissal, is improper given the evidence and legal arguments previously presented in this matter. During the evidentiary hearing, Applicant presented ample evidence in support of his PCR Application. Specifically, the Applicant presented undisputed evidence that his public defender, Matthew Shealy, failed to relay a plea offer that had been made by the Spartanburg County Solicitor's Office. Mr. Shealy testified that he did not have any evidence to show that he had conveyed the plea offer to the Applicant. The Applicant testified that he did not know of the

plea offer until his PCR counsel provided him with a copy of the email attached hereto and incorporated herein as **Exhibit A** (Applicant's Exhibit #1).¹

The evidence in this matter clearly indicates that neither of Mr. Bolin's public defenders relayed the State's initial plea offer to him. Mr. Bolin, as a defendant, had the right to the effective assistance of counsel under the Sixth Amendment to the United States Constitution. *See Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The right to effective assistance of counsel extends to the plea bargaining process. *See Judge v. State*, 321 S.C. 554, 471 S.E.2d 146 (1996), over-ruled on other grounds by *Jackson v. State*, 342 S.C. 95, 535 S.E.2d 926 (2000). Based on the foregoing, Mr. Bolin's public defenders were required to fully communicate with him regarding matters related to the pending charges so that Mr. Bolin could make an informed decision regarding any offer from the State. The failure of Mr. Bolin's public defenders to convey the initial plea offer to Mr. Bolin constitutes deficient performance. *See Davie, supra* (Defense counsel performed deficiently by failing to relay the State's initial plea offer to the defendant).

Mr. Bolin was prejudiced by his counsels' deficient performance. The determination as to prejudice in a case such as this is based on a case-by-case analysis. *See Davie, supra* at 613, 675 S.E.2d at 422 ("We find a case-by-case approach is most consistent with our prior decisions and effectively achieves the ultimate goal of assessing whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea bargain and that he would have benefited from the offer."). Here, Mr. Bolin testified that he first learned of the initial plea offer during the pendency of Mr. Bolin's Post-Conviction Relief action. Mr. Bolin

¹ In the last full sentence on page 3 of the Order of Dismissal, the Court inaccurately summarizes the Applicant's testimony to suggest that the Applicant knew on the day of the plea that there was a plea offer. Said sentence is inconsistent with the evidence and the Order of Dismissal should be altered to note that Mr. Bolin did not know of the plea offer contained in the email until he received a copy of the email during the pendency of this PCR proceeding.

did not learn of the initial plea offer until he received a copies of the documents contained in the Public Defender's file with regard to shoplifting counts. Specifically, the undersigned counsel obtained and provided Mr. Bolin with an email dated October 26, 2010 from Assistant Solicitor, Prina Taylor, to Matthew Shealy, in which Ms. Taylor noted that the Solicitor was prepared "to make a recommendation of cc sentencing w/ a cap of 5 years." In that same email, Ms. Taylor asked Mr. Shealy to contact her after he had discussed the offer with Mr. Bolin. The evidence indicates that neither Mr. Shealy nor Mr. Cheek relayed the plea offer to Mr. Bolin. Likewise, Mr. Bolin testified that he would have agreed to the initial plea offer had it been presented to him by either Mr. Shealy or Mr. Cheek.² Assuming that the cap of five (5) years had been relayed to Mr. Bolin and Mr. Bolin had agreed to accept the offer, it is more likely than not that Mr. Bolin's sentence would have been less than the sentence he received on April 15, 2011. Based on the foregoing, the conduct of Mr. Bolin's public defenders both before and during the plea hearing was highly prejudicial and resulted in a sentence that was twice what the Solicitor was prepared to offer.

As such, the Order of Dismissal should be altered to find that Mr. Bolin has met the burden of proving (1) that his counsels' performance was deficient and (2) that he was prejudiced by his counsels' deficient performance. *See Strickland, supra; also Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009).

b. The Order Of Dismissal Improperly Holds Mr. Bolin Responsible For Mr. Shealy's Failure To Convey The Plea Offer.

The Order of Dismissal improperly holds Mr. Bolin responsible for Mr. Shealy's failure to convey the plea offer. Mr. Shealy testified that he received the plea offer from the State and

² "[I]t is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice." *Davie, supra* at 613, 675 S.E.2d at 422 (citing *Jackson v. State*, 342 S.C. 95, 97, 535 S.E.2d 926, 927 (2000)).

that he failed to convey the plea offer to Mr. Bolin. Mr. Shealy testified that his file suggested that he tried to call Mr. Bolin on November 1, 2010 but that he was unable to speak with Mr. Bolin. Mr. Shealy further indicated that he mailed a letter (Applicant's Exhibit #2) to Mr. Bolin that was returned as undeliverable on November 5, 2010. Given the charges Mr. Bolin was facing and the significance of the plea offer that was made by the State, it was insufficient for Mr. Shealy to merely make one telephone call and send one letter that he knew was not received by Mr. Bolin. The November 2, 2010 letter, copy of which is attached hereto and incorporated herein as **Exhibit B**, does not refer to the plea offer in any way. No evidence was presented that would indicate that Mr. Shealy utilized the best and most current address for Mr. Bolin. The Public Defender's own file contained additional addresses for Mr. Bolin that Mr. Shealy did not use when he sent the November 2, 2010 letter. In addition, Mr. Shealy did not send a second letter to the correct address once the November 2, 2010 letter was returned. There is no evidence to suggest that Mr. Shealy attempted to call or to leave Mr. Bolin a voice mail after the letter was returned. Mr. Shealy clearly failed to comply with his obligation to communicate with Mr. Bolin and to keep him informed about the pending matters. Even if the one telephone call on November 1 and the single letter of November 2 were related to the plea offer, which has not been clearly established, Mr. Shealy should have taken additional steps to communicate the plea offer to Mr. Bolin. Based on the foregoing, the Court's finding that the Applicant failed to make contact with his attorney or provide his attorney with a current address or to phone number is not supported by the evidence. Mr. Shealy had that information in his file yet he failed to convey the plea offer. Mr. Bolin cannot and should not be held responsible for his attorneys' failure to take reasonable steps to inform him of something as significant as a plea offer and the Order of

Dismissal should be altered or amended to hold Mr. Bolin's attorneys responsible for their ineffective assistance.³

c. The PCR Court Erred In Denying The Applicant An Opportunity To File A Rebuttal Memorandum.

The Appellant respectfully asserts that the PCR Court erred by refusing Mr. Bolin an opportunity to submit a rebuttal memorandum in response to Respondent's Memorandum of Law. The PCR Court granted the parties leave to submit briefs within thirty (30) days of the evidentiary hearing.⁴ Applicant's Memorandum in Support of Application for Post-Conviction Relief was filed and served on June 25, 2013, the same day as the evidentiary hearing.⁵ Respondent's Memorandum of Law was served on August 22, 2013 and filed on September 18, 2013. After reviewing the Respondent's Memorandum of Law, the Applicant's undersigned counsel sought permission from the PCR Court to file a brief memorandum to rebut and/or clarify certain issues raised in Respondent's Memorandum of Law. The following are some of the issues that the Applicant wanted to bring to the Court's attention in the rebuttal memorandum:

- a. That Mr. Shealy failed to utilize the best and most current address for Mr. Bolin, as evidenced by the Public Defender's own file, when he sent the November 2, 2010 letter.
- b. That Mr. Shealy failed to send a second letter to the correct address once the November 2, 2010 was returned.

³ The Applicant would also note that there is no explanation as to why the November 2, 2013 letter was not delivered. At any rate, the fact that the letter was undeliverable cannot be attributed to any act or omission of Mr. Bolin and therefore, he should not be denied the relief sought in his PCR Application because of the U.S. Postal Service's actions.

⁴ See Form 4 Order dated and filed on June 27, 2013 which is attached hereto and incorporated herein as **Exhibit C**.

⁵ The Applicant incorporates by reference the procedural history and legal analysis set forth in his earlier Memorandum.

- c. That Mr. Shealy failed to reference the plea offer in the November 2, 2010 letter or leave Mr. Bolin a voice mail regarding the plea offer.
- d. That the reference to a recommendation vs. a negotiated plea in the State's memorandum is a red herring given that Mr. Bolin had already established that he was prejudiced by Mr. Shealy's failure to relay the plea offer. In short, the prejudice was not related to whether the Court would have accepted the recommended plea but that Mr. Bolin was neither advised of the offer nor given the opportunity to have the recommendation presented to the Court for consideration. *See generally, Davie v. State*, 381 S.C. 601, 675 S.E.2d 416 (2009) ("[I]t is not always necessary for a defendant to offer objective evidence to support a claim of actual prejudice. Instead, depending on the facts of the case, a defendant's self-serving statement may be sufficient to establish actual prejudice.").

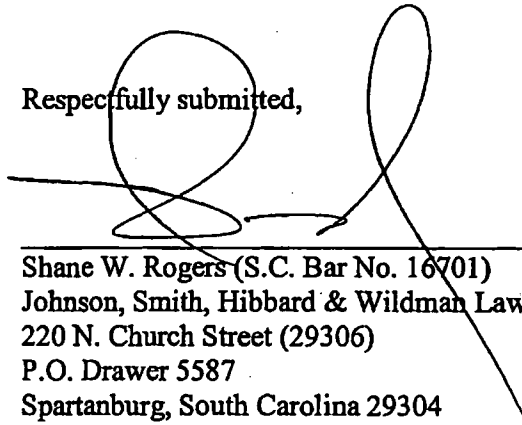
The PCR Court denied the Applicant the opportunity to brief these issues for consideration. The Applicant respectfully asserts that since he bears the burden of establishing that he is entitled to relief, he should have been afforded the opportunity to present a rebuttal memorandum.⁶ By denying the Applicant's request for leave to file a rebuttal memorandum, the PCR Court denied the Applicant due process and/or unnecessarily hindered the Applicant's ability to present all relevant evidence and arguments to the Court for consideration. Based on the foregoing, the Applicant respectfully asserts that the Order of Dismissal should be vacated and the Court should allow the Applicant an opportunity to file his rebuttal memorandum for the Court's consideration.

⁶ In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief. *Caprood v. State*, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000).

CONCLUSION

As set forth above, Mr. Bolin has established both that his counsels' failure to communicate the State's initial, five-year plea offer constituted deficient performance, and also that he was prejudiced by this deficient performance (i.e., there is a reasonable probability that but for counsels' deficient performance, Mr. Bolin would have accepted the original plea offer). Based on the foregoing, the Order of Dismissal should be altered or amended to grant the relief requested in Mr. Bolin's PCR Application. Specifically, the Court should find that Mr. Bolin's plea should be vacated or, at a minimum, a new sentencing hearing should be conducted with the limitation that the sentence should not exceed the original sentence and that the sentencing judge should take into consideration the initial plea offer of concurrent sentencing with a five (5) year cap.

Respectfully submitted,



Shane W. Rogers (S.C. Bar No. 16701)
 Johnson, Smith, Hibbard & Wildman Law Firm, P.C.
 220 N. Church Street (29306)
 P.O. Drawer 5587
 Spartanburg, South Carolina 29304
 Telephone: (864) 582-8121
 Facsimile: (864) 585-5328
 Email: srogers@jshwlaw.com
 Attorney for Applicant Frank Bolin, Jr.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 NOV 15 PM 1:26
 M. HOPE BLACKLEY

Spartanburg, South Carolina

November 15, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	
Frank Bolin, Jr., #209887,	)	2012-CP-42-0993
)	
Applicant,)	
)	
v.	)	RETURN AND MOTION TO DISMISS
	)	MOTION TO ALTER OR AMEND
State of South Carolina,	)	DENIAL OF PCR PETITION
)	
Respondent.)	
_____)	

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCP, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

The Respondent submits that the Order of Dismissal of the Honorable R. Lawton McIntosh, dated October 31, 2013, contains the findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003), and Rule 52(a) SCRCP. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Further, the State notes that the Applicant was able to present evidence and testimony in support of his claim, as well as a supplemental memorandum following the hearing. Therefore, the Court did not err in not allowing the Applicant the opportunity to file a rebuttal memorandum.

II.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

BY: 
ATTORNEYS FOR RESPONDENT

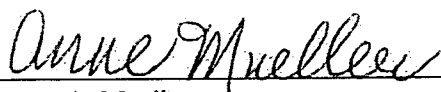
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

Dec 3, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Frank Bolin, Jr.,	)	2012-CP-0993
)	
Applicant,)	
)	
v.	)	CERTIFICATE OF SERVICE BY MAIL
)	
)	
State of South Carolina,)	
)	
Respondent.)	

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

Shane W. Rogers, Esquire
 Johnson Smith Hibbard & Wildman, LLP
 PO Drawer 5587
 Spartanburg, SC 29304-5587


 Anne A. Mueller
 Legal Assistant for the Respondent

DATED this 3rd day of December, 2013.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-42-00993

Frank Bolin, Jr., #209887,

State of South Carolina,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Applicant's Motion to Alter or Amend, filed November 15, 2013 is denied without the necessity of a hearing. No formal order to follow.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 NOV 15 AM 10:43
T. MICHAEL ACKLEY

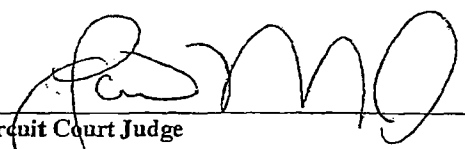
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2155
Judge Code

11-26-13
Date



For Clerk of Court Office Use Only

This judgment was entered on the 4 day of ~~November~~ ^{December}, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of ~~November~~ ^{December}, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Shane W. Rogers, Esquire

Suzanne White, Esquire

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
M. Hope Blackley
CLERK OF COURT

DC

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Multiple horizontal lines for additional information.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2018 DEC -4 AM 10:18
M. HOPE BLACKLEY

WITNESSES

Spartanburg County Sheriff's Office

T.K. Tufton

1. SENTENCE ALIASE

2. REPORT BUDED

CARD FILED

INDEXED

ARREST WARRANT NUMBER

121340

CLERK'S SIGNATURE

ASSESSMENT AND
FEE CARD HEADS

TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Preperson of Grand Jury
Date: *7-22-10*

VERDICT

Preperson of Petit Jury

Date:

DOCKET NO.

10-GS-42-3858

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COMPUTER COURT OF GENERAL SESSIONS

JUL 26 2010

TERM

Computer

THE STATE

v.

Frank Bolin, Jr.

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 JUL 27 PH 3: 25

M. HOPE BLACKLEY

Indictment for
SHOPLIFTING

SC Code: 16-13-110 (B) (1) & 16-01-0057
CDR Code: 2877
Class FEUE

STAT 97

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

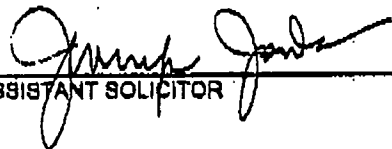
INDICTMENT

At a Court of General Sessions, convened on JUL 22 2010 the
Grand Jurors of Spartanburg County present upon their oath:

SHOPLIFTING

That Frank Bolin, Jr., did in Spartanburg County on or about May 15, 2010, take possession of, carry away, transfer from one person to another or from one area of a store or other retail mercantile establishment to another area, or caused to be carried away or transferred merchandise displayed, held, stored, or offered for sale by a store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value; to-wit: a swimming pool, valued at \$2000.00 or less merchandise of Dollar General, 100 Parris Bridge Road, Bolling Springs, South Carolina; that the Defendant has at least (2) two or more prior convictions for property crimes; all in violation of S.C. CODE ANN. §16-1-57 and §16-13-110 (Law Co-op. 1976).

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

Computer IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG
STATE VS.

Frank Jr Bolin

AKA

Race: W Sex: M Age: 38

DOB: [redacted] SSH: [redacted]

Address: [redacted]

City, State, Zip: Spartanburg, SC 29306

DL#: [redacted] SID#: [redacted]

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was TO: Shoplifting / Shoplifting, value \$2,000 or less 3rd or sub 0-10 years

INDICTMENT/CASE#: 2010-65-41-3858

A/W#: M121340

Date of Offense: 5/15/2010

S.C. Code §: 16-13-0110(BY)16-1-57

CDR Code #: 2367

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-13-0110(BY)16-1-57 of the S.C. Code of Laws, bearing CDR Code # 2367
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lowd 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: [Signature] 77947 [Signature] 1208
TAILOR, PRINAC SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to this State Department of Corrections, County Detention Center,

for a determinate term of 10 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: with Probation Parole

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. 84 days

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 PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED

Set by SCDPPPS Attend Voc, Rehab. or Job Corp.

Recipient: May serve W/E beginning

*Fine: Substances Abuse Counseling

§ 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 \$

§ 47.12 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$

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

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

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00

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

TOTAL \$133.90

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: ATTU in DOC

Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]

Judge Code:

Sentence Date: 4-15-11

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

WITNESSES

Spartanburg County Sheriff's Office

1 SENTENCE MADE

2 REPORT ENDED

3 CARD FILLED

4 INDEXED

5 CHECKED WARRANTS

6 ARREST MADE

7 E CARD MADE

8 CITATION COPY

9

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 7-22-10

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 10-GS-42-3856
The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 26 2010

TERM

THE STATE

v.

Frank Bolln, Jr.

Indictment for

SHOPLIFTING

SC Code: 16-13-110 (B) (1) & 16-01-0057

CDR Code: 2877

Class: FEUE

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 JUL 27 PM 3: 25

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
Race: _____
AKA: _____

100

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT


At a Court of General Sessions, convened on JUL 22 2010 the

Grand Jurors of Spartanburg County present upon their oath:

SHOPLIFTING

That Frank Bolin, Jr., did in Spartanburg County on or about June 1, 2010, take possession of, carry away, transfer from one person to another or from one area of a store or other retail mercantile establishment to another area, or caused to be carried away or transferred merchandise displayed, held, stored, or offered for sale by a store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value; to-wit: grocery items valued at less than \$1000.00 merchandise of Ingles, 8004 Warren H. Abernathy Highway, Spartanburg, South Carolina; that the Defendant has at least (2) two or more prior convictions for property crimes; all in violation of S.C. CODE ANN. §16-1-57 and §16-13-110 (Law Co-op. 1976).

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

Computer

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG)
 STATE VS.)
 Frank Jr Bolin)
 AKA:)
 Race: W Sex: M Age: 38)
 DOB:)
 Address:)
 City, State, Zip: Spartanburg, SC 29306)
 DL#:) SID#:)

INDICTMENT/CASE#: 2010-65-42-3856
 A/W#: M121325
 Date of Offense: 6/1/2010
 S.C. Code §: 16-13-0110(B)16-1-57
 CDR Code #: 2367

SENTENCE SHEET

*CJDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Shoplifting / Enhancement for 3rd or sub. offense. Value \$1000 or less (see 16-01-0057) 0-10 years

in violation of § 16-13-0110(B)16-1-57 of the S.C. Code of Laws, bearing CDR Code # 2367
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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: FR Prina C TAILOR PRINA C SC Bar# 77947
Frank Jr Bolin Defendant
John S. Bolin Attorney for Defendant SC Bar# 1207

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 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: with Prob Negotiation
 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. 54 days

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% fee: \$ _____

Payment Terms: _____
 Set by SCDPPPS _____

Recipient:	
*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$133.90

Clerk of Court/ Deputy Clerk A. Sauer
 Court Reporter: Rudgins
 SCCA/217 (11/2009)

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

Other: ATO while in DOC

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature]
 Judge Code: _____
 Sentence Date: 4-15-11