

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from York County
John C. Hayes, III, Circuit Court Judge

RECEIVED

AUG 22 2014

S.C. Supreme Court

ARKELLA RENA BROWN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000180

APPENDIX

LARA M. CAUDY
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

RUTLEDGE JOHNSON
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF YORK COUNTY

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

2013 JUL 24 AM 9:59

VS

AB

= defendant's initials required

Arkella Rena Brown

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY SC

Total Time Served (days): [Click here to enter text.](#)

I want to plead guilty, no contest, or enter a plea under N.C. v. Alford to the charges listed below. I understand that the minimum and maximum penalties as well as some of the collateral consequences for the charges to which I am pleading are listed below:

Truebilled Waiver

Indictment #: 2013-GS-46-00813 CDR: 3612 Statute #: 16-13-10

Original Charge: Forgery less than \$10,000, enhanced per 16-1-57

Pleading To: Same

Misdemeanor Felony

Penalty: Up to 10 years per the enhancement

Non-Violent Violent Serious Most Serious No Parole Sex Offender Registry

AB

Mandatory GPS Increased Punishment for Future Offenses Murder Day for Day

Truebilled Waiver

Indictment #: 2013-GS-46-00816 CDR: 3612 Statute #: 16-13-10

Original Charge: Forgery less than \$10,000, enhanced per 16-1-57

Pleading To: Same

Misdemeanor Felony

Penalty: Up to 10 years per the enhancement

Non-Violent Violent Serious Most Serious No Parole Sex Offender Registry

Mandatory GPS Increased Punishment for Future Offenses Murder Day for Day

Truebilled Waiver

Indictment #: 2013-GS-46-00815 CDR: 3612 Statute #: 16-13-10

Original Charge: Forgery less than \$10,000, enhanced per 16-1-57

Pleading To: Same

Misdemeanor Felony

Penalty: Up to 10 years per the enhancement

Non-Violent Violent Serious Most Serious No Parole Sex Offender Registry

Mandatory GPS Increased Punishment for Future Offenses Murder Day for Day

Truebilled Waiver

Indictment #: 2013-GS-46-00810 CDR: 3612 Statute #: 16-13-10

Original Charge: Forgery less than \$10,000, enhanced per 16-1-57

Pleading To: Same

Misdemeanor Felony

Penalty: Up to 10 years per the enhancement

Non-Violent Violent Serious Most Serious No Parole Sex Offender Registry
 Mandatory GPS Increased Punishment for Future Offenses Murder Day for Day

Truebilled Waiver
Indictment #: 2013-GS-46-00811 CDR: 0049 Statute #: 16-17-0410
Original Charge: Criminal Conspiracy
Pleading To: Same

Misdemeanor Felony
Penalty: Fined not more than \$5,000 or imprisoned not more than 5 years
 Non-Violent Violent Serious Most Serious No Parole Sex Offender Registry
 Mandatory GPS Increased Punishment for Future Offenses Murder Day for Day

List General Sessions Charges Being Dismissed: Forgery Enhanced, Financial Transaction Card Fraud
List Pending General Sessions Charges not being resolved: None

YOA: Eligible Ineligible due to: Age Offense Other: Click here to enter text.
List Prior Convictions: 8/90 Shoplifting, 7/97- Simple Assault, 11/97- PDC, 4/98- Simple Assault, 12/98- Shoplifting, 1/99- Shoplifting 7/02- Financial Card Theft, 7/02- Financial Card Fraud, 8/02-Shoplifting, 8/02- Common Law Forgery, 8/03- Misd. Larceny, 2/04- Misd. Larceny, 7/04-Felony Larceny, 11/05- Forgery (3 Counts) 6/08- Unlawful use of a Telephone, 6/08- Violating a Restraining Order
Currently on Probation? Yes No Is this plea a violation of the probation? Yes No

I have agreed to plead guilty, no contest, or enter a plea under N.C. v. Alford as part of a plea arrangement. The Solicitor, my lawyer, and I have informed the court that the following contains all of the terms of conditions of my plea:

Type of Plea Guilty N.C. v. Alford Nolo
Recommendation Negotiated Without Recommendation

State is recommending or the negotiation is: None

This plea is not the product of any other promises or any threats whatsoever, except as indicated below:

I understand that, upon entering a plea under N.C. vs. Alford, I will be treated as being guilty whether or not I admit that I am in fact guilty.

I understand that a no contest plea is treated by the Court the same as a plea of guilty.

The Solicitor is making a recommendation to the judge, as listed above. I understand the Judge is not required to accept the recommendation given by the Solicitor and the Judge may accept it, may go below the recommendation, or may go above the recommendation.

This plea is a negotiated plea and the negotiation is listed above. I understand the Judge may refuse to accept the negotiation and that if the Judge refuses, the plea will not go forward.

This plea is without negotiation and I understand I could receive from the minimum to the maximum sentence on each charge to which I am pleading guilty and that those sentences could also be run consecutive to other.

I am not currently under the influence of any intoxicants, drugs, or narcotics.

I currently DO take the following prescribed medications:

Plavix - heart Lisinopril - Heart/BP
Metoprolol - heart/BP Flexiril - Heart - Xanax -

I am entering my plea today freely, voluntarily, knowingly, and intelligently.

I understand that I have the right to be represented by a lawyer at all stages of the proceedings. I can hire my own lawyer, or the court will appoint a lawyer for me if I cannot afford one. I understand an attorney would be of benefit to me, and since I am not an attorney, there is a danger in my representing myself. Understanding this, I give up this right.

I understand that I have the right to plead not guilty and be tried by a jury, and that I am presumed innocent until such time as the jury is convinced of my guilty beyond a reasonable doubt. Understanding this, I give up that right.

I understand I have the right to have the Court issue subpoenas to bring my witnesses and evidence to a trial at no cost to me. Understanding this, I give up that right.

I understand I have the right to testify or remain silent at trial. Understanding this, I give up this right.

My lawyer has reviewed with me all the factual and legal issues surrounding my case, including any defenses I may have and he or she has done everything I have asked him to do. I am satisfied with his or her services.

I understand that I have the right to remain silent, that is, the right against self-incrimination. Understanding this, I give up this right.

I understand that in a jury trial I have the right to see and hear all witnesses called to testify against me and to confront, cross-examine, and question them.

I give up, for each of the charges listed above, my right to a jury trial, my right to a bench trial (trial by Judge with no jury), my right to confront and cross examine witnesses, my right to remain silent and not incriminate myself, and my right to produce evidence and to present a defense, including my right to testify on my own behalf.

I understand that by my pleading to each charge, I am waiving all defenses, including, but not limited to the right to challenge any evidence the State may have used in its case against me and the voluntariness of any statements made to law enforcement.

I understand that upon my conviction I may be ordered to pay restitution to any persons directly and proximately injured as a result of my commission of these crimes and that a civil judgement in favor of

each person may be docketed against me and will be a lien against any real estate I own now or may own in the future.

I understand that if I am not a citizen of the United States, my plea of guilty, no contest, or my plea under N.C. v. Alford may result in my deportation, exclusion from re-entry to the United States, and denial of naturalization and amnesty.

I understand that I have 10 days within which to appeal this guilty plea.

I understand that I am pleading guilty, no contest, or under N.C. v. Alford to the charges shown above.

I now personally plead () guilty; () under N.C. v. Alford; () no contest to the charges above.

Acknowledgement

I have read or have had read to me this form and have initialed each of the items that applies to my case. If I have an attorney, I have discussed each item with my attorney. By putting my initials next to the items in this form, I am indicating that I understand and agree with what is stated in each item that I have initialed. The nature of the charges, possible defenses, the effects of any prior convictions and enhancements, have been explained to me. I understand each of the rights outlined above, and I give up each of them to enter my plea.

Defendant's Signature: William Brown Date: 5-9-13

Defense Counsel's Statement

I, the attorney for the defendant in the above entitled case, personally read and explained to the defendant the entire contents of this plea form and any addendum thereto. I discussed all charges, all discovery provided by the State, and possible defenses with the defendant and the consequences of the plea, including any immigration consequences. I personally observed the defendant fill in and initial each item, or read and initial each item to acknowledge his or her understanding and waivers. I observed the defendant date and sign this form and any addendum. I concur in the defendant's plea and waiver of constitutional rights.

Print Name: Daniel D. Hall D.D. Hall Bar # 011846
Attorney Signature

Date: 5-9-13 Circle One: PD Retained Appointed

Solicitor's Review

I have reviewed this form as completed by the Defendant or by the Defendant with his Defense Attorney for completeness and accuracy.

Solicitors Signature: [Signature] Bar # 100830

Date: 9 May 13

Judge's Confirmation

Upon consideration of the record, evidence or factual presentation offered, answers of defendant, and statements of the lawyer for the defendant and the prosecutor and the contents of this plea and waiver form, the undersigned finds that:

- 1. There is a factual basis for the entry of the plea,
- 2. The defendant is satisfied with his/her lawyer's legal services,
- 3. The defendant is competent to stand trial, and
- 4. The plea is the informed choice of the defendant and is made freely, voluntarily, knowingly, and intelligently.

The defendant's plea is hereby accepted by the Court.

Judge's Signature: [Signature] Judge's Code: 0048 Date: 5/9/13

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK) CASE NO.: 2013-GS-46-0810
 0811, 0813, 0814, 0815, 0816

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
)
 ARKELLA RENEE BROWN)

BEFORE THE HONORABLE PAUL BURCH

APPEARANCES:

KEVIN BRACKETT, SOLICITOR
 YORK, SOUTH CAROLINA

RYAN NEWKIRK, ASSISTANT SOLICITOR
 YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

DAN HALL, ASSISTANT PUBLIC DEFENDER
 YORK, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
 16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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NO EXHIBITS

1 WHEREUPON ADVISEMENT OF RIGHTS WERE GIVEN TO
2 GROUP OF DEFENDANTS WHICH INCLUDED MS. ARKELLA RENEE BROWN
3 AS FOLLOWS:

4 THE COURT - All right, everybody that's named was
5 called, you acknowledged being here, I need you to stand up
6 again, give me an idea -- all right, you may be seated.
7 What I'm going to do to preserve my voice which sometimes
8 go out on me especially at the end of the afternoon when
9 we're doing mass pleas for the entire week -- you know,
10 your voice will just go out on you sometimes and I'll get
11 laryngitis for a week, and I don't want that to happen,
12 because I know some of you are anxious to get your case
13 disposed of and we want to do that, so what I'm going to
14 do, I'm going to talk to everybody that's intending to plea
15 or if you -- or if you're here and you're thinking about
16 pleading, go ahead and listen to me carefully, because
17 we're going to -- people still coming in -- all right, once
18 again, if you're pleading or you may be thinking about
19 pleading, listen up, because I'm going to go over your
20 rights. If you've got any question about them you be sure
21 and ask your attorney if you have one. And that is the
22 first thing I need to talk to you about. If you do not
23 have an attorney I can look into appointing one for you.
24 You don't have to have an attorney to go forward with a
25 plea, but I'm required to tell you that you have a right to

1 have one and I will certainly suggest that you entertain
2 having an attorney, but if you've got the matter worked out
3 with the solicitor to your satisfaction, you certainly
4 don't have to have an attorney. If your case has not been
5 presented to the Grand Jury -- if your case has not been to
6 the Grand Jury -- the Grand Jury is a body of jurors that
7 meets here about every month. There's usually 18 of them
8 and they have to be a minimum of 12, and they review the
9 State's evidence to see if there's enough there to send it
10 onto trial by a petit jury. If there's not enough evidence
11 presented by the State, they may no-bill the case and in
12 effect it would be thrown out, but in order for you to
13 plead, you've got to waive that review. If you enter a
14 plea of guilty, no contest or under North Carolina v.
15 Alford, you need to fully understand that the State of
16 South Carolina will treat that as a conviction and it will
17 go on your criminal record. If you enter such a plea, you
18 will be waiving your constitutional right to a jury trial.
19 If you were to have a trial, the State would have to prove
20 your guilt beyond a reasonable doubt and convince 12 jurors
21 unanimously of your guilt. You'd be able to cross examine
22 the State's witnesses and put up your own defense and
23 witnesses; you could testify at your own defense, but you'd
24 also have a constitutional right to remain silent; if you
25 elected not to testify, it couldn't be held against you and

1 I would even tell the jury that. That's your Fifth
2 Amendment rights under the United States Constitution.
3 Everybody that's charged with a crime in this State is
4 presumed innocent until proven guilty, and that presumption
5 of innocence will stay with you throughout any trial and
6 would only end if the jury convicted you. If a jury did
7 convict you, you would have a right to appeal just as you
8 can appeal a guilty plea, as long as you file a notice of
9 appeal within 10 days of sentencing. I cannot take your
10 plea unless it's freely, voluntarily and intelligently
11 entered into, so if you're under the influence with any
12 medication or drugs or alcohol, don't even try to come up
13 here and enter a plea and you best not let me find out that
14 you're here in that shape, because it's probably going to
15 be some dire consequences, but the bottom line is you need
16 to understand what you're doing and it needs to be freely
17 and voluntarily and intelligently entered into. I do not
18 get into parole eligibility. I don't discuss the 85
19 percent rule, prison credits, violent versus non-violent,
20 two strikes, three strikes, serious, most serious and all
21 that. If you've got a question about that, you need to
22 talk to your attorney to get an answer, because I do not
23 get into that; there's too much other business I have to
24 tend to without trying to keep up with what the prison
25 system does. So bottom line, my advice you on that, for

1 example, if I were to give you a two year sentence, as far
2 as the Court's concerned, you need to be prepared to serve
3 the full two years. Another issue that's popped up in the
4 last year or two involves the federal government and their
5 gun laws. If you are convicted of any crime that carries
6 more than one year, for example, you're an avid hunter, you
7 like to deer hunt, when you get convicted of a crime like
8 that, then you're going to be bow hunting the rest of your
9 life, because you're not going to be able to buy, possess
10 or own a firearm. So if that's an issue, talk to your
11 attorney about that, too. But that's a federal situation
12 that we have no control over. Of course, now there are
13 State laws concerning felonies and things like that in all
14 with a gun, possession and ownership. That's basically
15 what I need to go over with you. If you've got any
16 questions, whatsoever, about what I've gone over, you ask
17 your attorney first, and if you don't get a satisfactory
18 answer you let me know at the appropriate time. The last
19 issue I want to cover with you is, if you're not happy or
20 satisfied with your attorney's representation -- maybe I
21 need to correct that -- if you're not satisfied, because
22 nobody is really in a happy mood to be up here in trouble.
23 I understand that, but you need to let me know that before
24 we get deep into the plea, because I need to resolve that
25 issue before we even think about accepting your plea. All

1 right, I appreciate your attention. If y'all will just be
2 patient, we will work down the solicitor's list. My first
3 thought this morning when he came in and presented it to me
4 we were going to have problems in trying to get to
5 everybody, but he was right in telling me that there wasn't
6 near that many here, so I think we'll be able to take care
7 of most everybody. Okay? Thank you, Sheriff.

8 MR. NEWKIRK - Could we have Arkella Brown,
9 please. Thank you, Your Honor. May it please the Court.
10 Standing before you is the Defendant, Arkella Renee Brown,
11 represented by her counsel Dan Hall with the public
12 defender's office. She is charged with four counts of
13 forgery under the property enhancement on Indictments 2013-
14 GS-46-00810, 815, 816 and 813. Your Honor, she also has an
15 accompanying conspiracy charge on Indictment Number 2013-
16 GS-46-00811. All of those indictments have been true
17 billed before the Grand Jury. Your Honor, pursuant to plea
18 negotiations, the State will be dismissing another forgery
19 charge as well as a financial transaction card fraud
20 charge. The State has not provided a recommendation in
21 this case, and because it's a straight-up plea, Your Honor,
22 our solicitor would like to read her record into the record
23 when the time is appropriate.

24 THE COURT - Okay. All right. Ms. Brown, you're
25 40 years of age?

1 MS. BROWN - Yes, sir.

2 THE COURT - You're from York?

3 MS. BROWN - Yes, sir.

4 THE COURT - And what is your education?

5 MS. BROWN - I'm a high school graduate.

6 COURT REPORTER - She needs to speak up, Judge.

7 THE COURT - The court reporter's got to hear
8 everything we say.

9 MS. BROWN - Okay.

10 THE COURT - All right, start with 2013-811 is for
11 conspiracy; York County on or about November the 1st, 2012
12 you did commit the offense of conspiracy in that you
13 conspired with others for the purpose of the crime of
14 forgery. You could receive up to five years on that
15 particular charge. How do you plead?

16 MS. BROWN - Guilty.

17 THE COURT - 813 is for forgery. York County
18 November the 5th, 2012 and it involved the signing or
19 completing of the check 8722 in the amount of one hundred
20 sixty-seven dollars. The offense occurred at Bi-Lo, 717
21 East Liberty Street in York. You could receive up to five
22 years on a forgery charge. How do you plead?

23 MS. BROWN - Guilty.

24 THE COURT - 815 is also for forgery, that one
25 occurring November 1st, 2012 involving a check for three

1 hundred and twenty-nine dollars and seven cents. How do
2 you plead on that one?

3 MS. BROWN - Guilty.

4 THE COURT - And 816 is also a forgery, York
5 County, October 31st, 2012 a check for three fifty-six
6 seventy-eight. How do you plead on that one?

7 MS. BROWN - Guilty.

8 THE COURT - Now, I think I misquoted on the
9 possible penalty because some of these are enhanced.

10 MR. NEWKIRK - That's correct, Your Honor.

11 THE COURT - Or all of them -- well, conspiracy.
12 Could receive up to 10 years. You understand that?

13 MS. BROWN - Yes, sir.

14 THE COURT - Up to 10. Exposure of 35 years. If
15 I totaled them up and you got consecutive sentences, you
16 could get 35 years. All right, with that said, how do you
17 plea on these?

18 MS. BROWN - Guilty.

19 THE COURT - You fully aware of the rights that I
20 went over with you?

21 MS. BROWN - Yes, sir.

22 THE COURT - You understood them?

23 MS. BROWN - Yes, sir.

24 THE COURT - You don't want a trial.

25 MS. BROWN - No, sir.

1 COURT REPORTER - She needs to speak up.

2 MS. BROWN - No, sir.

3 THE COURT - You understand your attorney's

4 advice?

5 MS. BROWN - Yes, sir.

6 THE COURT - You discussed these matters with him?

7 MS. BROWN - Yes, sir.

8 THE COURT - You satisfied with his services?

9 MS. BROWN - Yes, sir.

10 THE COURT - Answered all your questions?

11 MS. BROWN - Yes, sir.

12 THE COURT - Are you today under the influence of
13 any drugs, alcohol or medication?

14 MS. BROWN - No, sir.

15 THE COURT - Any mental or physical difficulties
16 that could be affecting your understanding?

17 MS. BROWN - No, sir.

18 THE COURT - Has anybody promised you anything,
19 held out any hope of reward or threatened you in any way in
20 order to get you to plead?

21 MS. BROWN - No, sir.

22 THE COURT - You are entering this plea of your
23 own free will and accord.

24 MS. BROWN - Yes, sir.

1 THE COURT - I find your pleas are freely,
2 voluntarily and intelligently entered into; you've had the
3 services of a competent attorney with whom you say you're
4 satisfied. Your plea is accepted.

5 MR. NEWKIRK - Thank you, Your Honor. On October
6 30th, 2012, Kim Bockstege lost her pocketbook at J.C.
7 Penney's in Rock Hill. When she realized that the purse
8 was lost, she immediately contacted her bank and cancelled
9 all of her debit cards and froze the checks that were in
10 the purse. On November 6th, 2012, Ms. Bockstege received a
11 letter from her bank stating that several of her checks had
12 been passed at local Bi-Lo stores after cancellations.
13 Officers with the York Police Department went to the store
14 locations of Bi-Lo at 717 East Liberty Street in York and a
15 Bi-Lo at 1401 East Main Street in Rock Hill, both in South
16 Carolina. Officers pulled the video-surveillance from the
17 store. In the video a black woman can be seen placing the
18 items in a checkout line and writing a check. In one of
19 those videos the woman has an accomplice that hands her a
20 checkbook. The officers were able to clearly identify Ms.
21 Brown, the Defendant, as the person fraudulently obtaining
22 goods with Ms. Bockstege's check. The other woman in the
23 video is the Defendant's 24 year old daughter.

24 THE COURT - Solicitor?

1 MR. BRACKETT - May it please the Court. May it
2 please the Court, Your Honor, Ms. Brown's criminal history
3 is extensive, and I'm breaking it down into some North
4 Carolina convictions and South Carolina convictions.
5 Starting with the North Carolina convictions -- well, I'll
6 try to take them in order in which they occurred. In
7 January -- or August of 1990 she was convicted of
8 shoplifting in Rock Hill, and she was at the time I
9 believe, Your Honor, -- this is 23 years ago just about --
10 17 or 18 years old, and I just point that out because as
11 you can see, this goes on throughout her life. She was
12 convicted in 1997 of simple assault, '97 public disorderly
13 conduct, '98 simple assault in North Carolina, '98
14 shoplifting, '99 shoplifting, 2002 financial transaction
15 card theft in North Carolina, '02 -- I'm sorry -- '02
16 financial card theft in North Carolina, '02 financial card
17 fraud in North Carolina, '02 shoplifting in North Carolina,
18 '02 forgery in North Carolina, '03 shoplifting, '04
19 misdemeanor larceny in North Carolina, 2004 a felony
20 larceny, 2005 three counts of forgery, 2008 unlawful use of
21 telephone and 2008 violating a restraining order. She is a
22 career criminal, Your Honor, and she has served time
23 before. I have been -- I've been prosecuting since 1991
24 and she has been a feature of the criminal justice system
25 here in York County and in North Carolina as long as I've

1 been -- longer than I've been prosecuting, and I have
2 received a number of complaints from law enforcement and
3 from victims asking what can be done about it, because she
4 doesn't seem to be learning a lesson after she gets
5 convicted, goes and does a little bit of time and they ask
6 me to come in and speak on their behalf, the community's
7 behalf, and ask the Court to impose a sentence that
8 reflects the significance of her criminal history, because
9 she needs to understand that this behavior ultimately will
10 not be tolerated, and I want her to understand today that
11 every time hereafter if she -- when she completes whatever
12 sentence Your Honor imposes -- and I'm going to ask for a
13 significant sentence -- that she factor that into her
14 calculations when she's making a decision of whether or not
15 to engage in criminal behavior, because every time she
16 appears in this Court, I or somebody whoever is the
17 solicitor or through the years will be here to ask the
18 Court what I'm asking today. The last time she was
19 convicted of forgery, she got five years suspended on two
20 with three years probation, and that was in 2005-2006 and
21 apparently that didn't do it, so I'd ask the Court to at
22 least do better than that, and I would ask the Court to
23 impose a significantly more severe sentence than that.
24 Hopefully she'll get the lesson that you can't steal from
25 people, you can't forge checks, you can't engage in this

1 kind of behavior that ultimately horns are going to hook.

2 Thank you, Your Honor.

3 THE COURT - And I apologize, I had one that got
4 tucked in under another one. We left out 810 and it was a
5 forgery two hundred and sixty-three dollars and forty-five
6 cents in York County on November 2nd, 2012. How do you
7 plead on that one?

8 MS. BROWN - I didn't hear you.

9 THE COURT - It was on November the 2nd, 2012, two
10 hundred and sixty-three dollars and forty-five cents and it
11 was Bi-Lo. Don't remember that one?

12 MS. BROWN - It's not that.

13 MS. HALL - Your Honor, I think --

14 MS. BROWN - Guilty.

15 THE COURT - Okay. You don't want a trial on
16 them, do you? Do you?

17 MS. BROWN - (No response)

18 THE COURT - You seem to be hesitating on this
19 one.

20 MR. HALL - Your Honor, if I may, Solicitor
21 Brackett informed us just right before we began the plea
22 that he would be speaking and would be talking about
23 information that he received from the community. That's
24 the first time we had heard that information. I did relay
25 that to Ms. Brown about whether she wanted to go forward.

1 He did let me know this morning that he would be -- that he
2 would be asking for that and would be representing the
3 community. We have not received any of that information
4 until he stated that to the Court. She's -- that was news
5 to her, certainly news to me, and so she's just trying to
6 process that. She has indicated to me that she wished to
7 plead guilty to all those charges.

8 THE COURT - I'm going to hear from you and I'm
9 going to give you time to collect your thoughts, but you
10 did say guilty on that one.

11 MS. BROWN - Yes, sir.

12 THE COURT - I mean you understand everything
13 that's been said.

14 MS. BROWN - (No response)

15 THE COURT - All right.

16 MR. HALL - Your Honor, not to -- certainly my
17 client does have a record. We were aware -- we had the
18 NCIC when I met with her. Just not to quibble over, what
19 record other than it appears -- the last time she was in
20 Court was listed on the NCIC is the forgeries where she
21 received a five year sentence suspended to two years she
22 was in Court in November of 2005, and I researched that.
23 It's based on a -- a docket or a -- an Indictment of 05-46-
24 311 -- 3111, 3112. When I pulled that information at the
25 clerk's Office, because my client told me there'd been some

1 confusion, that was actually for offenses that occurred in
2 2001 where she was in the Department of Corrections and
3 then when she was released, she ended up coming back to
4 Court, but they were for incidents that occurred in 2001.
5 That ended up being the probation she was on. She came up
6 twice according to the clerk's records, the last in 2008 in
7 which Judge Hayes terminated her probation. So she really
8 was on about seven years and so just wanted to state to the
9 Court that my client informs me and I think she's right as
10 far as being in this Court, pleading guilty to this type
11 crime it was in 2000 -- it was for a 2001 -- in fact the
12 NCIC says that the offense date on the checks that were
13 related after 1999, so just want to state that for the
14 Court. My client's here and she would like to address the
15 Court. She's 41 years old now. She has four grown
16 children, has seven grandchildren. She would like the
17 opportunity and certainly the solicitor had gave us a
18 restitution Order that she's willing to sign. She's going
19 to owe about twelve hundred, thirteen hundred bucks to the
20 different Bi-Los she went in. She understands that what
21 she did was wrong. She would like the opportunity to pay
22 restitution. She's also at the stage in life with seven
23 grandchildren that she's ready to get this foolishness
24 behind her, accept full responsibility. Certainly with
25 four confession, a very significant sentence that would be

1 hanging over her head that would allow her to put the keys
2 to the courthouse -- jailhouse in her hands; certainly if
3 she is the individual that the solicitor has painted her to
4 be, then obviously if she is, then she isn't going to be
5 out very long and would face a very significant sentence if
6 the Court saw fit to do that. She has some health issues.
7 She is scheduled for a heart scan the week of May the 20th.
8 She does -- she takes medication for her anxiety. She has
9 had surgery. She understands again what she did was -- was
10 a wrong thing. She had some other individuals got a hold
11 of this lady's checks; she went to the Bi-Lo and bought
12 some groceries at four different Bi-Los, and she'll address
13 the Court about that. We ask that you consider --
14 understand where the solicitor's coming from, however I
15 would disagree as far as her danger in the community and
16 her status as a life-long career criminal. She is a woman
17 who has had certainly lots of issues on her record, but
18 she's at the stage in life, the point in life where she's
19 ready to deal with that and get that behind her. We ask
20 that you consider giving her a probationary sentence
21 hanging whatever the Court -- whatever time the Court sees
22 fit and that she would be responsible for, and Your Honor,
23 she's ready to deal with it, and we would like for her to
24 have the opportunity to not be incarcerated but again have

1 that time hanging over her head. She would like to address
2 the Court.

3 THE COURT - Sure.

4 MS. BROWN - First of all, I was deeply
5 apologizing for my actions. I don't know -- at the time
6 when all of this happened I was going through a crises with
7 my family. We needed food and stuff. I have -- I do have
8 grown -- they're not grown grown children, but I have
9 children that -- I have three in college right now and I
10 was just struggling. I been a single mother since I was
11 16, and I have did some things to try to -- to try to take
12 care of my family, and you know, it's -- it has been over
13 amount of time -- years that I haven't been in trouble. It
14 really has. And I have learned, but just at that time I
15 was just trying to feed my children and my grandchildren.
16 I have son that in Minnesota that's in school, but I'm
17 trying to help him with his tuition, and it's hard. It
18 just got hard on me, and I just fell in between the crack.
19 I have not did any of this in a long time. I really
20 haven't. And I did learn from my mistake. I'm not a
21 menace to society or anything like that, but I am deeply
22 sorry for what -- for what is going on right now. I didn't
23 steal anybody's checkbook. I didn't take anybody's
24 checkbook. It was just -- it was presented to me and at
25 the time I was just trying to feed my family. That's all I

1 was trying to do. I wasn't trying to do anything other
2 than that. And I just ask that you forgive me for what I
3 did, and I do accept all the responsibility -- I can try to
4 do everything I can to pay them back. It just -- it just
5 happened. I really don't understand. It happened, and it
6 has been over -- actually over ten years since I -- since I
7 did anything, and I don't -- it just happened. It
8 happened. And I do apologize, but I -- I just -- the whole
9 time since my first baby up to my -- to my seven grands, I
10 have not had no one to no help. I have been taking care of
11 them by myself and I made some mistakes, but I also did
12 good with them, because I do have three that's in college
13 right now, and I'm trying hard. My son, he don't even know
14 anything about this, because he's in Minnesota right now,
15 but, you know, I -- and I'm just trying to make sure things
16 go okay, and I -- this is not my life. This is not my life
17 and I have did some wrong things in my life, but I'm -- I
18 had them corrected also. I done went through a lot.

19 MR. HALL - Your Honor, her best friend, Sherry
20 Hardy's present in the courtroom and her daughter, Arkia
21 Hinton is also in the courtroom.

22 THE COURT - How long was she in jail?

23 MR. HALL - Thirty-two days.

24 THE COURT - All right, Ms. Brown, I fully

25 understand the economy has been in dire straights since

1 2008. A lot of folks are out there struggling trying to
2 make ends meet, however, there are too many opportunities
3 out there that are legal and above-board that you could
4 turn to without getting into trouble once again. On 810,
5 815, 813 and 816 -- I'm not going to hit you with any
6 consecutive sentences, but the sentence are all concurrent
7 sentences of seven years. You get credit for 32 days.
8 Also concurrent with that on the conspiracy is a sentence
9 of three years, same credit. Solicitor ---

10 MR. BRACKETT - Yes, sir?

11 THE COURT - -- as much as I would like to get
12 into the restitution aspect, I just don't see that it's
13 feasible.

14 THE COURT - We're not either, so I certainly
15 understand.

16 THE COURT - If you'll let Bi-Lo know they may
17 have to find funds somewhere else because I just don't
18 think that that will work here.

19 MR. BRACKETT - Yes, sir.

20 THE COURT - Thank y'all.

21 MR. HALL - Your Honor, my client did want to
22 respectfully ask if the Court did give her SCDC time that
23 she would be allowed to stay out until June the 3rd so she
24 could go to her heart appointments.

25 THE COURT - Denied.

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MR. HALL - Thank you, Your Honor.

MR. NEWKIRK - Thank you, Your Honor.

(END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

C E R T I F I C A T E

I, Shirley G. Broom, the undersigned Court Reporter hereby certify that the foregoing 22 pages constitute a true and accurate record of the proceedings taken in the case of State of South Carolina vs. Arkella Renee Brown, as taken by me at the time and place stated.

I do further certify that the persons were present as stated, that I am not of counsel for, related to or in the employe of any of the parties to this action and that I have no interest whatsoever in the outcome of this case.

This the 2nd day of October, 2013.


Shirley G. Broom

16th Circuit Court Reporter

2013CP4-2211

CERTIFIED TRUE COPY

2013 JUL 23 PM 2:28

STATE OF SOUTH CAROLINA

County of YORK

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

In the Court of Common Pleas

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2013 JUL 23 AM 9:20

FILED-RECEIVED

Arkelle Rena Brown 310705
Full name and prison number (if any) of Applicant.

vs.

The State
Name of Respondent.

Atty. Gen.

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. 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 applicant was convicted.

1. Place of detention MOSS Justice Center, (Detention)
YORK, SC 29745
2. Name and location of Court which imposed sentence YORK MOSS JUSTICE Courthouse 1675-3A York Hwy
YORK, SC 29745
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Forgery - 13-GS-4600810
 - (b) Forgery - 13-GS-4600813
 - (c) Consp - 13-GS-4600811
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 09, 2013 7 yrs
 - (b) May 09, 2013 7 yrs
 - (c) May 09, 2013 3 yrs

5. Check whether a finding of guilty was made

- (a) after a plea of guilty yes
- (b) after a plea of not guilty NA
- (c) after a plea of nolo contendere NA

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

NA

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) I didn't know that I could appeal
- (b) Attys didn't inform about an appeal
- (c) Trial Judge didn't advise me of an appeal

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

- (a) 5th Amendment U.S.C.A. Violation
- (b) 14th Amendment - U.S.C.A
- (c) 6th Amendment - U.S.C.A

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

- (a) I did not appear for Grand Jury arraignment, I didn't waive my rights to be present
- (b) Deft/De Indictment
- (c) They suppressed evidence of discovery evidence falsely represent me, conspired with the state

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

- (a) any petition in a State Court under South Carolina Law? NA
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NA
- (d) any other petitions, motions or applications in this or any other Court?
N/A

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NA

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

(a) which grounds have been presented:

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

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

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

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

- (a) Attwy did not raise the issue
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? NA
- (b) your trial, if any? NA
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

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

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

- i. Ypek County Miss. Jct's Public Defender Division (DAN HALL)
- ii. NA
- iii. NA

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

- i. General Session Court - Guilty Plea
- ii. NA
- iii. NA

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

~~General Session Court~~ ^{AB} Guilty Plea Charges dec, fast of speedy trial within 120 days, re-open States Evidence

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

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of YORK

I, AKELLA BROWN, 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.

AKELLA BROWN

SWORN to and subscribed before me this 12th

day of July, 19 2013

ANNE S. WILLIAMS (L.S.)
Notary Public

My Commission Expires: August 25, 2015

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

I, AKELLA BROWN, 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 therefor.

AKELLA BROWN
Applicant

SWORN or affirmed to and subscribed before me this

12th day of July, 19 2013

ANNE S. WILLIAMS
Notary Public

My Commission Expires August 25, 2015

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT
)	
Arkella Rena Brown, #310705,)	2013-CP-46-2211
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed July 23, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the February 2013 term of the York County Grand Jury for Forgery value less than \$10,000 (2013-GS-46-0810), Criminal Conspiracy (2013-GS-46-0811), and three counts of Forgery, 3rd or subsequent offense (2013-GS-46-0813, -0815, -0816). The Applicant was represented by Dan Hall, Esquire. On May 9, 2013, the Applicant pled guilty to all charges as indicted. The Honorable Paul M. Burch sentenced the Applicant to confinement for seven (7) years for Forgery, value less than \$10,000, three (3) years, concurrent, for Criminal Conspiracy, seven (7) years, concurrent, for two of the Forgery, 3rd or subsequent charges and three (3) years, concurrent for the remaining forgery charge. The Applicant did not appeal her convictions or sentences.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina

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

II.

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

1. "5th Amend U.S.C.A. Violation"
 - i. "I did not appear for Grand Jury arraignment, I didn't waive my rights to be present"
2. "14th Amendment- U.S.C.A."
 - i. "Defect/Delayed Indictment"
3. "6th Amendment- U.S.C.A."
 - i. "They suppressed evidence of discovery evidence falsely represent me conspired with the State."

III.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, she 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 she was denied due process of law. The Applicant's allegation claims infringement of her rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for

post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

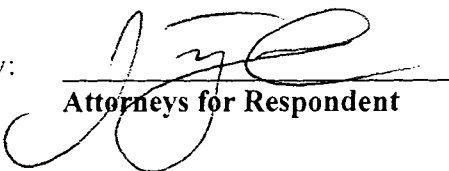
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

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

October 14, 2013

By: 
Attorneys for Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
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 ARKELLA R. BROWN, 310705)
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 Applicant,)
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 vs)
)
 STATE OF SOUTH CAROLINA,)
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 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

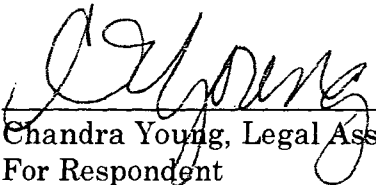
2013-CP-46-2211

AFFIDAVIT OF SERVICE BY MAIL

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

W. Michael Hemlepp, Esquire
 2506 W. Cranbrook Lane #3
 Charlotte, NC 28207

DATED this 14th day of October, 2013.



 Chandra Young, Legal Assistant
 For Respondent

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<u>WITNESS</u>	<u>BY:</u>	<u>PAGE NO.</u>
Arkella Brown	Mr. Hemlepp	P.5-14
		P.19-21
	Mr. Johnson	P.14-19
Mr. Dan Hall	Mr. Johnson	P.21-25
		P.31
	Mr. Hemlepp	P.25-31
Court Reporter's Certificate Page		P.33

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I-N-D-E-X - CON'T

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits were received into the record.

1 (COURT IN SESSION DECEMBER 9, 2013 AT 09:45 A.M..)

2 MR. HEMLEPP: Arkella Brown.

3 (DEFENDANT ENTERS COURTROOM.)

4 MR. JOHNSON: May it please the Court, Your Honor.

5 This is the case of Arkella Brown versus State of
6 South Carolina. This is Case No. 2013-CP-46-2211. Mr.
7 Brown was indicted at the February 2013 term of the York
8 County Grand Jury for forgery valued at less than Ten
9 Thousand Dollars, Criminal Conspiracy and three counts of
10 Forgery third or subsequent offense.

11 On May 9th, 2013 she plead guilty to all charges as
12 indicted before the Honorable Paul M. Burch. She was
13 sentenced concurrently to seven years for forgery, three
14 years for criminal conspiracy, seven years for two of the
15 forgery third subsequent offenses and three years for the
16 remaining forgery third or subsequent offense.

17 She filed no appeal however she filed a timely PCR
18 application July 23, 2013. The State filed it's return
19 October 14, 2013 and she is represented here today by Mr.
20 Mike Hemlepp.

21 THE COURT: Mr. Hemlepp, I see she's got several
22 Fifth, Sixth, and Fourteenth Amendment concerns according
23 to her application. What are we gonna be dealing with as
24 far as the issues with Ms. Brown today?

25 MR. HEMLEPP: Your Honor, the primary issue, there are

ARKELLA BROWN: DIRECT BY MR. HEMLEPP

-5-

1 several of those that are going to be abandoned as you can
2 see, that was a lay person who wrote the petition. The
3 ineffective assistance of counsel is the gravity of the
4 case.

5 THE COURT: Okay. You can call your first witness.

6 MR. HEMLEPP: Thank you, Your Honor.

7 I would call my client Ms. Arkella Brown.

8 MADAME CLERK: Ms. Arkella, can I have you place your
9 left hand on the Bible and raise your right as far as you
10 can.

11 (WHEREUPON, Arkella BROWN, BEING
12 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

13 MADAME CLERK: Thank you. Come around and have a
14 seat. Watch your step up.

15 THE COURT: You may proceed.

16 MR. HEMLEPP: Thank you, Your Honor. May it please
17 the Court.

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 ARKELLA BROWN BY MR. HEMLEPP:

21 Q. Ms. Brown, would you please give me your full name and
22 could you spell your last name for the court reporter?

23 A. Arkella Rene Brown, B-r-o-w-n.

24 Q. Now, Ms. Brown, you and I had spoken before and you
25 told me that you have difficulty hearing out of one ear?

1 A. Yes.

2 Q. If there is anything you don't understand I need you
3 to tell me that, that we can speak louder, okay?

4 A. Okay.

5 Q. Okay. Ms. Brown, tell me, how old are you?

6 A. Forty-one.

7 Q. You're forty-one?

8 A. Yes.

9 Q. And before you went to the Department of Corrections
10 where did you live?

11 A. At [REDACTED], York, South Carolina with my
12 mother.

13 Q. Here in York. Are you a native of York?

14 A. Yes.

15 Q. And do you have any certifications or licenses for
16 any kind of profession?

17 A. Yes, I'm a licensed beautician.

18 Q. Is that what you did prior to going into the
19 Department of Corrections?

20 A. Yes.

21 Q. Okay. And do you have - Are you married, single, or
22 divorced?

23 A. I'm single.

24 Q. Single. And do you have children?

25 A. I have four.

ARKELLA BROWN: DIRECT BY MR. HEMLEPP

-7-

1 Q. You have four children. And where do they live?

2 A. My son is in Minnesota, he goes to school in
3 Minnesota. My oldest daughter she stays in Rock Hill and
4 my two - my two other daughters they stay home with my
5 mother.

6 Q. Okay. Do you remember the day that you came to court
7 for a plea in this court to the charges that sent you to
8 the Department of Corrections?

9 A. Yes.

10 Q. Who was your lawyer at the time?

11 A. Dan Hall.

12 Q. Did you hire Dan - Mr. Hall on your own or was he
13 appointed to you by the Clerk of Court?

14 A. He was appointed.

15 Q. When did you first discover Mr. Hall was your lawyer?

16 A. I don't know exactly what date but it was like a
17 couple of months after I had been arrested.

18 Q. Okay. When you were arrested did you spend any time
19 in the Detention Center awaiting trial?

20 A. Not awaiting trial. Just waiting for bond.

21 Q. Waiting for a bond. Did you get a bond?

22 A. Yes.

23 Q. How long did you spend in jail before you got bond,
24 the bond?

25 A. It was thirty-two days.

1 Q. Thirty-two days. Was Mr. Hall appointed to you during
2 that time?

3 A. No.

4 Q. It was after you got bond?

5 A. Yes.

6 Q. Okay. And how long of a wait was there between you
7 getting out of jail on bond and you coming to court for
8 that plea hearing?

9 A. Five months.

10 Q. Five months.

11 A. Uh-huh.

12 Q. During that five months did you have the opportunity
13 to talk to Mr. Hall?

14 A. Yes.

15 Q. And meet with Mr. Hall?

16 A. Yes.

17 Q. How many times did you talk with him?

18 A. About five.

19 Q. Okay. And were they in the same place? Did you come
20 up here to visit him in his office or was it somewhere
21 else? Can you tell us a little bit about those?

22 A. I visited him in his office.

23 Q. Okay. And how much time did you have to spend with
24 Mr. Hall?

25 A. Anywhere from twenty - Anywhere from like twenty to

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1 thirty minutes.

2 Q. Okay. When you were meeting with Mr. Hall, did he
3 talk to you about your charges?

4 A. Yes he did.

5 Q. And did he talk to you about the effect that prior
6 offenses would have on the sentence for this charge?

7 A. Yes.

8 Q. Okay. Tell me what your understanding was with
9 regards to those prior offenses.

10 A. The day when he called me to come and do the plea we
11 had talked the day before and he was telling me that once
12 he had a chance to look at my record and everything and
13 seeing - After I had explained to him how my record was he
14 looked at it and he was telling me that my record wasn't as
15 bad as it seemed and that he was sure that I would be able
16 to get probation or no more than ninety days at the County.

17 Q. Okay. And you just testified that you explained to
18 him about your record.

19 A. Yes.

20 Q. Was there - Is there an issue with your prior
21 offenses?

22 A. Yes. My charges for some reason from my rap sheet
23 they keep reappearing like they new charges but they're
24 not. They're all the same charges and I been trying to get
25 someone, you know, I hadn't had the money to actually get

1 it straightened out yet. But it's the same old - every
2 time you look at it it's like it continuously coming back
3 through but it's the same charge on a couple of 'em.

4 Q. And did you communicate that to Mr. Hall?

5 A. Yes I did.

6 Q. Okay. Now your testimony was that you talked to him
7 the day before the plea?

8 A. Yes.

9 Q. On the date of the plea did you have a chance to talk
10 to him again?

11 A. Briefly yes.

12 Q. Okay. And do you remember the circumstances of the
13 plea?

14 A. Yes I do.

15 Q. Okay. Now do you remember the solicitor, the
16 assistant solicitor who handled your plea? Can you
17 describe that person?

18 A. Mr. Brackett.

19 Q. Mr. Brackett is the elected solicitor. Was there an
20 assistant solicitor in the room?

21 A. No but they told me that there wouldn't be any - the
22 State wasn't gonna talk against me that day.

23 Q. Okay. When you say they told you, who told you?

24 A. Mr. Hall did.

25 Q. Okay. And did you enter a plea of guilty?

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1 A. Yes.

2 Q. And did you enter a plea of guilty based upon your
3 knowledge of the offenses? You entered a plea of guilty
4 and admitted that you did the offense?

5 A. Yes.

6 Q. Okay. And you entered a plea of guilty based upon
7 what you believe your record to be.

8 A. Right.

9 Q. Okay.

10 A. Yes.

11 Q. Yes. Now if I told you that there is an assistant
12 solicitor who handled your case named Mr. Newkirk, is that
13 familiar? Do you know who that is?

14 A. No I never met him.

15 Q. Okay. Do you know who Mr. Brackett is, Solicitor
16 Brackett?

17 A. I don't know him. That day he come in I saw him
18 briefly but I didn't know him.

19 Q. Did he handle the entire plea?

20 A. Yes.

21 Q. Did he handle the entire case from beginning to the
22 end?

23 A. Yes.

24 Q. When it came time to talk to the Court after you had
25 entered your plea and talked to the Court about sentencing,

1 did Mr. Brackett speak?

2 A. Yes.

3 Q. And was that surprising to you?

4 A. Yes it was.

5 Q. Please tell the Court why that was surprising to you.

6 A. It was surprising to me because from my understanding
7 that there wasn't gonna be any - the State wasn't gonna
8 talk against me and I was coming in to do the plea for
9 probation or no more than ninety days. But when he come in
10 he come in with the attitude as if I was like a monster.
11 You know he just made me out to be someone that I knew that
12 I wasn't and I didn't have no defense and it was like I - I
13 don't even - My lawyer didn't even have a defense. It was
14 - I couldn't understand it.

15 Q. Was that --

16 A. I can't even explain it.

17 Q. Was that a surprise to you?

18 A. Yes it was.

19 Q. Prior to Mr. Brackett talking to the Court regarding
20 sentencing, did Mr. Hall tell you Solicitor Brackett was
21 going to come in?

22 A. He told me right before yes, sir, he did.

23 Q. And did he ask you whether you wanted to proceed?

24 A. I can't - I don't remember. I don't remember that.

25 Q. Okay. If you had known that Solicitor Brackett was

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1 going to testify with regards to your record after you had
2 been under the belief that the State was not going to talk
3 badly about you but simply give facts about your record,
4 would you have gone forward with your plea?

5 A. No I wouldn't have.

6 Q. Okay. Is there anything else about this matter that
7 you think the judge needs to know before we proceed?

8 A. I think really - I just feel like it didn't go
9 according to how it was explained to me that it was gonna
10 go because I really wasn't initially set to come to court
11 that day. It's just that when he called me up and told me
12 that, you know, it was gonna be good for me to come in that
13 day and, you know, what it was that was offered to me I
14 took his word at that. So when I come in and everything
15 changed on me I was lost. I didn't understand that from
16 that point on.

17 So I did try to - I did try to speak with Mr. Hall
18 after - I never did receive - You know he never come and
19 talked to me when I was down. And I even sent my family
20 out to talk to him a couple of times so I really don't know
21 - you know nothing else behind that.

22 Q. When you same come to talk to you and sent your family
23 to come to talk to you, was that before or after?

24 A. It was after the plea because I wanted to ask for an
25 appeal during that time because I know they say you have a

ARKELLA BROWN: DIRECT BY MR. HEMLEPP
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1 ten day frame to do it. And I wasn't able to cause he
2 didn't come to speak to me.

3 Q. Okay. Is there anything else that you think the Court
4 needs to know in this matter?

5 A. I just feel like it was unfair.

6 Q. Okay.

7 A. It was unfair.

8 Q. Thank you, Ms. Brown. The Attorney General is going
9 to ask you some questions.

10 MR. HEMLEPP: And thank you, Your Honor.

11 MR. JOHNSON: May it please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 ARKELLA BROWN BY MR. JOHNSON:

15 Q. Ms. Brown, correct me if I'm wrong, what your grip is
16 is that the plea did not go according to how you thought it
17 was going to and you were promised no more than ninety
18 days; is that correct?

19 A. I - I -

20 Q. Correct me if I'm wrong, but you're saying that Mr.
21 Hall promised you no more than ninety days. Correct?

22 A. Right.

23 Q. But the judge ask you if you were fully aware that
24 each charge carried up to ten years; isn't that right?

25 A. I don't know. I don't know what he said during that

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1 time. I'm not sure.

2 Q. So you don't know what was said during your plea?

3 A. Not all no I don't.

4 Q. So you're facing prison time and you weren't paying
5 attention?

6 A. I was paying attention. Its just that like I said
7 before a lot of things I can't hear and I try to read lips
8 so sometimes I can't hear and when I didn't quite
9 understand I ask my lawyer and he spoke in - he spoke for
10 me.

11 Q. Okay.

12 A. So I know I don't really understand. I didn't
13 understand what was being said at the time but I do know
14 that there was - they said that the charges can carry up to
15 a certain amount of time but from what he was telling me it
16 was okay, that what we discussed it was okay, that was what
17 was gonna happen. I didn't expect all the rest of that to
18 happen.

19 Q. Have you seen a copy of your transcript?

20 A. No I haven't.

21 MR. JOHNSON: May I approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 Q. Ms. Brown, on Page 10 starting around Line 14 will
24 you pleas read that out loud?

25 A. "Up to ten exposed to thirty-five. If I told them

1 you can get a - you could get consecutive sentence. You
2 could get thirty-five years.. All right with that being
3 said how do you plead?" "Guilty."

4 Q. Thank you. So right there shows that you knew you
5 could get up to thirty-five years not just ninety days;
6 isn't that correct?

7 A. Yeah I guess.

8 Q. Okay. And, Ms. Brown, the court went over all your
9 constitutional rights with regards to a trial. You waived
10 your rights at your guilty plea hearing. Correct?

11 A. Did I do that in court? I don't remember.

12 MR. JOHNSON: Judge, Page 4 through 8 the Court covers
13 all of her constitutional rights.

14 Q. And you pled guilty to each of these charges did
15 you not?

16 A. Yes I did.

17 Q. Okay. And you didn't want a trial?

18 A. I did want a trial yes.

19 Q. But that's not what you told the Court is it?

20 A. That's not what - Its more complicated than what
21 we're speaking here but. . .

22 Q. You pled guilty to avoid a larger sentence didn't you?

23 A. No.

24 Q. You want to face thirty-five years?

25 A. No I didn't plea guilty to avoid a large sentence.

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1 Q. Okay. You pled guilty cause you're guilty of this
2 crime weren't you?

3 A. No.

4 Q. Then why did you plead guilty?

5 A. I pled guilty because they played my daughter against
6 me that's why.

7 Q. You've been convicted of forgery multiple times in the
8 past haven't you?

9 A. I have.

10 Q. 2005 three counts, 2002 one count. You have a whole
11 bunch of stealing convictions don't you? Larceny,
12 shoplifting?

13 A. I do.

14 Q. You apologized for your actions in this case; isn't
15 that correct? You took responsibility for your actions in
16 this case.

17 A. I did.

18 Q. You said that you were satisfied with Mr. Hall's
19 representation. Correct?

20 A. I said that before this happened I did. Because like
21 I said before what he promised me and what happened was
22 totally two different things.

23 Q. But at no time during the plea did you stop the
24 Court and say hey this is not what's supposed to be
25 happening did you?

1 A. If you look in there somewhere I tried when he was - I
2 was hesitant about a couple of things and Mr. Hall did
3 speak because like I told you before some things I did not
4 understand but when - when the judge was saying things to
5 me I was also speaking to my attorney and he was telling me
6 it was okay so I took him at his word.

7 Q. But it was your decision to plead guilty wasn't it?

8 A. No it wasn't.

9 Q. So Mr. Hall forced you to plead guilty?

10 A. It wasn't like a force but it was - the way that they
11 had it set up it was a lot more to it than just me pleading
12 guilty cause no I wasn't going to plead guilty. I wasn't
13 going to plead guilty at all.

14 Q. So but you plead on your own free will and accord
15 didn't you?

16 A. I did.

17 Q. So nobody threatened you to plead guilty, you made
18 the conscious decision to plead guilty in this case; is
19 that not correct?

20 A. It wasn't - it wasn't totally a threat but like I said
21 earlier when they put my daughter in it it was either - it
22 was either this or that so it took me to say I take the
23 charge so - cause my daughter didn't have anything to do
24 with it and then it was costing a lot of problems. She got
25 children and it was gonna cost her to be evicted so it - in

ARKELLA BROWN: CROSS BY MR. JOHNSON
REDIRECT BY MR. HEMLEPP

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1 order for her to come out without being charged, without
2 them having her evicted and no where to stay I did take the
3 plea. I took that plea and that's what - that's when they
4 snowed that's what they put against me. So I ain't like I
5 come in and I just wanted to take the plea. That's what
6 they put before me. That's what - That's what was done in
7 this case from the beginning to the end.

8 Q. So you want to go back and face thirty-five years is
9 what you're telling me?

10 A. It doesn't matter how - I just don't feel like the
11 way that it was done was right.

12 Q. You realize that if you are successful here today
13 you would go back and face thirty-five years in prison?

14 A. Yeah.

15 Q. And that's what you really want?

16 A. I want justice I do. I do.

17 Q. But you decided to plead guilty in this case did you
18 not?

19 A. Yes.

20 MR. JOHNSON: No further questions, Your Honor.

21 MR. HEMLEPP: May it please the Court?

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION

24 ARKELLA BROWN BY MR. HEMLEPP:

25 Q. Ms. Brown, how far did you go in school?

1 A. I went to the eleventh grade.

2 Q. You went to the eleventh grade. And do you have any
3 legal training?

4 A. I have a GED.

5 Q. Do you have any legal training in the law?

6 A. No I don't.

7 Q. Okay. And do you have any training as to your
8 constitutional rights other than what you've been told by
9 lawyers?

10 A. No.

11 Q. Okay. On the date of the plea was that stressful
12 to you?

13 A. It was very stressful.

14 Q. Okay. And did you in fact rely upon your lawyer to
15 guide you given the fact that you have no legal training
16 and you were under the stress of facing jail time?

17 A. Yes I did.

18 Q. Thank you.

19 MR. HEMLEPP: I have nothing further, Your Honor.

20 MR. JOHNSON: No further questions from the State.

21 THE COURT: I do have a question.

22 You mentioned your daughter. Was she charged with
23 these same crimes?

24 A. Yeah she was but they told me if I took the plea that
25 they would dismiss her charges.

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DAN HALL: DIRECT BY MR. JOHNSON

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1 THE COURT: Did they dismiss her charges?

2 A. They did.

3 THE COURT: All right, you can step down and have a
4 seat with your attorney.

5 MR. HEMLEPP: Thank you, Your Honor.

6 (WITNESS LEAVING WITNESS STAND.)

7 MR. HEMLEPP: That's all from the Applicant.

8 MR. JOHNSON: The State calls Dan Hall to the stand.

9 (WHEREUPON, DAN HALL, BEING

10 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 DIRECT EXAMINATION

12 DAN HALL BY MR. JOHNSON:

13 Q. Good morning, Mr. Hall. How long have you practiced
14 crime law?

15 A. For about twenty years.

16 Q. And what is your current position?

17 A. I'm a Assistant Public Defender.

18 Q. And how long have you been with the Public Defender's
19 Office?

20 A. Two years.

21 Q. And where were you before that?

22 A. I was a Assistant Solicitor for about twelve years.

23 Q. And have you handled forgery cases before?

24 A. I have.

25 Q. About how many percentage of your cases are forgery

1 cases?

2 A. I'd say five.

3 Q. And how did you come to represent Ms. Brown?

4 A. I was appointed to represent her.

5 Q. About how many times did you meet with her?

6 A. My records indicate I met with her about five times.

7 I think five times.

8 Q. And did you discuss the charges with her?

9 A. I did.

10 Q. And the potential sentences she was facing?

11 A. Yes.

12 Q. And what advice would you have given her as far as
13 the sentencing or the - you know, her exposure?

14 A. She was looking at thirty-five, potential thirty-five
15 years and they were enhanced forgeries based on her prior
16 record.

17 Q. Did you ever promise her no more than ninety days?

18 A. No.

19 Q. Do you ever promise clients what sentence they'll get?

20 A. No unless it's a negotiated sentence.

21 Q. Right.

22 A. This is not a negotiated sentence.

23 Q. And so she was well aware that she faced up to
24 thirty-five years ---

25 A. Yes.

DAN HALL: DIRECT BY MR. JOHNSON

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1 Q. --- and the judge could sentence her you know
2 accordingly?

3 A. That's correct.

4 Q. Okay. Also her other complaint was that Solicitor
5 Brackett spoke at the plea hearing. Were you aware that he
6 was going to speak?

7 A. No I was not.

8 Q. Okay. Do you think that influenced the judge in any
9 way shape or form in her sentence?

10 A. Yes.

11 Q. Okay. And how so?

12 A. When - Before Mr. Brackett was involved Ms. - what I
13 had told Ms. Brown is that this seemed like an appropriate
14 time to enter her guilty plea; that I - it had been told to
15 me that this would be a straight up plea and that the
16 Assistant Solicitor Ryan Newkirk would give the facts. It
17 was not until shortly before the plea that Mr. Brackett
18 informed me that he would be presenting the State's facts
19 of the case and that he indicated he would be asking for a
20 significant sentence.

21 Q. But you would agree with me that the judge has
22 discretion in his sentencing?

23 A. That's --

24 Q. As long as it's not illegal he can sentence her up
25 to thirty-five years in this case?

1 A. Yes.

2 Q. Okay. And he only gave her seven years; isn't that
3 correct?

4 A. That's correct.

5 Q. Okay. So that's well within his discretion to do
6 that?

7 A. Yes.

8 Q. And based on her prior record do you feel that's an
9 appropriate amount of time?

10 A. I certainly argued before the judge that I did ask
11 for an opportunity for her not to go to prison. Her last
12 property offense was actually was some discussion about her
13 record, her last property offense was not in 2005. She
14 faced a probation violation in 2005 because of the - it was
15 a 2001 sentence but I did indicate to her that the fact
16 that she had a probation violation on a prior property
17 offense that it was very unlikely that a judge would give
18 her - another judge would give her a probationary sentence
19 but I would certainly ask for it.

20 Q. Did you ever threaten or coerce Ms. Brown into
21 pleading guilty?

22 A. No.

23 Q. Whose decision was it to plead?

24 A. It was hers.

25 Q. At any point did she want a trial in this case?

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CROSS BY MR. HEMLEPP

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1 A. Yes. Several times we had talked about the
2 possibility of a trial. In fact she had - she had told me
3 that at one of our meetings that she would not plead
4 straight up that she would take her chances at a jury trial
5 and I had told her that was on our May the 11th meeting.
6 I'm sorry, April the 11th meeting that the State would not
7 offer a probationary sentence.

8 I do remember telling her I did not believe that was
9 in her best interest based on her record, based on her view
10 of the facts that she could very likely face a very
11 significant jail sentence. And then on May the 10th is
12 when she entered her guilty plea in front of Judge Burch.

13 Q. And did you agree with that decision to enter a guilty
14 plea?

15 A. I did. I thought that was appropriate at that time.

16 MR. JOHNSON: The Court's indulgence, Your Honor.

17 (PAUSE.)

18 MR. JOHNSON: That's all I have on direct. Thank you.

19 Please answer any questions Mr. Hemlepp may have.

20 MR. HEMLEPP: May it please the Court, Your Honor?

21 THE COURT: Yes, sir.

22 MR. HEMLEPP: Thank you.

23 CROSS-EXAMINATION

24 DAN HALL BY MR. HEMLEPP:

25 Q. Mr. Hall, of course you've been doing this a long time

1 and have had lots of clients that dealt with forgery cases.
2 How many cases do you think that you've handled as a guilty
3 plea in your career in York County?

4 A. As a guilty plea prosecutor and public defender. I
5 have no idea. I don't know a thousand.

6 Q. Hundreds? A thousand. That's probably not
7 unreasonable. There are thousands of cases that go through
8 York County every year and you've been here for fifteen
9 years, sixteen?

10 A. I been here since 1988. Part of - Some of that time
11 I was - I had my own practice so what's that? Twenty-five
12 years.

13 Q. Was it given the number of cases that you've handled
14 during your experience in York County, was it unusual for
15 Solicitor Brackett to come into the courtroom to talk to
16 the judge about sentencing? This would be the elected
17 solicitor himself --

18 A. In this type case I thought yes.

19 Q. Yes. And why is that unusual?

20 A. Because it was a forgery case the Chief Prosecutor
21 usually leaves that solely at the - let the Assistant
22 Solicitor handling the case to deal with it.

23 Q. And do you remember who the Assistant Solicitor was?

24 A. Ryan Newkirk.

25 Q. Okay. And you've dealt with him before?

DAN HALL: CROSS BY MR. HEMLEPP

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1 A. I have.

2 Q. And had he been at the Solicitor's Office when you
3 were also at the Solicitor's Office?

4 A. No.

5 Q. Okay.

6 A. No he was relatively new.

7 Q. Okay. But you had worked with him on this case?

8 A. Yes.

9 Q. And had you also negotiated this case? And by
10 negotiating I don't mean resulted in a negotiated agreement
11 but you had negotiations with him.

12 A. Yes.

13 Q. Okay. And how was that working relationship? Was it
14 open was it?

15 A. It was open.

16 Q. Okay.

17 A. The Solicitor he had - they had always taken the
18 position that there would be no offer in the case. She
19 would have to plead straight up. I mean as far as any
20 negotiations there was never any - anything other than
21 that.

22 Q. Was there either an agreement or an understanding
23 between you and Assistant Solicitor Newkirk that he would
24 not speak against the defendant when it comes to sentencing

25 ---

1 A. No.

2 Q. --- but simply gave the facts?

3 A. No.

4 Q. Okay. Was Solicitor Brackett in the courtroom for the
5 entire plea?

6 A. Yes.

7 Q. Okay. And when you discover that he was going to be
8 in the courtroom?

9 A. Fifteen minutes before the plea.

10 Q. Okay. Have you had an opportunity before you came
11 here today to read the transcript?

12 A. I did.

13 Q. Okay. Do you have one with you?

14 A. I think I left it back there.

15 Q. Okay. I have one. If I can ask you to read - -

16 MR. HEMLEPP: May I approach the witness?

17 THE COURT: You may.

18 MR. HEMLEPP: Thank you.

19 Q. Page 15 from Line 20 to Page 16 through Line 7.

20 A. Mr. Hall: Your Honor, if I may Solicitor Brackett
21 informed us just right before we began the plea that he
22 would be speaking, talking about information that he
23 received from the community. That's the first time we had
24 heard that information. I did relay that to Ms. Brown
25 about whether she wanted to go forward. He did let me know

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1 this morning that he would be - would be asking for that
2 and would be representing the community. We have not
3 received any of that information until he stated that to
4 the Court. She - That was news to her, certainly news to
5 me and so she's just trying to process that. She has
6 indicated to me that she wished to plead guilty to all
7 those charges."

8 Q. Thank you. When you said at the time she's just
9 trying to process that, what did that mean? What were you
10 - What did you mean by that? If you recall.

11 A. I'm trying to figure out whether what Mr. Brackett may
12 or may not say about her.

13 Q. Did you consider at the time whether you should or
14 should not advise her to withdraw her plea?

15 A. At that time I still considered it to her advantage
16 to go forward with the plea.

17 Q. Okay. Did you talk to her about whether she should
18 withdraw her plea?

19 A. When as I stated there I did tell her about Mr.
20 Brackett being there and then I did believe that it was in
21 her best interest to go forward with the plea that day.

22 Q. Okay. Do you remember the dollar amount involved in
23 this case?

24 A. There were several counts. I think - I don't remember
25 exactly. It seems like Four Hundred and some odd dollars

1 on each charge.

2 Q. At one point during your presentation in the plea you
3 testified - well you didn't testify, you argued to the
4 court on behalf of your client that she would like the
5 ability to pay the restitution. Was that a restitution
6 amount that you believed she could pay?

7 A. Yes.

8 Q. Okay. So it wasn't an enormous amount?

9 A. No.

10 Q. Okay. So for the amount of money involved for the
11 record involved given all the circumstances but for the
12 solicitor coming in and giving his presentation on
13 sentencing is a seven year sentence consistent with other
14 sentences that you've seen in York County?

15 MR. JOHNSON: Objection to the relevance of that, Your
16 Honor.

17 THE COURT: I'll allow the question and answer.

18 A. No. I can't - I mean I don't know. She did have a
19 fairly extensive record and she had been on probation
20 before. Had a five year sentence and been on probation and
21 then violated that. Certainly that was what I argued to
22 the Court was about thirteen years ago but I can't say that

23 Q. Let me ask it a different way and this will be my
24 final question. Based upon your experience in York
25 County and the many cases that you've handled and the

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1 client's that you've handled who have had property crimes
2 before this court especially with the volume of cases that
3 come through York County and the dollar amount in this
4 instance did the sentence of seven years surprise you?

5 A. Yes.

6 Q. Thank you.

7 MR. HEMLEPP: I have nothing further.

8 Thank you, Mr. Hall.

9 MR. JOHNSON: Just one follow up, Your Honor.

10 REDIRECT EXAMINATION

11 DAN HALL BY MR. JOHNSON:

12 Q. Mr. Hall, that seven years was still within the
13 judges discretion. It was not an illegal sentence was it?

14 A. Yes.

15 Q. Okay. It was not an illegal sentence?

16 A. No it was not an illegal sentence, no.

17 MR. JOHNSON: Thank you, Your Honor.

18 THE COURT: You may step down.

19 (WITNESS LEAVING WITNESS STAND.)

20 THE COURT: Thank you. You can be excused.

21 MR. JOHNSON: The State has no further witnesses.

22 THE COURT: Any redirect? I mean any reply?

23 MR. HEMLEPP: No, Your Honor. Thank you.

24 THE COURT: All right. I'll take this under
25 advisement. Appreciate everybody's - or do you want to

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make --

MR. HEMLEPP: No. That's fine, Your Honor.

THE COURT: I'll take it under advisement.

MR. HEMLEPP: Thank you, Your Honor.

(END OF TRANSCRIPT OF RECORD.)

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
)
 Arkella Rena Brown, #310705,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-46-2211

ORDER

FILED-RECEIVED
 2013 DEC 11 PM 3:25
 W. MICHAEL HEMLEPP
 D.C. C.P. & GS
 YORK COUNTY, SC

This is a post-conviction relief application filed July 23, 2013. The case was heard December 9, 2013. Applicant was represented by W. Michael Hemlepp, Esq., the State by J. Rutledge Johnson, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The applicant was indicted by the February 2013 term of the York County Grand Jury for Forgery value less than \$10,000 (2013-GS-46-0810), Criminal Conspiracy (2013-GS-46-0811), and three counts of Forgery, 3rd or subsequent offense (2013-GS-46-0813, -0815, -0816). The Applicant was represented by Dan Hall, Esquire. On May 9, 2013, the Applicant pled guilty to all charges as indicted. The Honorable Paul M. Burch sentenced the Applicant to confinement for seven (7) years for Forgery, value less than \$10,000, three (3) years, concurrent, for Criminal Conspiracy, seven (7) years, concurrent, for two of the Forgery, 3rd or subsequent charges and three (3) years, concurrent for the remaining forgery charge. The Applicant did not appeal her convictions or sentences.

In her application for post-conviction relief, the Applicant alleges she is being held in custody unlawfully for the following reasons:

JCH #1

1. "5th Amend U.S.C.A. Violation"
 - i. "I did not appear for Grand Jury arraignment, I didn't waive my rights to be present."
2. "14th Amendment – U.S.C.A."
 - i. "Defect/Delayed Indictment"
3. "6th Amendment – U.S.C.A."
 - i. "They suppressed evidence of discovery evidence falsely represent me conspired with the State."

At her hearing Applicant's counsel stated the only issue for the Court's consideration was ineffective assistance of counsel.

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

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

jc#2

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, she 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).

Applicant testified that she is a licensed beautician and a single mother with four children. She recalls her plea and being represented by Dan Hall, Esq., by appointment. She testified that she bonded out of jail after her arrest. Thereafter, she was appointed counsel. The time between her release on bond and her plea was five months during which time she talked with Mr. Hall about 5 times at his office for 20 to 30 minutes each time.

Applicant testified that Dan Hall discussed her charges and the effect of her prior offenses. She testified that prior to her hearing, Dan Hall told her that her record was not as bad as it seemed and that she should expect a sentence of 90 days or probation. This was the day before her plea.

Applicant testified that Mr. Hall told her the State would not talk against her at the plea. Applicant testified she entered her plea of guilty based on her prior record which she alleged is inaccurate and shows that some offenses repeated as multiple offenses.

Applicant testified that at her plea Solicitor Keven Brackett, Esq. talked against her and she testified that she did not expect this. Mr. Brackett’s comments were very adverse to her and she felt they were damaging to her. Prior to the plea, Mr. Hall told her that Solicitor Brackett was going to speak against her. She testified that she did not ask to delay her plea even with this knowledge, but had she known the State was going to speak against her, she would not have pled that day. Applicant testified that Mr. Hall did not talk with her or her family after the plea.

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On cross, she testified that she expected to receive 90 days or probation, and did not expect what happened at her plea nor to receive what sentence she received. Applicant testified that she pled guilty because "they played her daughter against her." She did not elaborate on this comment.

She testified that she was guilty of the charges to which she pled. Applicant said it was not her intention to plead guilty but did plead guilty on her own accord, and took a plea as a way to protect her daughter who was also charged.

Dan Hall, an Assistant Public Defender, testified that he has handled forgery cases prior to Applicant's case. He testified that he met with Applicant five times, discussed charges and potential jail time. He advised her she was facing thirty-five (35) years. He testified that he did not tell her she would get 90 days or any probationary sentence.

As to Mr. Brackett making a statement, Mr. Hall testified that he did not know this was going to occur. Only right before the plea was Mr. Hall aware of Mr. Brackett's involvement in the plea. Mr. Hall testified that the appearance by Solicitor Brackett did affect the sentence Judge Burch imposed.

Mr. Hall testified that based on her prior record, he would be surprised if she got a probation sentence. Mr. Hall testified that Applicant told him that rather than plea straight up she would proceed to trial.

On cross Mr. Hall testified that he had handled thousands of pleas over his 25 year career. He testified that it was unusual for the Solicitor to appear at a forgery case plea as these were usually left to the assistant solicitor handling the case.

Mr. Hall testified that the State never would negotiate for a particular sentence, but did drop some charges in exchange for her plea. Mr. Hall testified that he never told Applicant the

JCH#4

State would not speak against her at the plea. Mr. Hall still felt it was in her best interest to proceed with her plea even though he is now aware of exactly what the Solicitor would say to the Court.

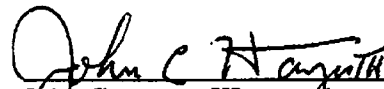
Mr. Hall testified that he could not compare the sentence Applicant received with other sentences for like offenses with like records. Mr. Hall did testify that he was surprised the Applicant was given a seven year sentence.

Based on the record and the testimony at the Post-Conviction Relief hearing, I find Applicant has failed to carry her burden of proof and failed to prove that, when the appropriate standards set forth hereinabove are applied, trial counsel's representation of her was ineffective to any degree.

Wherefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that she must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge #5

December 10th, 2013
York, South Carolina

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WITNESSES

RHPD/Hanoka

DOCKET NO. 2013-GS-46-00810

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 21, Term 2013

ARREST WARRANT NUMBER

2012A4620301033

THE STATE

vs.

ARKELLA RENEE BROWN

ACTION OF GRAND JURY

TRUE BILL

M. M. Escribano
Foreperson of Grand Jury
Date: 2/21/13

VERDICT

Indictment for

FORGERY AND/OR UTTERING,
VALUE LESS THAN \$10,000

SC Code: 16-13-10
CDR Code: 3436

Foreperson of Petit Jury
Date:

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

Defendant

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

Arkella Renee Brown
Defendant

Witness:
My Dyer et. Oper.
C.C.C. PJS. AND S.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT
CERTIFIED TRUE COPY
2013 JUL 24 AM 10:01

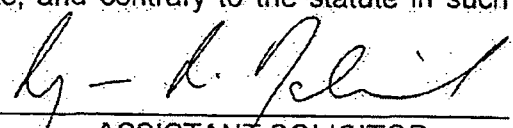
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions convened on February 21, 2013, the Grand Jurors of York County present upon their oath:

FORGERY AND/OR UTTERING, VALUE LESS THAN \$10,000

The Defendant, Arkella Renee Brown, did in York County, South Carolina, on or about November 2, 2012, with intent to defraud, falsely make, forge, counterfeit or cause or procure to be falsely made, forged, or counterfeited a writing, utter and/or publish as true a forged, false or counterfeited writing, or willfully act or assist in any of the foregoing, to wit: the Defendant did present check number 8724 drawn on the Family Trust Federal Credit Union account of Kim Bockstege and made payable to Bi Lo located in York, South Carolina, in the amount of Two Hundred Sixty-Three Dollars and Forty Five Cents (\$263.45). Said check was forged, passed, and/or negotiated without the permission or knowledge of the account holders. All in violation of Section 16-13-10, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT
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2013 JUL 24 AM 10:01

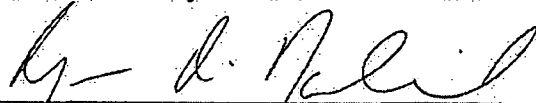
DAVID HAMILTON

At a Court of General Sessions convened on February 21, 2013, the Grand Jurors of York County present upon their oath COUNTY, SC

CRIMINAL CONSPIRACY

The Defendant, Arkella Rena Brown, did in York County, South Carolina, on or about November 1, 2012, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have tacit understanding with Silonia Brown, for the purpose of committing the crime of Forgery. All in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

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WITNESSES

YPD/Clark

DOCKET NO. 2013-GS-46-00813

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 21, Term 2013

ARREST WARRANT NUMBER

2012A4620500288

THE STATE

vs.

ARKELLA RENA BROWN

ACTION OF GRAND JURY

TRUE BILL

Johnny Earls

Foreperson of Grand Jury 2/21/13

VERDICT

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

Defendant

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

Arkella Brown
Defendant

Witness:
Johnny Earls
C.C.C. P.S. AND G.S.

Indictment for
FORGERY THIRD OR SUBSEQUENT
PROPERTY CRIME

SC Code: 16-13-10, 16-01-0057

CDR Code: 3612

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

CERTIFIED TRUE COPY

2013 JUL 24 AM 10:00

At a Court of General Sessions convened on February 21, 2013, the Grand Jurors of York County present upon their oath

CLERK OF COURT
YORK COUNTY, SC

FORGERY THIRD OR SUBSEQUENT PROPERTY CRIME

The Defendant, Arkella Rena Brown, did in York County, South Carolina, on or about November 5, 2012, with intent to defraud, falsely make, forge, counterfeit or cause or procure to be falsely made, forged, or counterfeited a writing, utter and publish as true a forged, false or counterfeited writing, or willfully act or assist in any of the foregoing, to wit: by completing and signing a check #8722 in the amount of One Hundred Sixty Seven Dollars and 43/100 (\$167.43). This did occur at BiLo 717 East Liberty Street, York, SC, all in violation of Section 16-13-10, 16-01-0057 Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

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WITNESSES

YPD/Clark

DOCKET NO. 2013-GS-46-00815

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 21, Term 2013

ARREST WARRANT NUMBER

2012A4620500291

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

ARKELLA RENA BROWN

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

Defendant

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

Arkella Brown
Defendant

Witness:
W. J. Diver et. al.
C.C.C. P.S. AND G.S.

Sammy Earls
Foreperson of Grand Jury
Date: 2/21/13

VERDICT

Indictment for
FORGERY THIRD OR SUBSEQUENT
PROPERTY CRIME

Foreperson of Petit Jury
Date:

SC Code: 16-13-10, 16-01-0057
CDR Code: 3612

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

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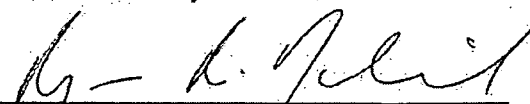
At a Court of General Sessions, convened on February 21, 2013, the Grand Jurors of York County present upon their oath

 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

FORGERY THIRD OR SUBSEQUENT PROPERTY CRIME

The Defendant, Arkella Rena Brown, did in York County, South Carolina, on or about November 1, 2012, with intent to defraud, falsely make, forge, counterfeit or cause or procure to be falsely made, forged, or counterfeited a writing, utter and publish as true a forged, false or counterfeited writing, or willfully act or assist in any of the foregoing, to wit: by completing and signing a check #8723 in the amount of Three Hundred Twenty Nine Dollars and 07/100 (\$329.07), and Twenty Five Dollars cash (\$25.00). This did occur at BiLo 1095 Filbert Highway, York, SC, all in violation of Section 16-13-10, 16-01-0057 Code of Laws of South Carolina, (1976, as amended).

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


 ASSISTANT SOLICITOR

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WITNESSES

YPC/Clark

DOCKET NO. 2013-GS-46-00816

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 21, Term 2013

ARREST WARRANT NUMBER

2012A4620500293

THE STATE

vs.

ARKELLA RENA BROWN

ACTION OF GRAND JURY

TRUE BILL

Jammy Eubank

Foreperson of Grand Jury

Date: 2/21/13

VERDICT

Indictment for
FORGERY THIRD OR SUBSEQUENT
PROPERTY CRIME

Foreperson of Petit Jury

Date:

SC Code: 16-13-10, 16-01-0057
CDR Code: 3612

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

Defendant

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

Arkella Brown
Defendant

W. Dixon et. al.
C.C.C. P.S. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

 CERTIFIED TRUE COPY
 2013 JUL 24 AM 10:00

At a Court of General Sessions, convened on February 21, 2013, the Grand Jurors of York County present upon their oath

FORGERY THIRD OR SUBSEQUENT PROPERTY CRIME

The Defendant, Arkella Rena Brown, did in York County, South Carolina, on or about October 31, 2012, with intent to defraud, falsely make, forge, counterfeit or cause or procure to be falsely made, forged, or counterfeited a writing, utter and publish as true a forged, false or counterfeited writing, or willfully act or assist in any of the foregoing, to wit: by completing and signing a check # 8720 in the amount of Three Hundred Fifty Six Dollars and 78/100 (\$356.78). This did occur at BiLo 717 East Liberty Street, York, SC; all in violation of Section 16-13-10, 16-01-0057 Code of Laws of South Carolina, (1976, as amended).

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


 ASSISTANT SOLICITOR