

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

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OCT - 8 2014

S.C. Supreme Court

SHAQUAN BURGESS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000099

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APPENDIX

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BENJAMIN JOHN TRIPP  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

JOSHUA L. THOMAS  
Assistant Attorney General  
P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2006-GS-21-636
	)	2007-GS-21-1162
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Shaquan Burgess	)	)
<u>DEFENDANT</u>	)	June 13, 2007
		Florence, South Carolina

B E F O R E :

THE HONORABLE THOMAS A. RUSSO, JUDGE.

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

JOHN JEPERTINGER, ASSISTANT SOLICITOR  
Attorney for the State

SHANNON PROSSER, ESQ.  
Attorney for the Defendant

KESHIA REED  
Official Court Reporter

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I N D E X

(WHEREUPON, there were no witnesses called.)

1 MR. JEPERTINGER: Your Honor, we have Shaquan  
2 Burgess in front of you on 07-GS-21-1162, which was --  
3 will be a waiver of presentment and also 06-GS-21-636 two  
4 counts of arm robbery. Before we get started, this one  
5 indicted. Before we get started, Judge, this gentleman  
6 was sent to the department of mental health and we'll need  
7 to have a Blair hearing. Represented by Mr. Prosser. I  
8 provided you the report back from the state department of  
9 mental health where they say he was competent to stand  
10 trial, that's all the other information I have.  
11 Mr. Prosser has a copy of that report.

12 THE COURT: I do have in my possession a report  
13 from the South Carolina Department of Mental Health  
14 forensics evaluation service. I believe this was a report  
15 from a -- is it Dr. Dalal?

16 MR. JEPERTINGER: Mayank H. Dalal.

17 THE COURT: He's a forensic psychiatrist. Mr.  
18 Prosser, you have a copy of that report. You received a  
19 copy of that report?

20 MR. PROSSER: I do, Your Honor, I'm looking at  
21 it.

22 THE COURT: Have you reviewed that with Mr.  
23 Burgess?

24 THE DEFENDANT: I have, Your Honor, we discussed  
25 it actually.

1 THE COURT: All right. Are there any objections  
2 or exceptions to the report?

3 MR. PROSSER: No, sir.

4 THE COURT: All right. In reviewing the report,  
5 he was -- Mr. Burgess was evaluated on April the 16th of  
6 2007 for his competency to stand trial and pursuant to  
7 this report from the department of mental health, it  
8 appears that conclusions are that Mr. Burgess is in fact  
9 competent to stand trial. And then I will make this  
10 report apart of the record as a Court's Exhibit. And we  
11 adhere to findings from the department of mental health as  
12 to Mr. Burgess competency and find that he is competent to  
13 stand trial. We are here today though for the purposes of  
14 accepting a guilty plea. It's my understanding. There  
15 is -- sir, you are Shaquan Burgess?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Mr. Burgess, I have two  
18 indictments, sir. Indictment 2006-GS-21-636 is a three  
19 count indictment charging you with two counts of armed  
20 robbery and one count of a possession of a weapon during  
21 the commission of the violent crime. My understanding,  
22 sir, is that you're before the Court on Counts 1 and 2,  
23 which are the two armed robberies and the State is going  
24 to dismiss Count 3 on that indictment. Is that your  
25 understanding, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: The State's going to dismiss the  
3 possession of a weapon charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And when you respond, Mr. Burgess,  
6 if you would speak louder because Miss Reed has to hear  
7 everything we are saying, sir. And then on indictment  
8 2007-GS-21-1162 that is a single count indictment for  
9 armed robbery. That indictment has not been presented  
10 before the grand jury. It has not been true billed,  
11 hasn't been considered by the grand jury. The other  
12 indictment 06-636 is a true billed indictment.  
13 Mr. Burgess the charge of armed robbery carries a sentence  
14 of not less than ten years no more than 30 years and is  
15 considered a violent and a most serious crime under our  
16 classification of crimes in South Carolina. Do you  
17 understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Understanding the nature of the  
20 charge against you and the possible punishment, how do you  
21 plead to those three counts of armed robbery guilty or not  
22 guilty?

23 THE DEFENDANT: Guilty.

24 THE COURT: All right, sir. Mr. Prosser, you  
25 represent Mr. Burgess?

1 MR. PROSSER: I do, Your Honor.

2 THE COURT: Have you discussed with him his  
3 Constitutional Rights to a trial and the charges he's  
4 pleading guilty to?

5 THE DEFENDANT: We have, Your Honor.

6 THE COURT: Have you also talk with him about  
7 his rights to have this '07 indictment presented to the  
8 grand jury?

9 THE DEFENDANT: Yes, sir, we have.

10 THE COURT: All right. Mr. Burgess, am I  
11 correct, you're 18 years of age, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Do you work anywhere,  
14 Mr. Burgess?

15 THE DEFENDANT: No, sir.

16 THE COURT: How far did you go in school, sir?

17 THE DEFENDANT: Like ninth grade.

18 THE COURT: You married or single?

19 THE DEFENDANT: Single.

20 THE COURT: You have any children?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: How many?

23 THE DEFENDANT: Two. I got one nine and one on  
24 the way.

25 THE COURT: Did you serve any time in jail on

1 these charges Mr. Burgess?

2 THE DEFENDANT: I had went to Turbeville and  
3 then I got out like three months ago.

4 MR. JEPERTINGER: He in terms of Turbeville  
5 issue, Your Honor, I think he went to youthful offender  
6 for a prior charge, that's where that would come up. He's  
7 made bond on both of these charges.

8 THE COURT: All right.

9 MR. JEPERTINGER: Your Honor, while I was going  
10 on, Mr. Prosser informed me and reminded me to remind you  
11 that the sentence in this case he ask that it be deferred  
12 until Monday.

13 THE COURT: That was my understanding that we  
14 were going to do that.

15 Mr. Burgess, I am going to go over with you,  
16 sir, I'm going to review with you your Constitutional  
17 Rights. I know that you have talked with Mr. Prosser  
18 about these rights. So if at any time during our  
19 conversation you have a question or you would like to stop  
20 and speak with Mr. Prosser, if you'll let me know that,  
21 I'll stop and give you that opportunity, all right.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. The first thing I want to go  
24 over is your right to have the grand jury consider this --  
25 it's a seven indictment. Mr. Burgess, the -- I know

1 Mr. Prosser's talk to you. This indictment 07-1162 which  
2 is an indictment for armed robbery which allegedly  
3 occurred on or around May the 23rd of this year 2007.  
4 That charge has not been presented to the grand jury. The  
5 grand jury does not decide whether somebody is guilty or  
6 not guilty. They only decide if there's probable cause  
7 for a case to go forward. There are 18 members of a grand  
8 jury. Unlike a trial jury, which is only 12 members. And  
9 with a grand jury, it doesn't take a unanimous decision or  
10 in other words all 18 don't have to agree that there's  
11 probable cause. It's simply that they have to have 12 of  
12 the 18 agree. If 12 of the 18 people of the grand jury  
13 agree that there's probable cause, then they true bill an  
14 indictment and it comes before the Court and I have  
15 jurisdiction to hear it. With regards to this charge, it  
16 has not been before the grand jury.

17 Now, the grand jury meets before the term of  
18 every term court. You are not present at a grand jury  
19 hearing, your lawyer is not present. The Solicitor's  
20 office is not present. There's not even a judge there.  
21 It's simply just the 18 members of the grand jury and the  
22 only people who are present are the law enforcement agency  
23 that made the case against you. In this case, the  
24 Florence police department, a representative from that  
25 department would show up and what they would do is they

1 would present to the grand jury this is the evidence we  
2 have. The grand jury would hear that and then like I said  
3 earlier, they only decide if there's probable cause. They  
4 don't decide guilt or innocence. You have the right for  
5 this case to be considered by the grand jury. You have  
6 the right for the State to have to present this case to  
7 the grand jury before it can be heard by this court. But  
8 you can waive that right you can say, Judge, I understand  
9 I have that right, but I want to waive that and I want to  
10 go head and have this case heard today. And if you waive  
11 that right to the grand jury, you can do that and that  
12 would give jurisdiction to the Court to hear it. Now, I  
13 see on this sentencing sheet that you had checked the box  
14 or that the box has been checked that the defendant wishes  
15 to waive presentment to the grand jury. Is that your  
16 desire, sir, do you wish to waive presentment to the grand  
17 jury on this indictment and have it heard today?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, Mr. Burgess, you have the right  
20 to remain silent and you have the right to a jury trial on  
21 each of these counts. But if you decide to go forward and  
22 plead guilty, then you give up your rights to a jury trial  
23 and you give up your right to remain silent. Do you  
24 understand that, sir?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: Now, I am going to review with you  
2 your rights to a jury trial because when you plead guilty,  
3 you give them up as well. For example, sir, if you were  
4 to have a jury trial, you would be presumed innocent of  
5 these charges and the State would have the burden of  
6 proving your guilt beyond a reasonable doubt. The way  
7 they do that is they would bring witnesses into court and  
8 those witnesses would testify against you. Through your  
9 lawyer, Mr. Prosser, you would have the right to confront  
10 those witnesses, to question those witnesses, to face  
11 those witnesses. But when you plead guilty, by pleading  
12 guilty, you give up that presumption of innocence and that  
13 relieves the State of the burden of having to prove your  
14 guilt. So they don't have to bring their witnesses into  
15 court and say you give up the right to question their  
16 witnesses. Do you understand that, sir?

17           THE DEFENDANT: Yes, sir.

18           THE COURT: During the course of a trial if you  
19 were to have a trial, you would be -- you would have the  
20 right if you decided you wanted to bring witnesses into  
21 court who would testify on your behalf or you yourself  
22 could testify on your own behalf, but you are not required  
23 to do that, Mr. Burgess, because in a criminal trial the  
24 State carries the burden of proof. You don't have to  
25 prove anything. Anyone charged with a criminal offense

1 never has prove themselves innocent. The State always has  
2 to prove the defendant guilty. So because you have no  
3 burden of proof, you could have a jury trial and you could  
4 decide to remain silent. If you did that, sir, I would  
5 explain to the members of the jury that they cannot hold  
6 that against you, that is your Constitutional Right and  
7 that you have nothing to prove. The State carries the  
8 burden of proof. And so therefore, it would be improper  
9 for them to even discuss it in their deliberations. Do  
10 you that understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: The State has to carry their burden  
13 of proof to a unanimous verdict. In other words, they  
14 would have to convince all 12 members of the jury that you  
15 were guilty before they could convict you of these  
16 charges. And if you did go through a jury trial and if  
17 you were convicted on any of these charges, you could  
18 appeal those convictions to a higher court if you felt  
19 that that was appropriate. Do you understand that, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Burgess, all these rights that  
22 you have regarding these charges, by pleading guilty you  
23 given up these Constitutional Rights, you waive them at  
24 least as they apply to these charges. And you will not  
25 have a jury trial. Do you understand that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Understanding that, do  
3 you still want to go forward with your plea?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Now, Mr. Burgess, the  
6 State is making a recommendation in these charges -- is it  
7 concurrent sentencing, Mr. Jepertinger?

8 MR. JEPERTINGER: That's it, Your Honor.

9 THE COURT: The State has made the  
10 recommendation that whatever the Court decides to do on  
11 these charges that all of these charges are to run  
12 together or at the same time. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Other than that recommendation has  
15 anyone and excuse me -- and they also are dismissing this  
16 other charge. You understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Other than the  
19 recommendation that the State is making and dismissing  
20 Count 3 on this other indictment, has anyone promised you  
21 anything, held out any hope of reward or threatened you in  
22 any way to get you to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you satisfied with the way that  
25 Mr. Prosser has represented you and advised you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any complaints against  
3 him or any member of his office?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you told Mr. Prosser everything  
6 you know about these charges so that he could look into  
7 these matters on your behalf?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Are you today, Mr. Burgess, under  
10 the influence of any substance that would affect your  
11 ability to understand what you are doing?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you have or are you aware of any  
14 condition you may have such as a mental condition, a  
15 physical condition or a nervous condition? Is there any  
16 situation that you're aware of that would affect your  
17 ability to understand what you are doing?

18 THE DEFENDANT: No, sir.

19 THE COURT: Do you have any complaints against  
20 law enforcement, the Solicitor's office or anyone at the  
21 detention center?

22 THE DEFENDANT: No, sir.

23 THE COURT: The questions that you've given me  
24 excuse me -- the answers that you've given me to the  
25 questions that I've asked, have they been your answers or

1 what someone else told you to tell me?

2 THE DEFENDANT: My answers.

3 THE COURT: Have you understood the questions  
4 I've asked you, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And have your answers been honest?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Now, Mr. Burgess, are  
9 you pleading guilty of your own freewill, sir?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And are you guilty of these charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. If you would please,  
14 sir, listen carefully. I'm going to get Mr. Jepertinger  
15 to give me the facts.

16 MR. JEPERTINGER: Judge, quick synopsis. You're  
17 already familiar with the older case, that happened on  
18 January 30th 2006. Your Honor, this gentleman was on June  
19 Lane with Demetric Barr, Rondel Moore and someone that he  
20 identified through a confession that he gave as Jersey.  
21 He says that co-defendant Barr gave him a handgun and they  
22 robbed James Bacote and Robert Heathman mostly of  
23 clothing. Now, Bacote had some money in his jacket  
24 pocket \$145, but it was mostly clothing. It was at gun  
25 point. When they talked to Heathman, he even said he saw

1 this gentleman go to the car get the gun and start saying  
2 F it, give it up and all sorts of stuff and even took the  
3 gold teeth he had on out of his mouth. In fact, I think  
4 this gentleman said in his confession that he took the  
5 guys gold teeth.

6 Your Honor, the next day which would have been  
7 the 31st of January 2006, Bacote and Heathman and I think  
8 Bacote's mother were over at Todd Gear Clothing at the  
9 four-way stop and Burgess is in there wearing the same dog  
10 on clothing that he'd gotten from them the day before. He  
11 ran out of the store, he was going to purchase a shirt or  
12 something, he just left the store immediately and I guess  
13 the store owner knew who he was. And mention the name,  
14 but law enforcement got a hold of him and he gave a  
15 complete statement of his involvement and everybody else's  
16 involvement in it. He was going to testify for the State  
17 in the matter. Both the victims picked him out of a  
18 lineup number one as being number four in the lineup. And  
19 the only issue in terms of competency came up and that's  
20 why this case kind of was extended as much as it did.

21 Now, unfortunately, while this case was pending  
22 and I know it's not Mr. Prosser's fault or anyone else's,  
23 but Shaquan decided to get involved on May 23rd this year  
24 not too long ago with the armed robbery of a gentleman by  
25 the name of Anthony C. Johnson. According to the warrant

1 in that case, this defendant and a known co-defendant were  
2 riding with the victim in his vehicle looking for a  
3 clothing vender in the City of Florence. The victim  
4 agreed to take the defendant to his girlfriend's house.  
5 While en route, the co-defendant who's sitting in the  
6 backseat behind the victim pulled a pistol from his waist  
7 area and pointed at the victim's head and robbed the  
8 victim of his merchandise. The defendant took the  
9 victim's radio, hat, rings, wallet and the contents of his  
10 glove compartment. The victim observed a laceration to  
11 both of the victim hands. The victim stated the defendant  
12 threatened his life and fled the area on foot. The police  
13 officer met with the victim, he identified the defendant  
14 from a mug shot. Prior to the victim identifying the  
15 defendant, he advised the affiant of a distinguishing  
16 tattoo located on the defendant's body. The affiant was  
17 able to gather information and so doing discovered that  
18 the defendant did in fact have a distinguishing tattoo  
19 which corroborated the victim's story, marking he had on  
20 his body, which he does have on his body, Your Honor. My  
21 victim -- Ms. Chavis with my office contacted the victim  
22 today and he said he did not want to be present for this  
23 proceeding, Your Honor. I would point out to the Court  
24 that he does have a record. He originally back in 2005  
25 was charged with armed robbery. However, he pled down to

1 strong armed robbery and he received a youthful offender  
2 sentence suspended to two years probation. But  
3 apparently, I think they may have revoked some of that  
4 time and he had to do sometime in Turbeville.

5 MS. GOODSON: And he's still on YOA parole.

6 MR. JEPERTINGER: And he's still on YOA parole.

7 THE COURT: All right. And that's the time you  
8 were doing in Turbeville recently?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. All right. Mr. Burgess, the  
11 facts that Mr. Jepertinger gave the Court on these charges  
12 are those facts correct, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. I find that the State  
15 has provided a substantial factual basis to support the  
16 charges that Mr. Burgess has pled guilty to. Mr. Burgess'  
17 decision to enter this plea of guilty appears to be  
18 freely, voluntarily and intelligently made. I reviewed  
19 the report from the department of mental health regarding  
20 his competency to stand trial and I have no concerns over  
21 the fact that I believe Mr. Burgess is in fact competent  
22 to stand trial as is reflected in the report from the  
23 department of mental health and he appears to be very  
24 cognizant and aware of what's going on. Mr. Burgess has  
25 intelligently responded to my questions. And I believe

1 he's understood those questions. He's had the benefit of  
2 an excellent lawyer in Mr. Shannon Prosser. Mr. Burgess  
3 has indicated he has been satisfied with the  
4 representation that he's received from Mr. Prosser.

5 With regards to the '07 indictment which has not  
6 been presented to the grand jury, Mr. Burgess has  
7 indicated that he understands that he has the right for  
8 the grand jury to consider this charge, but that he wishes  
9 to waive that right and have the case heard along with  
10 these other -- this other indictment and I believe that he  
11 understands the grand jury procedure and that he has made  
12 a knowing, intelligent waiver of his grand jury rights  
13 regarding that indictment. And I'm going to accept his  
14 plea. What I'm going to do, Mr. Prosser and Mr. Burgess,  
15 is rather than hear from you today, I'm just going to wait  
16 because my understanding is that there has been an  
17 agreement with the State to defer sentencing in this case  
18 until Monday.

19 MR. PROSSER: That's correct.

20 THE COURT: And, Mr. Burgess, is it my  
21 understanding he is currently on a bond.

22 MR. PROSSER: He is on bond, yes, sir.

23 THE COURT: He will remain on that bond and be  
24 back Monday and then we will consider sentencing and I'll  
25 hear from both of you with regards to anything you may

1 wish to bring before the Court regarding sentencing.

2 MR. PROSSER: Yes, sir. Thank you, Your Honor.

3 THE COURT: Thank you very much gentlemen.

4 END OF REQUESTED TRANSCRIPT

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(There were no witnesses introduced.)

1 MR. JEPERTINGER: Your Honor, we're here on 07-1162  
2 and 06-636. The defendant was here earlier this morning,  
3 Your Honor. His attorney, Shannon Prosser, is here. We  
4 are ready to start the sentencing procedure. If the Court  
5 recalls ---

6 THE COURT: Give me his name again?

7 MR. JEPERTINGER: His name is Shaquan Burgess on 07

8 ---

9 THE COURT: And I recall telling Mr. Burgess I would  
10 give him a -- I would delay sentencing until today.

11 MR. JEPERTINGER: Today, Yes, sir.

12 THE COURT: Mr. Prosser, can you give me some insight  
13 on Mr. Burgess' whereabouts?

14 MR. PROSSER: First of all, Your Honor, before we  
15 began, I would request the Court ask a bailiff to go  
16 downstairs and upstairs and call for him.

17 THE COURT: I'll be happy to ask for somebody --  
18 Mr. Propps, have we got either a bailiff or deputy who is  
19 available to go call?

20 MR. PROPPS: You got a bailiff, I don't know about  
21 your deputies. What's his name?

22 MR. PROSSER: His name is Shaquan Burgess.

23 THE COURT: Shaquan Burgess. You want me to write  
24 that down for you?

25 MR. PROSSER: Judge, I talk with his stepfather on

1 the phone and called all the numbers that I was given by  
2 him. The stepfather seems to think that quite possibly he  
3 might be listening to some outside influence. He's scared  
4 and he might not show up.

5 THE COURT: Have you seen him today, Mr. Prosser?

6 MR. JEPERTINGER: He was here today before  
7 Mr. Prosser got here. He answered roll this morning.

8 THE COURT: Did he answer roll call when the  
9 Solicitor's office held roll call?

10 MR. JEPERTINGER: Yes.

11 THE COURT: When was he instructed back, John, if you  
12 if you remember?

13 MR. JEPERTINGER: Well, like every other defendant,  
14 we were just waiting. They were excused until 2:30. It  
15 went down to 2:30, he's not made an appearance.

16 MR. PROSSER: It's just odd that he showed up this  
17 morning and not this afternoon, but again, I hope he  
18 didn't get cold feet because it's not a good situation for  
19 him. I'm certainly prepared to stand here in his absence  
20 and respond to the -- or plea on his behalf.

21 THE COURT: All right.

22 MR. JEPERTINGER: If I recall, Your Honor, you had  
23 taken the plea. I presented the facts and it was up to  
24 Mr. Prosser.

25 THE COURT: My recollection is we qualified the plea.

1 We heard from the State regarding the factual basis for  
2 the plea and Mr. Burgess admitted and agreed that the  
3 factual basis was as the State put forth. And at that  
4 time, I qualified his plea and accepted the plea and then  
5 we were going to withhold a hearing from Mr. Prosser on  
6 his behalf until today and I allowed him to remain on his  
7 bond until today if I recall.

8 MR. JEPERTINGER: Yes, sir.

9 (WHEREUPON, a pause in the proceedings.)

10 MR. PROPPS: I went down to the tenth floor, called  
11 Mr. Burgess' name out Shaquan, told him he just won a  
12 \$100,000 lottery and I was to take him to Columbia, but he  
13 didn't show.

14 THE COURT: The other defendants are still on the  
15 tenth floor?

16 MR. JEPERTINGER: They are, Your Honor. Your Honor,  
17 what the State would ask that you hear from Mr. Prosser is  
18 to sentence him, issue a bench warrant and then, of  
19 course, seal the sentence.

20 THE COURT: Mr. Prosser, and I know the last  
21 information you had was from his stepfather?

22 MR. PROSSER: That's correct, Your Honor.

23 THE COURT: And at that point his stepfather was just  
24 speculating, he doesn't know where he is as well?

25 MR. PROSSER: He was speculating, Judge. I talk with

1 the stepfather and I also talk with a cousin name Sherrel  
2 both of those were at different numbers. Sherrel informed  
3 me that it was her understanding that Shaquan and his  
4 mother were on the way to the courthouse and originally  
5 the stepfather gave me that same information. And then  
6 reiterated that he does not live with them, so therefore  
7 he doesn't have any control over him. And that he may be  
8 listening to some bad advice and maybe scared, afraid and  
9 in fact mention that he might even be suicidal.

10 THE COURT: Well, let me hear from you, Mr. Prosser,  
11 on his behalf, sir.

12 MR. PROSSER: Thank you, Your Honor. May it please  
13 the Court, Judge, I'm going to treat this as he was  
14 standing here with me. I want to tell you something about  
15 Shaquan for no other reason than to tell you why I think  
16 he's in this situation.

17 Obviously, it's of his own volition. Judge, he knows  
18 right from wrong. We talked about it at the plea that  
19 he's been evaluated in Columbia and been proven that he  
20 can tell right from wrong and he knows that what he has  
21 done is not right, but he did it anyway. I show you that  
22 today to tell you that he strikes me as the kind of fellow  
23 who because of his low mental abilities, he is very easily  
24 lead. One of the things -- I sat in on one of the pleas  
25 of the co-defendants the other day and one of the things

1 that I noticed that the co-defendant stated was and this  
2 was -- this the gentleman who was suppose to come before  
3 the trial -- come before you for a trial and pled on the  
4 eve of the trial. And I believe part of the reason he did  
5 that was because Shaquan was going to testify against him  
6 and that the reason Mr. Jepertinger agreed to this plea.  
7 But one of things I heard him say was that he wasn't  
8 involved with any gun. He kind of pointed to his record  
9 and said, I don't mess with guns. Well, when you look at  
10 the record and the evidence that was presented to me by  
11 Mr. Jepertinger, the statement which was given by Shaquan  
12 almost immediately after he was arrested clearly stated  
13 that the other defendants and especially the one who pled  
14 the other day basically said, All right, there's some  
15 people over there, you take this gun and you go rob them,  
16 in paraphrasing what was said. And it struck me almost as  
17 if it was a gang related situation, this is sort of like  
18 an initiation. And then I further that by telling you  
19 that when Shaquan did agree to plead guilty and to testify  
20 against this particular defendant, that his father -- both  
21 he and his stepfather were worried because they said that  
22 there is a code or a rule that says if he testifies  
23 against somebody, he should be dead or he will be dead  
24 within eight years. Don't know where eight years come  
25 from whatever ---

1 THE COURT: Like breaking a mirror.

2 MR. PROSSER: Seven years you break a mirror.

3 Anyway, they said eight years. Lead me to believe that  
4 the co-defendants were leading Shaquan. Now, that doesn't  
5 eliminate any or mitigate what he did because he did it.  
6 I just tell you that to tell you that I believe he  
7 understand his actions, he just didn't understand the  
8 consequences of his actions and that might be one of the  
9 reasons he's not here today because he -- the bell toll so  
10 to speak and he knows it's about to come down. And I told  
11 his stepfather on the phone that not only is the fact that  
12 he didn't show up not gone help him, it's actually going  
13 to hurt him quite a bit and he understood that. He said  
14 that, you know, he couldn't control Shaquan.

15 The other defendants, Judge, got -- one got five  
16 years I believe and one got three years. And Shaquan is  
17 pleading straight up to the arm robbery running  
18 concurrently, I guess, was the deal that was offered or  
19 the plea that was offered. And I was prepared to ask you  
20 for the minimum today just due to the fact that he was  
21 very helpful from day one to law enforcement. Why you  
22 commit a crime and then turn around the next day and admit  
23 that you committed the crime and then help throughout and  
24 then don't show up for the plea sentencing is beyond me  
25 other than it exhibits poor judgment which he's exhibited

1 from day one. He was originally -- actually, Judge, he  
2 pled on a strong arm robbery about two years ago and he  
3 got probation, but for this particular situation, I think  
4 he did okay on probation. I don't think probation was  
5 enough for him. I think ---

6 THE COURT: He was on probation when he committed  
7 these crimes?

8 MR. PROSSER: I think he was. And I don't think that  
9 was enough obviously for him. I think jail is probably  
10 appropriate for him and that's why I thought that the  
11 sentence or the plea was proper.

12 THE COURT: Is he currently on probation?

13 PROBATION AGENT: I'll check.

14 MR. PROSSER: Anyway, I think I say all this to tell  
15 you that due to the fact that he's easily lead, due to the  
16 fact that he is so young just turned 18, was 17 when this  
17 happened. Due to the fact that he helped law enforcement  
18 from day one and was going to help and testify to his own  
19 peril from what I found or saw, and due to the fact his  
20 co-defendants got off comparatively light just a matter of  
21 opinion, but to what he's going to get, I was prepared to  
22 ask you for the minimum sentence today. Doing that would  
23 tell me that if he got ten years, Judge, he would get --  
24 he serve at least 85 percent of that. And if that's not  
25 enough to convince him of the people he's hanging around

1 is leading him in the wrong direction, I don't know what  
2 would be. Without him here, that's about all I can say in  
3 his defense.

4 MR. JEPERTINGER: Your Honor, if I could interject  
5 just one thing, if the Court recalls he also during the  
6 pendency of the charge that he was going to testify  
7 against these co-defendants for he was -- has pled guilty  
8 to another arm robbery. It just the issue of the robbery.  
9 We also have the new arm robbery from May which he waived  
10 presentment to. The victim was Anthony Johnson.

11 PROBATION AGENT: He's on Y.O.A. parole.

12 THE COURT: That's right, I remember that. And,  
13 Mr. Jepertinger, if I recall, please correct me if I'm  
14 wrong, this was a situation involving two other  
15 co-defendants, but it was actually Mr. Burgess that had  
16 the -- the person with the gun?

17 MR. JEPERTINGER: That is correct.

18 THE COURT: Even though he was the one who came  
19 forward and gave a statement. I will say this, Mr.  
20 Prosser, there's nothing like this that you can do  
21 anything about, but, you know, the longer you do a job you  
22 learn -- we, all learn the longer we do our work and  
23 Mr. Burgess is going a long way in teaching this judge to  
24 no longer agree to delay sentencing. When you come to the  
25 trough, it's time to eat. And that is certainly in no way

1 a reflection on you and that you should have had him here.  
2 You've done everything you can do other than to chain him  
3 to you, which I'm sure you and your family would prefer  
4 you not do.

5 I'm going to impose sentence. I've heard from  
6 everyone other than Mr. Burgess and then I will seal the  
7 sentence. Then I'm assuming the State is requesting a  
8 bench warrant.

9 MR. JEPERTINGER: That's correct.

10 THE COURT: And I will issue a bench warrant for his  
11 failure to appear. All right. Thank you, Mr. Prosser,  
12 Mr. Jepertinger, I will complete these sentencing sheets  
13 and I will seal them and some point if Mr. Burgess is  
14 located we can then proceed to actually imposing a  
15 sentence.

16 END OF REQUESTED TRANSCRIPT

17  
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

I, Keshia Reed, Court Reporter and Notary Public  
 in and for the State of South Carolina At Large, do hereby  
 certify that the above-entitled cause was heard as  
 hereinafter set out; that I was authorized to and did  
 transcribe the said proceedings; and that the foregoing  
 and annexed pages, numbered 1 through 12, inclusive,  
 constitute a true and accurate transcription of my  
 stenographic report of the said cause taken during the  
 said hearing.

In witness whereof, I have hereunto affixed my  
 signature this 6th day of July, 2009.



Keshia Reed, Court Reporter  
 My Commission Expires: 6-5-2010

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STATE OF SOUTH CAROLINA) )  
 COUNTY OF FLORENCE ) ) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE, )

TRANSCRIPT OF RECORD

2006-GS-21-636

2007-GS-21-1162

v. )

SHAQUAN BURGESS, )

DEFENDANT.)

May 29, 2008  
 Florence, South Carolina

**BEFORE:**

THE HONORABLE THOMAS A. RUSSO, JUDGE

**APPEARANCES:**

ROBERT N. WELLS, ESQ.  
 Assistant Solicitor

SHANNON PROSSER, ESQ.  
 Attorney for the Defendant

FRANCES BAKIS-RAY, RPR  
 Circuit Court Reporter

**I N D E X**

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Remarks by Mr. Prosser	4
Remarks by the defendant	5
Sentence of the Court	6

1           MR. WELLS: May it please the Court, as I  
2 understand I was not the prosecutor who handled  
3 this. I talked this morning with John Jepertinger,  
4 the prosecutor who did. He said that back, I  
5 believe it was a little less than a year ago, the  
6 defendant entered a plea on indictments 06-636 and  
7 07-1126 to two counts of armed robbery. The pleas  
8 were accepted; however, the defendant apparently  
9 prevailed on mutilating stay out overnight and to  
10 start serving his sentence or be sentenced the next  
11 day. You agreed for him to do so. However,  
12 apparently it took the defendant a good while to get  
13 his affairs in order because he has just been picked  
14 up on a bench warrant which was issued. As a result  
15 of that, when he didn't come back then you wrote out  
16 the sentence and did a sealed sentence. That's what  
17 I understand.

18           THE COURT: All right. And I've been  
19 passed the files. Again, this is indictment  
20 06-639 — excuse me, 636 and 07-1162.

21           MR. WELLS: Right.

22           THE COURT: I've been passed those files  
23 from the clerk; and there is, in fact, a sealed  
24 sentence in both of these. But Mr. Prosser, you  
25 have anything to add, or do you have any explanation

1 or anything else to say with regards to Mr. Burgess  
2 and why we're here today?

3 MR. PROSSER: Your Honor, may it please  
4 the Court, he does want to speak to you if you will  
5 allow. The only thing that I can explain, for the  
6 first time that I've seen Shaquan since we left that  
7 day. And Your Honor, I look back through the record  
8 when I kind of opened the file back up because I  
9 knew we were coming in here today. And all I can  
10 tell you is he has a history of some mental  
11 treatment, things of that nature. We had him  
12 evaluated. The diagnosis was -- one of the  
13 diagnoses was mild mental retardation with  
14 antisocial personality traits. They did find he was  
15 competent to stand trial, that he had criminal  
16 responsibility and understood that. What I can say  
17 is -- I'm no professional in psychology or anything  
18 of that nature -- but I would believe that that  
19 might tend to affect your decision making ability.  
20 So he certainly wants to say something here today  
21 just to tell you he would ask for time served and  
22 with whatever he's had, if the Court is willing to  
23 give him that, Judge. But I think that's all I can  
24 say on his behalf you would like to hear what he has  
25 to say.

1           THE COURT: And as you're aware now these  
2 sentences have been imposed and they've been sealed,  
3 and the purpose for today is to unseal them and to  
4 pronounce sentencing. But I am more than happy to  
5 hear from you, Mr. Burgess, if there's anything you  
6 wish to tell the Court.

7           THE DEFENDANT: Sir, I ain't never -- I  
8 ain't never -- my name is Shaquan Burgess. I'm 19  
9 years old, man. I -- sir, my name is Shaquan  
10 Burgess. I'm 19 years old. I got four kids. My  
11 momma had six kids. It was hard. It was hard out  
12 there for me, I'm just saying, sir. I just been --  
13 I can't do no 10, 30 years, and all that, sir. I'm  
14 just saying I do want you to -- I just want you to  
15 be lenient with me. And the reason why I didn't  
16 show up for court, I had just -- I just got out  
17 February 15th, February 15th I think that was two  
18 thousand-- yeah, 2007. And then they just brought  
19 me back up like in another month and two and I had  
20 another baby on the way. My family needs me out  
21 there. And that the only thing. That the only  
22 thing I say. I just, I just had a rough life; my  
23 daddy died. I ain't had nobody there for me. At  
24 this point I just want to -- I ain't really got  
25 nothing else to say; but I just, I just, that too

1 much time for me.

2 THE COURT: All right, sir. These are the  
3 sentences that were imposed, or at least they were  
4 after taking the plea and hearing from both the  
5 State and the Defense. The Court entered the  
6 sentences on these charges and those were done on  
7 June the 18th of 2007. Those sentences were then  
8 sealed and remained in the Clerk's file until and a  
9 bench warrant was issued for Mr. Burgess for his  
10 failure to appear. And he has recently been picked  
11 up on those bench warrants. And the sentences have  
12 now been unsealed, and I'm going to read those into  
13 the record and impose the sentence of the Court.

14 With regards to 2006-GS-21-636, that's an  
15 indictment for armed robbery and on indictment  
16 2007-GS-21-1162, which is also an indictment for  
17 armed robbery, the sentence of the Court on both of  
18 those indictments is that you be committed to the  
19 State Department of Corrections for a period of 20  
20 years. Those are to run concurrent. And you are to  
21 be given credit for any time that you have served on  
22 those sentences up to this point. That's the  
23 sentence of the Court on those charges. Good luck  
24 to you, sir.

25 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

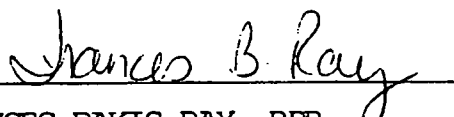
## C E R T I F I C A T E   O F   R E P O R T E R

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE        )

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 21st day of February, 2012.

  
FRANCES BAKIS-RAY, RPR  
My Commission Expires: 9-13-2014

FILED

DECEMBER 11 2009 11:30 AM

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF LEE CONNIE REEL-SHEARIN  
SHAQUN BURGESS, #314924  
Full name and prison number (if any) of Applicant.

2009 CP 21 444

v.  
State of South Carolina

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 clear to which question any such continued answer refers.

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

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

1. Place of detention LEE C.I., 990 WISACKY HWY., BISHOPVILLE, SC
2. Name and location of Court which imposed sentence FLORENCE CO. GEN. SESS.
3. Name(s) of co-defendant(s) (if any) RONDELL J. MOORE AND DEMETRICK L. BARR
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2006-GS-21-636/ARMED ROBBERY
  - (b) 2007-GS-21-1162/ARMED ROBBERY
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) JUNE 18, 2007, TWENTY YEARS (20) COUNT 1&2. SEE CONCUR.
  - (b) \_\_\_\_\_

FILED

- (c) \_\_\_\_\_
- 6. Check whether a finding of guilty was made:
  - (a) after a plea of guilty ~~XXXXXX~~ \_\_\_\_\_
  - (b) after a plea of not guilty \_\_\_\_\_
  - (c) after a plea of nolo contendere \_\_\_\_\_
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO AND NOT BY MY OWN CHOICE
- 8. If you answered "yes" to (7), list: n/A
  - (a) the name of each Court to which you appealed: N/A
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed: N/A
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (c) the date of each such result: N/A
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results: N/A
    - i. \_\_\_\_\_
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) TRIAL COUNSEL DID NOT FOLLOW THE ANDERS V. CALI. COURT
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: SEE ATTACHED ALSO

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) DUE PROCESS AND EQUAL PROTECTION RIGHTS VIOLATED
- (c) PLEA AGREEMENT FOR THE SENTENCE NEGOTIATED NOT KEPT BY THE SOLICITOR THAT MADE THE DEAL, SEE PLEA S

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

- (a) SEE ATTACHED ADDITIONAL SHEETS/MEMORANDUM OF ISSUES
- (b) " " " " " " " " " " " "
- (c) " " " " " " " " " " " "

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

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

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

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

FILED  
 MAR 11 AM 10:30  
 DONNIE DEEL-SHEARIN  
 CCCP & GS  
 FLORENCE COUNTY, SC

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: N/A
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?  
NO

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented: N/A
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - (b) the proceedings in which each ground was raised: N/A
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) NO ISSUES HAVE BEEN RAISED , PCR REMEDY IS APPROPRIATE
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

PCR APPLICATION FOR THE CASE OF SEE: STATE V. BURGESS, S., C/A

NO.: 2006-GS-21-636: THE ANY EVIDENCE STANDARDS IS EFFECTIVE IN THIS PCR CASE MATTERS AS ACCORDINGLY TO SC S. Ct. WELL SETTLED CASE LAW, SEE COUNCIL V. COTTE 08. ISSUES PRESENTED AS THE FOLLOWING: *r.v. Cotey 08*

FILED  
2009 MAR 11 AM 10:30  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC ISSUE NO. 1.

2009 CP 21 444

TRIAL COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO FILE PRE-TRIAL AND POST-TRIAL MOTIONS, IT IS A FACTUAL FINDINGS BY THE COURT'S RECORDS THAT THE TRIAL COUNSEL DID NOT PRESENT THE ISSUES IN THE REGARDS TO APPLICANT'S RIGHTS TO A SENTENCE DICTATED BY THE SC CODE OF LAW § 17-24-10,20, and 30 IN THE REGARDS TO THE McNAUGHTEN STANDARDS, IT IS WELL SETTLED LAWS THAT WHEN THE DEFENDANT COMPETENCY AND MENTAL STATUS IS IN THE BOUNDS OF HAVING IT DETERMINED ABOUT RATHER IF THE DEFENDANT WAS CRIMINALLY RESPONSIBLE FOR THE ACTIONS ALLEGED AND IF DEFENDANT WAS AWARE OF THE ACTIONS, AND IN THIS PARTICULAR CASE AT BAR THE APPLICANT WAS NOT CRIMINALLY RESPONSIBLE DUE TO THE FACTUAL FINDINGS BY THE COURT THAT THE APPLICANT WAS MENTAL DISABLE AND HANDICAP AS IT WAS PRIORALLY DETERMINED THE APPLICANT BEING TESTED PRIMARILY BY THE DEPT. OF MENTAL HEALTH. SEE EXHIBIT #TWO & THREE

ISSUE NO. 2.

COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO HAVE THE COURT TO EVALUATE THE ISSUES ABOUT THE SOLICITOR MAKING THE OFFER FOR TEN YEARS AND THE COUNSEL FAILED TO MAKE THIS MATTERS KNOWN TO THE COURT AND INSTEAD COUNSEL TAKEN THE POSITION OF A SIT ON THE HAND AND DO NOTHING ROLE TO THE COURT, AND WITH THE COUNSEL KNOWING THAT IT WAS HIS DUTIES TO THE APPLICANT AS HIS CLIENT TO EXPEDITE LITIGATION ON THE BEHALF OF THE APPLICANT TO SEEK THE ENTITLED RELIEF HE SHOULD HAVE RECEIVED FROM THE COURT AS IN HAVING THE COURT TO ENFORCED THE SENTENCE OF TEN YEARS THAT HE WAS PROMISED, THE SOLICITOR HAD THE AUTHORITY TO OFFER SUCH OF A DEAL TO THE APPLICANT AND AS THE APPLICANT COMMITTED HIMSELF TO THE DEAL AS IN PLEADING GUILTY TO CHARGES HE WAS NOT GUILTY OF, THE COURT WAS BOUNDED TO THE AGREEMENT THAT THE SOLICITOR'S OFFICE MADE TO THE APPLICANT, AND SINCE THE APPLICANT PLEAD BEFORE THE COURT IT IS A MUST THAT THE SENTENCE AS STATED IN THE PLEA SHEET THAT WAS RECEIVED, IT IS THE SENTENCE THAT THE COURT MUST IMPOSE, SEE PLEA SHEET ATTACHED AS EXHIBIT #ONE,

ISSUE NO. 3.

COUNSEL WAS INEFFECTIVE WHEN HE ALLOWED THE COURT TO DISREGARD HIS RIGHTS TO A FAIR AND COMPLETE HEARING FOR THE COMPETENCY CASE MATTERS THAT WAS ACCRUED, HERE IN THIS ISSUE THE APPLICANT WILL TAKE THE MANDATES AND WELL SETTLED LAW OF THE COUNCIL V. CATOE, COURT IN THE MATTERS ABOUT COMPETENCY STANDARDS TO PURSUE AND TO PLACE IN THE FAVOR OF THE DEFENDANT AGAINST THE STATE AS IN THE DETERMINATION OF THE LIMITED POSSESSION OF THE APPLICANT, IT IS WELL SETTLED BY THE SUPREME COURT AND THERE IS NO FURTHER DEBATING OF THE RIGHTS OF THE DEFENDANT IN THE LAWS OF § 17-24-20, and 30. SEE ISSUE IS TO BE RAISED AND MULTIPLE EVALUATIONS SEE AS CLEARLY SUBMITTED TO THE PCR COURT,

ISSUE NO. 4.

COUNSEL IS INEFFECTIVE WHEN HE DID NOT FILE THE DIRECT APPEAL NOTICE TO THE SC SUPREME COURT, IT IS A STATUTORY RIGHT FOR THE APPLICANT TO APPEAL HIS CONVICTIONS TO THE SUPREME COURT ACCORDINGLY TO THE APPELLATE COURT RULES AND FOR THE COUNSEL TO DISREGARD THE RIGHTS OF THE CLIENT HE IS VIOLATING THE RULES OF PROFESSIONAL CONDUCT, SEE THE PROVISIONS OF THE SC RULES OF PROFESSIONAL CONDUCTS, RULE 407, SCACR AND SEE RULE 413, SCACR, HAVING IT TO BE WELL SETTLED IT IS MANDATORY FOR THE COUNSEL TO FILE THE NOTICE OF DIRECT APPEAL AND SEEK THE APPROPRIATE RELIEVING OF COUNSEL, IT IS ALSO WELL SETTLED IN RULE 235, SCACR, AND RULE 602(E), SCACR, THEREFORE THE COUNSEL STEPPED OUT OF BOUNDS WHEN HE FAILED TO FILE THE DIRECT APPEAL NOTICE TO THE APPELLATE COURT FOR THAT COURT TO TAKE POSSESSION OF THE CASE MATTER FROM THE CIRCUIT COURT AND AS TO HAVE THE APPELLATE COURT TO PLACE THE MATTERS TO THE OFFICE OF THE APPELLATE DEFENSE AND OR INDIGENT COMMISSION FOR THE ASSISTANCE TO BE PROVIDED TO THE APPLICANT IN HIS APPEAL MATTERS TO THE APPELLATE COURT, SEE NO APPEAL IS FILED TO THE APPELLATE COURT IN THE MATTER OF STATE V. BURGESS.

ISSUE NO. 5.

COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO ASSISTANCE THE APPLICANT WITH HIS PLEA MATTERS TO THE COURT AND BEING THAT THE COUNSEL FAILED TO HOLD THE SOLICITOR'S OFFICE TO THE PLEA DEALS IT IS IMPERATIVE THAT THE COURT ALLOWS THE APPLICANT TO WITHDRAW PLEA FOR THE 10 YEARS THAT HE SHOULD HAVE FROM THE INITIAL PLEA AGREEMENT, HAVING IT TO BE FACTUAL THAT A THRIFT COURT VIOLATION IS FOUND THE APPLICANT SHOWS THE COURT THAT THE ISSUE OF THE COUNSEL BEING

INEFFECTIVE IS THE SOLELY LINKED VIOLATIONS TO THE CAUSES THAT THE APPLICANT PLEAD BY THE ADVISE OF THE COUNSEL AND AS IT WAS DONE AND THE SENTENCE THAT HE SHOULD HAVE RECEIVED WASN'T IT IS NOTED THAT THE COUNSEL CREATED THIS MATTERS MORESO THEN THE SOLICITOR'S OFFICE, HAVING THE COUNSEL TO BE RESPONSIBLE FOR THE APPLICANT'S RIGHTS BEING VIOLATED TO THE COURT THAT THE EXHIBITS ARE PRESENTED TO THE COURT AS WITH THE GRAND JURY AND THE GRAND JURY MINUTES, THE CASE FOR THE GRANDJURY, IS ISSUED BY THE SOLICITOR VIOLATED THE RULES OF PRESENTING THE INDICTMENTS AND THE COUNSEL ALLOWED THE SOLICITOR'S OFFICE TO COMMIT SUCH VIOLATION AS IT THE DUE PROCESS RIGHTS THAT ARE REALISTICALLY INVOLVED INTO THIS FACTORS OF THE COURT TO DETERMINE FOR THE MATTERS TO BIND OVER TO THE GENERAL SESSIONS COURT, AND AS IT IS SIGHTED THE COUNSEL COULD NOT HAVE WAIVED THE RIGHT TO ATTACK A DEFECTIVE INDICTMENT IN THE REGARDS TO THE LAW STATUTES WELL SETTLED BY THE SC SUPREME COURT IN THE JENTRY COURT 2005 filed. SEE THE COUNSEL SHOULD HAVE FILED PRE-TRIAL MOTIONS TO HAVE INDICTMENTS QUASHED DUE TO THE LACK OF EVIDENCE AND THE ERRORS OF APPOINTING THE TIMES OF THE CRIMES SINCE THE ELEMENTS ARE BASICALLY THE NECESSARY FACTORS TO HAVE PROVEN OF AN ARM ROB OFFENSE.

FILED  
 2009 MAR 11 AM 10:30  
 CONNIE W. SHELTON  
 CLERK  
 CCCP & GS  
 LAWRENCE COUNTY, SC

ISSUE NO. 6.

THE APPLICANT MAKES IT EXPLICITLY KNOWN THAT BY THIS PRO SE FILED APPLICATION DOES NOT IN NO WAY WHATSOEVER MEANS THAT THERE ARE NOT ANY MORE ISSUES AVAILABLE OF THE RECORDS, WHEREAS IT IS THE SOLE RESPONSIBILITY OF THE FUTURE APPOINTED COUNSEL TO CONFORM TO THE REQUIRED PROCEDURES OF THE PCR INCORPORATED TO THE APPLICABLE RULES THAT MAKES IT MANDATORY TO PURSUE BY THE RECORD COUNSEL OF PCR TO BE PRESENTED TO THIS HONORABLE PCR COURT, AS IT IS EXCLUSIVELY KNOWN TO THIS COURT IT IS ALSO TO BE DONE AS REQUESTED BY THE APPLICANT.

\*\*\*\*\*

THE APPLICANT DOES IN THIS PCR MATTER CAUTION THE PCR COURT IF THE COUNSEL DOES NOT INITIATE ALL EXPECTED LITIGATION ON THE BEHALF OF THE APPLICANT IT WILL BE AS IS THE RESPONSIBILITY OF THE COURT TO BE THE INSTRUCTOR TOOL TO KEEP THE RIGHTS OF THE APPLICANT PROTECTED FROM ANY OFFICER UNDERMINING THE STATUTORY RIGHTS TO HAVE A FAIR EVIDENTIARY HEARING GIVEN BY THIS COURT AND AS



OFFICE OF THE SOLICITOR  
TWELFTH JUDICIAL CIRCUIT

FILED  
PLEA OFFER

2009 MAR 11 AM 10:30

CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

EXHIBIT #1

2009 CP 21 444

IN RE: STATE V. Shequan Burgess

Dear Beth York John Prosser

Your client, Shequan Burgess, has been charged as follows:

- Indictment No.: 06-636
- Count 1: A/R
- Count 2: A/R
- Count 3: Poss of weapon during crime of violence
- Count 4: \_\_\_\_\_

Upon review of these charges, we are willing to allow your client to plead as follows:

- Count 1: A/R 10 yrs
- Count 2: A/R
- Count 3: \_\_\_\_\_
- Count 4: \_\_\_\_\_

Please discuss this with your client and advise me at your earliest convenience if this plea offer is acceptable.

Sincerely,

J.J.

RECEIVED  
JUL 03 2006



South Carolina  
Department of Mental Health

Columbia Behavioral Health System  
Forensic Center  
7901 Farrow Road  
Columbia, South Carolina 29203  
Information: (803) 935-5600  
Fax: (803) 935-5544

FILED  
2009 MAR 11 AM 10:30

CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

Exhibit #2

January 29, 2007

John C. Jepertinger  
Assistant Solicitor  
180 North Irby Street  
Florence, SC 29501

20 09 CP 21 444

Re: The State of South Carolina v. Burgess, Shaquan  
DMH Case #: 1013-0091  
Florence County, Court of General Sessions

Dear Assistant Solicitor Jepertinger:

In accordance with the court order issued by the Honorable Edward B. Cottingham, a competency to stand trial, criminal responsibility and capacity to conform evaluations were initiated by the Department of Mental Health. However, there were indications of both mental illness and mental retardation or a related disability. Therefore, we cannot issue an opinion regarding the above issue. We will reschedule the evaluation for a joint evaluation with the Department of Disabilities and Special Needs.

This 1 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

1/29/2007  
Date

Kenneth M. Kepler, L.P.C.  
Kenneth M. Kepler, L.P.C.  
Program Coordinator  
Forensic Evaluation Services  
Department of Mental Health

c John M. Prosser, Attorney at Law, 232 Georgetown Hwy.  
Johnsonville, Charleston, SC 29555  
Melinda Fair, DDSN, PO Box 4706, Columbia, SC 29240

Florence PS District One

INDIVIDUALIZED EDUCATION PROGRAM

School Year: 2005-2006

Exhibit #3

MAR 11 AM 11:00  
COURT & GS  
FLORENCE COUNTY, SC

IDENTIFYING INFORMATION			
Name:	<u>Shaquan Vvicon Burgess</u>	DOB:	[REDACTED]
Student ID#:	<u>420000020493</u>	Social Security Number:	[REDACTED]
Medicaid #:	<u>1211757806</u>	Sex:	<u>Male</u>
		Grade:	<u>9th</u>
District ID #:	<u>2101: Florence PS District One</u>		
Name of Parent(s):	Phone Number:		
Address:	[REDACTED]		
Primary Disability:	<u>Mentally Disabled/Mild</u>		
Other Disabling Conditions:	<u>No other disabling condition</u>		
Least Restrictive Environment:	<u>Outside Regular Class more than 60%</u>	% Special Education	<u>&gt;60%</u>
Type of Conference:	Transition Special Review		
Date of IEP Meeting:	<u>03/16/2006</u>	Anticipated Annual Review:	<u>04/27/2006</u>
IEP Initiation Date:	<u>03/16/2006</u>	IEP Ending Date:	<u>05/24/2006</u>

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

FILED  
 2009 MAR 11 AM 10:30  
 DONNIE REEL-SHEARIN  
 CCCP & GS  
 FLORENCE COUNTY, SC

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

- (a) the name and address of each attorney who represented you:
  - i. \_\_\_\_\_ JOHN M. PROSSER, ESQ., PO DRAWER 779, JOHNSONV. SC 29555
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. ARRAIGNMENT, PLEA, AND SENTENCING
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

FLORENCE COUNTY, SC  
 DONNIE REEL-SHEARIN  
 CCCP & GS  
 2009 MAR 11 AM 10:30

19. State clearly the relief you seek in filing this application:  
**THE SENTENCE THAT I WAS PROMISED BY THE SOLICITOR'S OFFICE AND FURTHER ASSISTANCE FROM M.H. DEPT. OFFICIALS. AND OR THE APPROPRIATE RELIEF DEEM BY PCR COURT ACCORDINGLY.**

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

NO

20 09 CP-21 444

STATE OF SOUTH CAROLINA

VERIFICATION

County of LEE

I, S. BURGESS, 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.

SHAQUAN BURGESS

SHAQUAN BURGESS

SWORN to and subscribed before me this 10 day of March, 2009.

[Signature] (L.S.)  
Notary Public

My Commission expires: 5/16/17

FILED

2009 MAR 11 AM 10:30

CONNIE REEL-SHEARIN  
CCCP & CSS  
FLORENCE COUNTY, SC

SEE PRE-TRIAL MOTIONS

1. §17-27-150; RULE 26, SCRPC, MOTIN OF DISCOVERY IN THE MATTERS OF STATE V. BURGESS, SEE FOR SLED AND ENTITIES OF JUDICIAL DEPT.
2. PRIOR MOTION FOR THE MANDATORY AMENDING BY THE POTENTIAL COUNSEL TO BE APPOINTED TO PCR MATTERS.

MOTIONS ARE PRE-FILED FOR THE REASON THAT APPLICANT DOES NOT WAIVES NO RIGHTS TO HAVE ALL AVAILABLE ISSUES TO REVIEWED BY THE PCR COURT UNDER NO CIRCUMSTANCES, AND DUE TO THE RESPONDENTS HAVING A PRACTICES OF PLACING SUCH WAIVERS ON THE RECORDS IN THE PCR COURT THE APPLICANT DOES EXPLICITLY STATES THAT HE DO NOT AGREES TO NO SUCH WAIVER BEING PLACED IN THE FINAL ORDER SIGNED BY THE PCR JUDGE PREPARED BY THE RESPONDENT .

AS IT IS WRITTEN LET IT BE ACKNOWLEDGED BY THIS HONORABLE COURT

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

FILED  
NOV 30  
CONNIE REEL-SHEPHERD  
CLERK  
FLORENCE COUNTY, SC

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

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

SHAQUAN BURGESS  
Applicant  
SHAQUAN BURGESS

SWORN or affirmed to and subscribed before me this  
10 day of May, 2009  
[Signature]  
Notary Public

My Commission Expires: 5/16/17

SEE DOCUMENTS AND EXHIBITS # One, Two, and Three  
ATTACHED FOR THE PURPOSE OF EVIDENCE PROFFERS IN THE CAPACITY OF  
PRO SE STATUS DUE TO THE FILING OF THIS APPLICATION AT THIS TIME  
IN THE THIRTEENTH COURT CIRCUIT, FLORENCE COUNTY.

SHAQUAN BURGESS  
LECI/SN/#314924  
990 WISACKY HWY.  
BISHOPVILLE, SC 29010

2009 CP 21 444

MARCH 10, 2009

HON: CONNIE R. SHEARIN  
CLERK OF COURT  
CITY-COUNTY COMPLEX  
180 N. IRBY ST., NSC-E  
FLORENCE, SC 29501

FILED  
2009 MAR 11 AM 10:30  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

RE: BURGESS, SHAQUAN V. STATE, et. al., POST CONVICTION RELIEF  
APPLICATION SUBMITTED.

DEAR MS. SHEARIN,

PLEASE FIND ENCLOSED MY PCR APPLICATIONS COPIES AND ATTACHED (3) THREE DOCUMENTS FOR YOUR FILING PROCESS AND FOR A COPY OF THE PCR TO BE RETURNED TO ME AT MY SHOWN ADDRESS ABOVE AND BELOW; PLEASE FIND THAT I HAVE COMPLETED THIS APPLICATION AS REQUIRED AND SUBMITTED TO YOUR OFFICE; I AM FURTHER REQUESTING THAT YOU RETURN THE COPY TO ME WITH THE DOCKET NO. YOU ASSIGNED TO IT AT YOUR EARLIEST CONVIENCES. I AM THANKING YOU IN THE ADVANCED FOR YOUR TIME AND ATTENTION GIVEN TO THIS CRUX MATTERS, AND I LOOK FORWARD IN HEARING FROM YOU IN THE VERY NEAR FUTURE.

MARCH 10, 2009

ENCLOSURES:

RESPECTFULLY,

CC: HON: CLERK  
FILES/SE

s/ Shaquan Burgess  
SHAQUAN BURGESS  
PRO SE APPLICANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	2009-CP-21-444
	)	
Shaquan Burgess, SCDC No. 314924,	)	
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED  
 2009 JUL 16 PM 12:13  
 CLERK OF COURT & JUDGE  
 FLORENCE COUNTY, SC

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 11, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. The Applicant was indicted at the April 2006 term of the Florence County Grand Jury for two counts of armed robbery and possession of a weapon during the commission of a violent crime. (2006-GS-21-636). Upon information and belief, he was also indicted in 2007 for armed robbery. (2007-GS-21-1162). He was represented by John M. Prosser, Jr., Esquire. Upon information and belief, the Applicant entered his guilty plea to all three counts of armed robbery on or about June 8, 2007. Sentencing was deferred to June 18, 2007, at which time the Honorable Thomas A. Russo sentenced the Applicant to twenty (20) years on each charge, with all sentences to run concurrently. However, as the Applicant did not appear on June 18, 2007, the sentence was sealed. A bench warrant was issued for the Applicant and he was eventually apprehended. A hearing was held on

May 28, 2008, at which time the sentence was opened and read into the record. The Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections and the guilty plea transcript.

## II.

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

1. Ineffective assistance of counsel;
2. Due process and equal protection rights violated;
3. Plea agreement for the sentence negotiated not kept by the solicitor that made the deal.

## III.

In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). 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, 686 (1984); see also Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made all significant decisions in the

exercise of reasonable professional judgment. Strickland, 466 U.S. at 690. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of 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 prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 689). With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation 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, 265, 305 S.E.2d 247, 248 (1983).

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN MCMASTER  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

JULIE M. THAMES  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

*July 15, 2009.*

2009 JUL 16 PM 12:13  
CCJNIE REC'D  
CCCP & GS  
FLORENCE COUNTY, SC

**FILED**



HENRY McMASTER  
ATTORNEY GENERAL

July 15, 2009

The Honorable Connie Reel-Shearin  
Clerk of Court Florence County  
180 N. Irby St., MSC-E, Room B11  
Florence, South Carolina 29501

RE: Shaquan Burgess, #314924 v. State of South Carolina  
2009-CP-21-444

Dear Ms. Reel-Shearin:

Enclosed please find the original Return of the Respondent, in the above-captioned case, for filing in your office. We are also sending you copies of the following documents to accompany our Return:

- 1) Clerk Records: Florence County
- 2) SCDC Records
- 3) Guilty Plea Transcript

Sincerely,

Julie M. Thames  
Assistant Attorney General

2009 JUL 16 PM 12:13  
CONNIE REEL-SHEARIN  
CCCP & CS  
FLORENCE COUNTY, SC

FILED

JMT/jkb  
Enclosures

cc: Shaquan Burgess, #314924

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )  
 )  
 )  
 )  
 Shaquan Burgess, )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS

2009-CP-21-444

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, Florence County clerk records, SCDC records, and the guilty plea transcript in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Shaquan Burgess, #314924  
 Lee Correctional Institution  
 990 Wisacky Highway  
 Bishopville, SC 29010

2009 JUL 16 PM 12:13  
 DONNIE REEL-SHEARIN  
 CCCP & GS  
 FLORENCE COUNTY, SC

**FILED**

DATED this 15<sup>th</sup> day of July, 2009.

*Jena K. Breedlove*  
 Jena K. Breedlove, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )  
Shaquan Burgess, )  
Plaintiff(s), )  
-vs- )  
State, )  
Defendant(s). )

IN THE COURT OF COMMON PLEAS  
12th JUDICIAL CIRCUIT  
CASE NO.: 2009CP2100444  
APPOINTMENT OF COUNSEL OR GAL  
(Select one.)

ORDER  
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- Post-Conviction Relief (PCR)/habeas case
- SVP case
- Minor Name Change
- Adoption
- Custody and/or Visitation
- Other: Post Convict Rel 500
- Juvenile
- Abuse and Neglect

It appears Shaquan Burgess, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other.

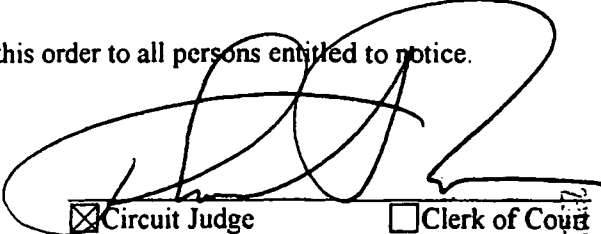
Therefore, it is ordered that Louis D. Nettles hereby is appointed as (Select one.)

counsel     lead counsel (if capital PCR case)     guardian ad litem  
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that Esquire is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED  
September 30, 2009

  
 Circuit Judge     Clerk of Court

Plaintiff Attorney:	
Louis D. Nettles	
PO Box 6139	
Florence, SC 29502	
Defendant Attorney:	
Julie Martino Thames	
S.C. Attorney General's Ofc.	
P.O. Box 11549	
Columbia, SC 29211	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.org and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

20 (08/08)  
A/267 (03/07)  
*Mailed 10/8/09*  
*cc: Nettles*  
*Thames*  
*Burgess*

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2009-CP-21-00444
	)	
SHAQUAN BURGESS,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

---

October 8, 2013  
Marion, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., Judge

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

LOUIS DAVID NETTLES, Esquire  
Attorney for the Plaintiff

JOSHUA THOMAS, Esquire  
Attorney for the Defendant

KRYSTAL J. SMITH  
Court Reporter

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Shaquan Burgess	
Direct Examination by Mr. Nettles.....	5
Cross Examination by Mr. Thomas.....	12
Redirect Examination by Mr. Nettles.....	17
John M. Prosser, Jr.	
Direct Examination by Mr. Nettles.....	18
Cross Examination by Mr. Thomas.....	27
Court Reporter Certification.....	34

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 OCTOBER 8, 2013

2 (WHEREAS this matter was scheduled for a post-conviction  
3 relief hearing, the applicant appeared along with his  
4 counsel of record. The hearing began at 1:58 p.m.)

5 THE CLERK: Stand again, please. I'm sorry, sir. If you  
6 would, raise your right hand as much as you can? Do you  
7 solemnly swear or affirm to tell the truth, the whole truth,  
8 and nothing but the truth, so help you God?

9 THE APPLICANT/PLAINTIFF: Yes, ma'am.

10 THE CLERK: You may be seated. Thank you, sir.

11 THE COURT: All right. Mr. Thomas?

12 MR. THOMAS: May it please the Court. The final case for  
13 this afternoon is Shaquan Burgess versus the State of South  
14 Carolina. It's Case 2009-CP-21-444. Mr. Burgess was indicted  
15 in April of 2006 for two counts of armed robbery, one count of  
16 possession of a weapon during the commission of a violent  
17 crime. He was also charged with one count -- another count of  
18 armed robbery which was never presented that he waived  
19 presentment on. He was represented on those charges by Mr.  
20 John M. Prosser.

21 He pled to those on June 13<sup>th</sup>, 2007. On June 18<sup>th</sup>, 2007,  
22 the Honorable Thomas A. Russo sentenced Mr. Burgess in his  
23 absence. He was present for -- present for the plea and  
24 absent for the sentencing. On May 28<sup>th</sup>, 2008, Judge Russo  
25 unsealed those sentences and sentenced Mr. Burgess to 20 years

SHAQUAN BURGESS - DIRECT EXAMINATION BY MR. NETTLES

1 concurrent on all three of the armed robbery charges and the  
2 possession of a weapon was null proessed.

3 He filed this PCR in March of 2009. He's present in  
4 court with his attorney, Mr. Louis Nettles. The State is  
5 ready to proceed.

6 THE COURT: All right. I'm ready when you are.

7 MR. NETTLES: All right. Your Honor, some other details  
8 that might be useful. Mr. Burgess was evaluated for  
9 competency to stand trial. That was in April of 2007. The  
10 second charge of armed robbery was I believe May the 22<sup>nd</sup>,  
11 2007. Mr. Burgess was not present at the time that he was  
12 sentenced by Judge Russo and we want -- so that's a big part  
13 of what we're going to talk about. So now we're going to talk  
14 to you and we're going to start with the examination of Mr.  
15 Burgess.

16 SHAQUAN BURGESS, being first duly  
17 sworn, testifies as follows:

18 DIRECT EXAMINATION

19 BY MR. NETTLES:

20 Q: Mr. Burgess, tell us about your schooling and how you did  
21 in school and why it came to be that you were evaluated for  
22 competency. How did you do -- go ahead. Tell us how you did  
23 in school?

24 A: I mean I -- it was hard. It was hard for me to  
25 understand. I didn't read, couldn't write, couldn't write

SHAQUAN BURGESS - DIRECT EXAMINATION BY MR. NETTLES

1 well. Like it was hard for me to understand it and I was like  
2 easy to lead by the wrong crowd. It was like hard -- hard for  
3 me. I didn't have no understanding.

4 Q: Okay. Now, in April of 2007, you were at that time under  
5 indictment for the first set of armed robberies. Do you  
6 recall that? The one that took place in 2006?

7 A: Yes, sir.

8 Q: Now, had you been offered a plea in that?

9 A: Yes, sir.

10 Q: What was the -- what was the plea in that at that time?

11 A: I was -- I plead -- I plead ten years. I would plead ten  
12 years on the Friday and the judge told me -- well, not the  
13 judge, but my lawyer told me to come back that Monday morning  
14 and I came back that Monday morning and answered roll call,  
15 but ---

16 Q: Let's stop a minute. While you were -- you had been  
17 offered a plea on the first indictment and you said the offer  
18 would be ten years; is that right?

19 A: Yes, sir.

20 Q: All right. Then you were evaluated by the -- evaluated  
21 for competency in April of 2007; right?

22 A: Yes, sir.

23 Q: And then in May of 2007, you were arrested for the second  
24 robbery; right?

25 A: Yes, sir.

SHAQUAN BURGESS - DIRECT EXAMINATION BY MR. NETTLES

1 Q: Okay. Now, you had discussions with Mr. Prosser about  
2 pleading on those two different charges.

3 A: Yeah.

4 Q: Tell me about that?

5 A: I plead -- I plead on the Friday to ten years. I plead  
6 ten years on Friday. He told me to come back. He told me to  
7 come back that Monday morning.

8 Q: Now, can you tell me why there was a gap between the time  
9 that you were pled guilty and the time that you were being  
10 sentenced?

11 A: Yes, sir.

12 Q: Like why was that?

13 A: Because he -- because the difference was -- my lawyer, he  
14 told me that he -- he was going to give me a time to go home  
15 with my family and tell my family I got to do ten years and he  
16 told me to come -- he told me to come back that Monday  
17 morning. So I came back to court that Monday morning and I  
18 answered roll call, but my lawyer, he wasn't there so I didn't  
19 have no kind of understanding of when to come back and -- or  
20 nothing.

21 Q: All right. Now, you were under the impression that you  
22 were -- that you were going to do ten years for these charges?

23 A: Yes, sir. Because I couldn't -- I couldn't -- I couldn't  
24 read what I was -- you know, what I was signing.

25 Q: What did Mr. Prosser tell you about the deal he had

SHAQUAN BURGESS - DIRECT EXAMINATION BY MR. NETTLES

1 worked out with the Solicitor's Office?

2 A: That I -- he told me I was going to receive ten years.

3 Q: Okay. Now, I'm going to show you the sentences and the  
4 plea agreements. Do you recognize that as being the plea  
5 agreements?

6 A: No. No, sir.

7 Q: Why is that?

8 A: Because it's 20 -- 20 years.

9 Q: Can you read those?

10 A: No, sir.

11 Q: Is that your signature on them?

12 A: Yes, sir.

13 Q: Okay. Now -- and what did Mr. -- what did Mr. Prosser  
14 tell you about what was available to you as far as a plea  
15 agreement?

16 A: I mean basically, he -- he basically said -- he basically  
17 sat on his hand and basically didn't tell me nothing. Only  
18 thing I -- the only thing I know is I was going to receive ten  
19 years. I didn't know what I was reading. I didn't have  
20 nobody there to read it to me and break it down.

21 Q: All right. Now, you went to court on June the 13<sup>th</sup> and  
22 actually pled guilty to these charges; right?

23 A: Yes, sir.

24 Q: All right. Now -- and then you were not sentenced that  
25 day. What were you told about returning to court?

SHAQUAN BURGESS - DIRECT EXAMINATION BY MR. NETTLES

- 1 A: See, they told me to come -- well, my lawyer -- he told  
2 me to come back that Monday morning and answer roll call. So  
3 I came back that Monday morning and answered roll call, but my  
4 lawyer -- he wasn't -- he wasn't there. So I didn't have no  
5 understanding of to come back or when to come back because he  
6 wasn't there. If he was there, I think it would have been a  
7 better chance that I would have -- that the Court would have  
8 ruled and I would have been there if he would have been there  
9 to give me a better understanding.
- 10 Q: So that Monday morning you appeared in court?
- 11 A: Yes, sir. And answered roll call.
- 12 Q: And how long did you stay there?
- 13 A: I stayed there like the whole time.
- 14 Q: Well, when you say the whole time, there was a sentencing  
15 hearing that afternoon. Were you there for that?
- 16 A: No, sir.
- 17 Q: Why not?
- 18 A: Why not? Because I didn't have an understanding to come  
19 back because my -- because my lawyer wasn't there. He didn't  
20 -- he wasn't there to break it down for me. The only thing I  
21 knew was to come back that Monday morning.
- 22 Q: And you did go back that Monday morning?
- 23 A: Yes, sir.
- 24 Q: And you later found out that you had been sentenced in  
25 your absence?

## SHAQUAN BURGESS - DIRECT EXAMINATION BY MR. NETTLES

1 A: Yes, sir.

2 Q: And at that point, you learned that you had been  
3 sentenced to two 20-year terms concurrent?

4 A: Yes, sir. I read 20 years in the envelope.

5 Q: And -- and you have been incarcerated; right? Ever since  
6 then?

7 A: Yes, sir.

8 Q: Okay.

9 A: Incarcerated going on six years.

10 Q: All right. Now, did you cooperate with the police on  
11 these criminal matters?

12 A: Yes, sir. I cooperated. I cooperated with them when  
13 they wanted and I even -- I even helped them. I even helped  
14 them with one of my co-D's and helped them make -- make him  
15 plead.

16 Q: All right. And the transcript we've got indicates that  
17 your co-defendants received sentences substantially less than  
18 yours?

19 A: Yes, sir.

20 Q: What's your understanding of what they were sentenced?

21 A: One of them -- one of the defendants three years non-  
22 violent and one of them was sentenced to five years, eighty-  
23 five, and I was -- and I was sentenced to 20 years, eighty-  
24 five.

25 Q: And how old are you now, Mr. Burgess?

**SHAQUAN BURGESS - DIRECT EXAMINATION BY MR. NETTLES**

- 1 A: I'll be -- I'll be 25 next week. I'm 24 now.
- 2 Q: Okay. And how old were you when this took place in 2007?
- 3 A: In 2007, I was 18.
- 4 Q: Okay. All right. Do you think you might have done  
5 better with your sentence had you been able to speak to the  
6 judge?
- 7 A: Yes, sir. I think 10 years was a good -- was a good deal  
8 and I -- and if I was to speak to the judge, I would have went  
9 along with it.
- 10 Q: Okay. And did your -- and what is -- what is the total  
11 of what your lawyer told you about appearing on that Monday?
- 12 A: He didn't -- basically, he just -- he just told me to  
13 come back that Monday morning and he said he gave -- he gave  
14 me a weekend to go home to my -- and talk to my family and  
15 come back that Monday morning. That -- that's the only thing  
16 I knew to come back that Monday morning. I never talked to  
17 him after that no more because he wasn't there. He wasn't  
18 present. I was present.
- 19 Q: And you stayed in court until around lunchtime; is that  
20 right?
- 21 A: Yes, sir.
- 22 Q: And then where did you go?
- 23 A: Where did I go? I went out. I went out with my friends  
24 because I didn't have no understanding to come back to court.
- 25 Q: Now, your stepfather had been with you in court

SHAQUAN BURGESS - DIRECT EXAMINATION BY MR. NETTLES

1 previously?

2 A: Yes, sir.

3 Q: All right. Was he there on that Monday?

4 A: Yes, sir.

5 Q: How long did he stay?

6 A: He stayed -- he stayed about like an hour. He stayed  
7 like about an hour or two.

8 Q: Then he left and left you there by yourself?

9 A: Yes, sir.

10 Q: And did you ever see Mr. Prosser that day or seen him  
11 since?

12 A: No, sir.

13 MR. NETTLES: Your Honor, that's all I have of this  
14 witness.

15 THE COURT: Mr. Thomas?

16 CROSS EXAMINATION

17 BY MR. THOMAS:

18 Q: Mr. Burgess, how many times did you meet with Mr. Prosser  
19 before your plea?

20 A: I met -- I met with him like one or two times.

21 Q: When you met with him, did y'all go over the discovery  
22 that the State provided?

23 A: Yes, sir.

24 Q: Did you discuss any possible defenses with him?

25 A: Yes, sir.

**SHAQUAN BURGESS - CROSS EXAMINATION BY MR. THOMAS**

1 Q: What -- he never promised you ten years on the plea; did  
2 he?

3 A: Yes, sir.

4 Q: But he didn't tell you that that's what the solicitor  
5 agreed to; did he?

6 A: Yes, sir. He told me that's what the solicitor had  
7 agreed to.

8 Q: Do you remember -- at the hearing where you pled on June  
9 13<sup>th</sup>, do you remember the judge telling you that you faced  
10 between zero and 20 years on these charges?

11 A: No, sir.

12 Q: Do you remember the solicitor going over with you the  
13 facts of each case?

14 A: No, sir.

15 Q: When you got to court and you pled, the solicitor stood  
16 up and told the judge the facts they planned to use to convict  
17 you. You don't remember that?

18 A: I don't. No, sir. I was listening. I was -- I was  
19 going off what my lawyer was telling me because he was the one  
20 defending me. I was going off what he was telling me.

21 Q: But you would agree that you told the judge that those  
22 facts were true?

23 A: Yeah, because I -- because my lawyer said ten years.

24 That why -- that why I plead because I wasn't pleading if -- I  
25 wasn't pleading if he wasn't -- if I didn't receive ten years.

SHAQUAN BURGESS - CROSS EXAMINATION BY MR. THOMAS

1 Q: But the judge asked you if you were guilty of armed  
2 robbery and you told him you were?

3 A: Yes. Yes, sir.

4 Q: The judge also told you to return on Monday; didn't he?

5 A: He told me to return on Monday morning.

6 Q: And when you got back on Monday and you said that you --  
7 you left at lunchtime?

8 A: Yes, sir.

9 Q: Who did you speak to before you left?

10 A: Nobody.

11 Q: You didn't speak to a bailiff?

12 A: I mean not that I recall. No, sir.

13 Q: You didn't ask somebody, hey, where's the judge? I'm  
14 supposed to be sentenced today?

15 A: No. No, sir.

16 Q: You didn't call your attorney and say, hey, where are you  
17 ---

18 A: I mean ---

19 Q: --- or anything to that effect?

20 A: I didn't have a phone. I didn't have no phone at the  
21 time to get in touch with him. I left ---

22 Q: When you left -- I'm sorry. Go ahead.

23 A: Because -- because I thought he -- he -- he was supposed  
24 to be there because that's what he told me. He was going to  
25 be there. So I'm thinking -- I'm thinking the lawyer was

**SHAQUAN BURGESS - CROSS EXAMINATION BY MR. THOMAS**

1 going to be there that morning.

2 Q: And when you left the courtroom, did you go by his office  
3 to see where he was?

4 A: No, sir. I didn't. I didn't. I didn't have no ride.

5 Q: But you do remember a year later -- almost a year later  
6 on May 28<sup>th</sup> when you returned to court to be sentenced? May  
7 28<sup>th</sup>, 2008? May 29<sup>th</sup>? I'm sorry.

8 A: Yes, sir.

9 Q: And at that time, do you remember the judge asking you if  
10 there's anything you wanted to tell the Court? Right?

11 A: I mean yes, sir, but before I went -- before I went in  
12 front of the -- before I went in front of the judge, my lawyer  
13 already told me it ain't nothing -- I don't need to say  
14 anything. It ain't nothing -- it ain't nothing to say because  
15 I got a sealed -- I got a sealed sentence and what I say don't  
16 matter.

17 Q: But you did get an opportunity to speak to the judge  
18 though; right?

19 A: Yes, sir, but it -- but I'm going to hold my argument  
20 because he said don't talk.

21 Q: Do you remember what the reasons were you gave the judge  
22 for why you didn't show up on Monday for sentencing?

23 A: The judge didn't ask me why I didn't show up. I just got  
24 read the envelope. I wasn't there. They charged me in my  
25 absence.

SHAQUAN BURGESS - CROSS EXAMINATION BY MR. THOMAS

1 MR. THOMAS: Your Honor, can I approach?

2 THE COURT: Sure.

3 Q: I'm going to show you the transcript from your plea or  
4 from the -- from the sentencing hearing. This is the May 28<sup>th</sup>  
5 transcript. May 29<sup>th</sup>, 2008. I'll let your lawyer find that  
6 before I show it to you.

7 MR. THOMAS: I beg the Court's indulgence for a moment.

8 THE COURT: Yes.

9 MR. NETTLES: Okay. I found it.

10 MR. THOMAS: Okay.

11 Q: Do you remember being put under oath when you came back  
12 on the 29<sup>th</sup> of May, 2008, just like you were today sworn in?

13 A: No, sir. I don't remember.

14 Q: Would you believe me if I told you you were sworn in that  
15 day as well? It's fine. It's okay. I'm sorry. I'm going to  
16 show you your transcript here. This is page 5 starting on  
17 line 7, and this is basically -- I'll read it to you and you  
18 can tell me whether you remember saying that.

19 You said: Sir, my name is Shaquan Burgess. I'm 19 years  
20 old. I've got four kids. It was hard. I had been out. It's  
21 been hard out there for me. All true.

22 And then you said: I can't do ten, 30, or all of that,  
23 sir. I can't do ten years. I can't do ten or 30 years.

24 And then you go on to say: That's too much time for me.

25 Do you remember saying that?

SHAQUAN BURGESS - REDIRECT EXAMINATION BY MR. NETTLES

1 A: Yes, sir.

2 MR. THOMAS: I think that's all I have.

3 THE COURT: All right. Mr. Nettles, anything further?

4 MR. NETTLES: All right.

5 REDIRECT EXAMINATION

6 BY MR. NETTLES:

7 Q: So, Mr. Burgess, when you got back up to the courthouse  
8 on that Monday morning to be sentenced, how long did you stay  
9 there?

10 A: I stayed there the whole time until we went on break.

11 Q: Okay. And then what do you recall being -- were you told  
12 anything about the break?

13 A: I mean no, sir.

14 Q: At that time, did they -- and you had been to roll calls  
15 before; right?

16 A: I had been to roll call.

17 Q: And after roll call, should they have let you go?

18 A: Yes, sir.

19 Q: And on this occasion, the courtroom cleared out and you  
20 left; is that right?

21 A: Yes, sir.

22 MR. NETTLES: All right. That's all I have.

23 THE COURT: All right. Anything further?

24 MR. THOMAS: Nothing further.

25 THE COURT: All right. If you'll go ahead and have a

JOHN M. PROSSER, JR. - DIRECT EXAMINATION BY MR. NETTLES

1 seat next to your lawyer. Do you have any other witnesses,  
2 Mr. Nettles?

3 MR. NETTLES: Why don't we just go ahead and call Mr.  
4 Prosser on up here?

5 THE COURT: Okay.

6 THE CLERK: Mr. Prosser, if you would, raise your right  
7 hand. Do you solemnly swear or affirm to tell the truth, the  
8 whole truth, and nothing but the truth, so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Thank you.

11 JOHN M. PROSSER, JR., being  
12 first duly sworn, testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. NETTLES:

15 Q: Mr. Prosser, you were appointed counsel for Mr. Burgess  
16 back in 2006?

17 A: I was.

18 Q: At that time, he was -- had two charges against -- or  
19 basically a charge of two armed robberies and another charge  
20 on a single indictment?

21 A: Yes. After reviewing some of the documents, I remember  
22 that I was the second lawyer for him.

23 Q: Okay.

24 A: There was a first lawyer originally and he was originally  
25 charged I think with two armed robberies and a -- maybe a

JOHN M. PROSSER, JR. - DIRECT EXAMINATION BY MR. NETTLES

1 possession of a weapon during a violent crime.

2 Q: Okay.

3 A: So I came in after the first lawyer.

4 Q: Okay. And during that period of time, did y'all get an  
5 offer that he could plead to ten years on that original  
6 charge?

7 A: I don't recall an offer, but I do recall that there was  
8 an offer made to the original attorney ---

9 Q: Okay.

10 A: --- and that was to ten years. I think they would drop  
11 the possession of a weapon during a violent crime and let him  
12 plead to two armed robberies and ten years concurrent.

13 Q: Okay. And I take it you had some concerns about Mr.  
14 Burgess' ability to enter into a plea?

15 A: Yes, I did.

16 Q: Tell me what the nature of your concerns were?

17 A: I remember talking with Mr. Burgess and asking him about  
18 his education and some of his background when we were talking  
19 about his situation and he told me that he didn't finish  
20 school and that he was in some special classes and certainly I  
21 wanted to make sure he understood what he was doing. He  
22 seemed to be able to communicate with me. I'm no professional  
23 as far as, you know, whether or not somebody has a capacity to  
24 understand, but his -- his educational background certainly  
25 caused me some concern.

JOHN M. PROSSER, JR. - DIRECT EXAMINATION BY MR. NETTLES

1 Q: Okay. So what did you do about that?

2 A: I don't remember if it was I who initiated the request  
3 for him to be evaluated or if it was the solicitor through my  
4 urging, but he was eventually evaluated in Columbia.

5 Q: Okay. And do you recall what that evaluation showed with  
6 regard to Mr. Burgess?

7 A: I do. They found that he had some mild retardation, as  
8 they call it, which is a diagnosis. I didn't use the term,  
9 but I think it was a diagnosis. He had some substance abuse  
10 and -- but that he was competent to understand the  
11 proceedings, to understand what right and wrong was,  
12 understand the roles of lawyers and solicitors and juries, and  
13 that's what I recall from that.

14 Q: Okay. So they determined that he had mild retardation  
15 and had the ability to discuss the case with you and had  
16 sufficient ability to enter into a guilty plea?

17 A: Certainly.

18 Q: A plea. Now, before you -- that report I think came back  
19 in April of 2007. Then before the matter came up in court, he  
20 had been arrested on another charge?

21 A: Yes, sir. He got another armed robbery.

22 Q: Okay. And then when you appeared in court in June of  
23 2007, was there a deal with both the original charges and the  
24 second charge, the ones from May of 2007?

25 A: Yes, sir. I was obviously originally appointed on the

JOHN M. PROSSER, JR. - DIRECT EXAMINATION BY MR. NETTLES

1 first charges and when the second charges come along, I feel  
2 like it's obviously my duty to try to make sure all that is  
3 handled at one sitting. I wouldn't want him to plead to  
4 anything or handle anything without dealing with all of it if  
5 we can.

6 Q: Now, at that time, had he been indicted by the grand jury  
7 on the May 2007 charge?

8 A: I don't think he had yet been indicted on the new charge  
9 yet.

10 Q: What did you discuss with him about working out a plea  
11 deal with the second charge and the first charge and what that  
12 would mean as far as the grand jury indictment was concerned?

13 A: Well, what I recall about Mr. Burgess is that once he got  
14 the new charges, Mr. Jepertinger was not willing to recommend  
15 the minimum ten-year sentence anymore and so he would  
16 certainly make a recommendation that the charges run  
17 concurrent and then we would make our argument based on my  
18 perception of Mr. Burgess and some other mitigating factors  
19 and certainly try to get the ten-year sentence if we could,  
20 but there was no guarantees. It was discouraging.

21 Q: Okay. Why don't you tell us what the factors were that  
22 gave you some hope that you might be able to get a favorable  
23 sentence for Mr. Burgess?

24 A: I -- when I heard the story and reviewed the facts of the  
25 case and talked with Mr. Burgess and then I saw the new

JOHN M. PROSSER, JR. - DIRECT EXAMINATION BY MR. NETTLES

1 charges, it just seemed clear to me that Mr. Burgess was  
2 probably one of these kind of fellows that was easily led and  
3 that by virtue of that, there was some other people who -- you  
4 know, he was alleged to be the gunman so to speak, the guy  
5 with the gun in the armed robbery, and it just seemed to me  
6 that he was the kind of guy who the other guys would just put  
7 the gun in his hand so that he would be most culpable and he  
8 wouldn't resist that too much. The second thing was is that  
9 he had actually helped and worked or agreed to work I think  
10 with the solicitor in testifying against the others and I  
11 thought that that -- in my view, that was a reason they had  
12 pled earlier, that his testimony was going to help them.

13 Q: Okay. And how about the sentences for the other people  
14 participating in these particular crimes?

15 A: Like -- like we heard before, I think they got some  
16 lesser -- lesser-type sentences than ten years actually. I  
17 think it was maybe three and five. I don't recall.

18 Q: What -- and what did you tell him about the kind of  
19 sentencing he was facing when he appeared in court I believe  
20 it was the 13<sup>th</sup>, the original date where he actually pled  
21 guilty to this?

22 A: This was before he missed roll call? You're talking  
23 about the actual plea?

24 Q: Yeah. Not the day of sentencing, but the day of the  
25 guilty plea.

## JOHN M. PROSSER, JR. - DIRECT EXAMINATION BY MR. NETTLES

1 A: I actually recall meeting with Mr. Burgess and Mr.  
2 Burgess was very much afraid. He expressed that he was upset.  
3 He didn't want to go to jail for a long time. He had two  
4 children I believe. One was very young at the time and I  
5 understood that. Obviously, nobody wants to go to jail for a  
6 long time.

7 Q: So that's not a surprise then?

8 A: Not at all. It's not a good thing to think about and so  
9 we talked at length about that and what his chances were at  
10 trial. We certainly -- I gave him every option and then one  
11 of the last things that he wanted after he thought about it  
12 was to try to get a little time to spend with the family and  
13 that's where this plea condition kind of came about.

14 Q: Okay. And what -- what did you tell him about the  
15 sentences that were -- that he was facing?

16 A: I explained to him that at this point in time that there  
17 was a recommendation, that the recommendation was that the  
18 sentences would run concurrent, that the weapons charge would  
19 actually be dropped as originally offered, but that there was  
20 no minimum sentence that the judge -- other than ten years if  
21 the judge decided to give him that. I explained to him that  
22 the judge could not take the recommendation. It was not a  
23 negotiated plea and that the judge had a right to sentence  
24 him. I'm sure I explained to him that I would express all the  
25 mitigating factors that I thought were important in the case,

JOHN M. PROSSER, JR. - DIRECT EXAMINATION BY MR. NETTLES

1 but I have to disagree with his testimony that I told him that  
2 he was going to get ten years.

3 Q: Now, you -- and you stood by him while he pled guilty on  
4 that Thursday or Friday, whatever it was?

5 A: Yes, sir.

6 Q: What did you tell him about returning to court?

7 A: It was very clear. All the parties had discussed that he  
8 would be back in the morning on that Monday and that we would  
9 consummate the plea at that time. I didn't -- you know,  
10 before we left the week -- the prior week, I didn't get to  
11 express the mitigating factors just due to we were going to do  
12 that on that Monday. I don't recall -- after hearing him  
13 testify a little while ago, I don't recall if I was there or  
14 not that morning. Obviously, for some reason we didn't get to  
15 do it until the afternoon session, but ---

16 Q: Okay. And in the afternoon when this case was actually  
17 called, was he there?

18 A: He was not there.

19 Q: The transcript indicates that he -- that he, in fact, had  
20 appeared that morning though?

21 A: He had. That was my -- yes, sir, that was my  
22 understanding.

23 Q: But you did not see him?

24 A: I had not seen him. I don't recall seeing him.

25 Q: And at that point, did you have any way to get a hold of

## JOHN M. PROSSER, JR. - DIRECT EXAMINATION BY MR. NETTLES

1 him?

2 A: No way to get a hold of him. I had some numbers for  
3 family members and we did call some family members and  
4 expressed our concerns that he needs to be back and that this  
5 could -- would not help his situation at all if he didn't show  
6 up.

7 Q: Did you think he would be disadvantaged in arguing at his  
8 plea if he wasn't there?

9 A: Certainly.

10 Q: And what has been your -- your experience with sentences  
11 when the defendant isn't there?

12 A: Usually it's not a good situation.

13 Q: It reflects badly on the -- the defendant?

14 A: I think so.

15 Q: All right. Did you attempt to -- to -- to argue his case  
16 for him without him being there?

17 A: We did. I -- to be honest with you, it's hard to  
18 remember all these things until you review transcripts, but  
19 after reviewing the transcript, I do remember that I couldn't  
20 explain his absence. That's -- that's for sure, but I could  
21 argue the mitigating factors that I talked about before and I  
22 did attempt to do that, and then Judge Russo entered his  
23 sealed sentence.

24 Q: Okay. But you were aware when you talked to him after  
25 the guilty plea that he was a man of diminished intelligence

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1 because of his mild mental retardation?

2 A: I don't disagree with that.

3 Q: Okay. And that he was told to return Monday morning, but  
4 you didn't see him Monday morning or communicate with him at  
5 all that morning?

6 A: I didn't. I did not. I don't recall seeing him or  
7 talking with him personally I don't think.

8 Q: Did you take any other steps to assure that he would be  
9 there and be available when you needed to do the -- the  
10 sentencing?

11 A: No, sir. He hadn't ever given me any indication that he  
12 wouldn't show up.

13 Q: And this resulted in a sealed sentence and you appeared  
14 before him in 1988 [sic.] when he actually appeared for the  
15 reading of the sentence?

16 A: I don't recall about the reading of the sentence. I  
17 didn't get to review that particular transcript ---

18 Q: Okay.

19 A: --- actually.

20 Q: And he -- the sentence -- and you're aware that the  
21 sentence was 20 years on both -- both charges or both sets of  
22 charges and to run concurrent?

23 A: Yes.

24 Q: That is a pretty harsh sentence I think.

25 A: I wouldn't like it.

JOHN M. PROSSER, JR. - CROSS EXAMINATION BY MR. THOMAS

1 Q: Okay.

2 MR. NETTLES: That's all the questions I have for this  
3 witness, Your Honor.

4 THE COURT: All right. Mr. Thomas?

5 CROSS EXAMINATION

6 BY MR. THOMAS:

7 Q: Good afternoon, Mr. Prosser. How long have you been  
8 practicing law?

9 A: Eighteen years.

10 Q: And I believe you said you were the second appointed  
11 attorney on this case?

12 A: Yes, sir.

13 Q: How many times did you get the opportunity to meet with  
14 Mr. Burgess?

15 A: It's hard to remember. I can tell you I would tend to  
16 believe it was more than one or two. I mean if I had to tell  
17 you, I couldn't tell you under oath that I met with him five,  
18 six, seven, eight times. I just know that through the course  
19 of representing people with charges like this, there are more  
20 meetings than one or two in my practice.

21 Q: When you got the case, did you have a copy of the State's  
22 discovery response?

23 A: Yes, sir.

24 Q: Did you get a chance to go over that with him?

25 A: I did.

JOHN M. PROSSER, JR. - CROSS EXAMINATION BY MR. THOMAS

1 Q: When you met with him, did he give you any -- let me back  
2 up. Did you discuss with him the elements of the charges and  
3 what the State's evidence was against him?

4 A: Yes, sir.

5 Q: And just kind of briefly, what was it? Do you recall  
6 what the State's evidence was?

7 A: Well, the first charges -- which again kind of comports a  
8 little bit about why I thought he might have some intellectual  
9 deficiencies. The first armed robbery involved a situation  
10 where they pretty much disrobed a fellow allegedly and took  
11 his clothes, shoes especially, and that the evidence was that  
12 Mr. Burgess was seen wearing these clothes the next day by  
13 folks in the same vicinity and that he ran once they noticed  
14 him. That was a pretty big piece of evidence on that first  
15 case. The second case I recall was where he was in a back  
16 seat I think of a car allegedly and put a gun to a gentleman's  
17 neck I think or head and robbed him of certain things, and a  
18 tattoo -- a specific tattoo was identified in that case which  
19 matched Mr. Burgess.

20 Q: When you met with him, did he give you any leads to  
21 investigate in terms of these charges?

22 A: No leads that I can recall and I think a lot of our  
23 conversation if I will recall was that Mr. Burgess -- Mr.  
24 Burgess always had a good nature. I didn't feel like he was  
25 -- personally just my view, even though he had been charged

JOHN M. PROSSER, JR. - CROSS EXAMINATION BY MR. THOMAS

1 with these crimes -- a bad person other than the fact that I  
2 thought he could be led. He was always -- appeared always  
3 willing to help law enforcement and that's sort of the  
4 direction that the case seemed to take throughout time.

5 Q: And was -- his cooperation, was that a factor in getting  
6 the initial offer from the solicitor for ten years?

7 A: I'm not sure. That original offer I believe was offered  
8 to the first attorney I think and then they changed that.  
9 They may have -- I don't recall it being a factor, but I'm  
10 sure it was. I mean the charges themselves obviously could --  
11 he could have went to jail for 60 -- 60-plus years originally  
12 and so I felt like that was probably a factor.

13 Q: But you said the solicitor withdrew that offer after he  
14 picked up a third armed robbery charge; is that correct?

15 A: Right. It was -- the first two were one circumstance or  
16 situation. The third one I guess I looked as a second, but  
17 yes, sir. After we had been waiting on trial for a little  
18 while, he picked up that second one or third one I guess would  
19 be the way you look at it, and that changed things a little  
20 bit.

21 Q: And did you have a chance to explain to him at that time  
22 that the ten years was off the table?

23 A: I did.

24 Q: As far as the evaluation goes, that report came back that  
25 he was competent to assist and competent to stand trial?

## JOHN M. PROSSER, JR. - CROSS EXAMINATION BY MR. THOMAS

1 A: Yes, sir.

2 Q: And you had no reason to doubt the veracity of that  
3 report?

4 A: No, sir.

5 Q: Or the accuracy? Did you have any conversations with him  
6 between the day he pled and the day he was supposed to show up  
7 for sentencing?

8 A: No, sir.

9 Q: The day of the sentencing, what did you do to try and  
10 find him that afternoon?

11 A: I remember we called family members at the numbers we  
12 had. He didn't have a personal number that I remember. And  
13 one of the family members was a -- was his stepfather, and  
14 communication from his stepfather was that he had been -- they  
15 -- he didn't -- he didn't know where he was, but that he  
16 thought that he might be listening to some outside influences.  
17 That was the ---

18 Q: Was the ---

19 A: --- meaning ---

20 Q: I'm sorry. Go ahead.

21 A: That was the meaning that I think he was -- some folks  
22 were kind of swaying him not to come back is what I took it.  
23 He didn't say that, but ---

24 Q: But you did present your mitigating evidence that day  
25 without him there?

## JOHN M. PROSSER, JR. - CROSS EXAMINATION BY MR. THOMAS

1 A: Yes, sir.

2 Q: And just could you go over with us again what that  
3 mitigation evidence was that you presented to the best of your  
4 recollection?

5 A: Yes. To the best of my recollection, again due to his --  
6 and if I recall right, I think he was reading on about a  
7 fourth grade level or something like that, but he -- but he  
8 was in some special education classes and I think he might  
9 have made it to the ninth grade, somewhere around there, but I  
10 felt like that the factual circumstances and that educational  
11 background told me that he was an easily-led fellow, that he  
12 wasn't necessarily a bad guy, that those folks might have been  
13 able to manipulate him, whereas they might -- me and you they  
14 might not be able to talk into doing stuff, and that he had  
15 helped law enforcement willingly from day one is the way I  
16 understood it.

17 Q: And do you recall if you also told Judge Russo what the  
18 co-defendants got in terms of sentences?

19 A: I don't recall if that was discussed or not. Usually,  
20 that is discussed when you have a multi-defendant situation,  
21 but I don't recall if I brought that up personally.

22 Q: Would you believe me if I told you you did point out that  
23 one co-defendant got two years and the other got three or  
24 something along those lines?

25 A: Yes, sir.

JOHN M. PROSSER, JR. - CROSS EXAMINATION BY MR. THOMAS

1 Q: Throughout this whole process, did he ever indicate to  
2 you that he wanted to go to trial?

3 A: He didn't indicate that he wanted to go to trial. He did  
4 -- he did have reservations before we pled about pleading off  
5 and on, and most of that was because he knew he was going to  
6 jail and he didn't want to leave his family and I understood  
7 that and that option was always open.

8 Q: But ultimately, whose decision was it to plead guilty?

9 A: Oh, it was his.

10 MR. THOMAS: That's all I have. Thank you.

11 THE COURT: Okay. Mr. Nettles, anything further?

12 MR. NETTLES: Your Honor, I would offer the transcripts  
13 into the record if they're already not part of the record.

14 THE COURT: I think it is.

15 MR. THOMAS: You should have -- Your Honor, there seems  
16 to be -- I seem to be the only person that has a copy of the  
17 May 29<sup>th</sup>, 2008. I would just ask if you could check and make  
18 sure you have a copy of that one.

19 MR. NETTLES: If you'll give us an option to submit those  
20 into the record, that would ---

21 THE COURT: Sure.

22 MR. THOMAS: It should be in there.

23 THE LAW CLERK: We got it.

24 THE COURT: We got it.

25 MR. NETTLES: All right.

1 THE COURT: We got it.

2 MR. NETTLES: I have nothing further from -- I have  
3 nothing further for Mr. Prosser.

4 THE COURT: All right. Any other witnesses?

5 MR. NETTLES: No, Your Honor.

6 THE COURT: All right. Any witnesses from the State?

7 MR. THOMAS: None from the State.

8 THE COURT: All right. I'll take the matter under  
9 advisement and let you know soon.

10 MR. NETTLES: All right. Thank you, Your Honor.

11 THE COURT: Thank you very much.

12 (Whereupon, the proceedings end at 2:37 p.m.)

13

14 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA )  
2 )  
3 COUNTY OF FLORENCE )

CERTIFICATE

4  
5 I, the undersigned, Krystal J. Smith, Official Court  
6 Reporter for the Twelfth Judicial Circuit of the State of  
7 South Carolina, do hereby certify that the foregoing is a  
8 true, accurate, and complete Transcript of Record of all the  
9 proceedings had and evidence introduced in the hearing of the  
10 above captioned case, relative to appeal, in the Court of  
11 Common Pleas for Florence County, South Carolina, held in  
12 Marion, South Carolina, on the 8<sup>th</sup> day of October, 2013.

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

15  
16 Krystal J. Smith

17 Court Reporter

18  
19 Florence, South Carolina

20 April 26, 2014

21  
22  
23  
24  
25

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
FOR THE TWELFTH JUDICIAL CIRCUIT

Shaquan Burgess, #314924, )  
Applicant, )

Case No. 2009-CP-21-444

v. )

**ORDER OF DISMISSAL**

State of South Carolina, )  
Respondent. )

2013 DEC 11 PM 4:36  
CORINNE REED, CLERK  
CCCP & G.S.  
FLORENCE COUNTY, SC  
FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed March 11, 2009. Respondent made its Return on or about July 15, 2009. The Court convened an evidentiary hearing into the matter on October 8, 2013, in Marion County. Applicant was present at the hearing and represented by Louis D. Nettles, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, John M. Prosser, Jr., Esquire, also testified. The Court had before it a copy of the plea and sentencing transcripts, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application, and the return. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In April 2006, the Florence County Grand Jury indicted Applicant for two counts of armed robbery and one count of possession of a weapon during the commission of a violent crime (2006-GS-21-636). On June

CERTIFIED TRUE COPY  
Corinne Reed  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

13, 2007, Applicant waived presentment of a third indictment for armed robbery (2007-GS-21-1162). He was represented on all charges by John M. Prosser, Jr., Esquire ("plea counsel"). Also on June 13, 2007, Applicant pled guilty to the three counts of armed robbery. The Honorable Thomas A. Russo accepted Applicant's plea and deferred sentencing to June 18, 2007. Applicant did not appear at sentencing, and Judge Russo issued a sealed sentence and issued a bench warrant for Applicant. Applicant was apprehended brought before Judge Russo on May 28, 2008, where Judge Russo pronounced Applicant's sentenced of incarceration for a period of twenty (20) years. Applicant did not appeal his plea or sentence.

## **II. ALLEGATIONS**

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

1. "Ineffective assistance of counsel"
2. "Due process and equal protection rights violated"
3. "Plea agreement for the sentence negotiated not kept by the solicitor that made the deal"

Included with his application was a four (4) page attachment outlining Applicant's grounds for PCR. Among these various claims, Applicant proceeded at the PCR hearing on only the allegations plea counsel was ineffective for failing to investigate his mental competency and the State breached its plea agreement.

## **III. SUMMARY OF TESTIMONY**

Applicant testified he had difficulties in school growing up. He admitted he was out on bond on a set of armed robbery charges when he was arrested again for armed robbery. He recalled meeting with plea counsel and discussing the State's discovery and any possible defenses he may have. Applicant alleged the State made an offer to plea to the charges in

exchange for a recommendation of ten (10) years. He further testified plea counsel advised him the State agreed to a ten (10) year sentence, and he would not have pled if he had known he would get twenty (20) years. However, Applicant admitted he signed the sentencing sheets reflecting a sentencing range of ten (10) to thirty (30) years.

Applicant testified plea counsel arranged for him to plead to both sets of charges on a Friday and return on Monday for sentencing. Applicant testified he returned to court on Monday after pleading, but plea counsel was not there. He testified he was in court the whole morning with his stepfather, but no one approached him about his case. On cross-examination, Applicant admitted he did not attempt to speak with anyone the morning of his sentencing, he did not attempt to call plea counsel, and he did not go by plea counsel's office.

Plea counsel testified the State made a ten (10) year offer to Applicant's prior appointed counsel. He recalled meeting with Applicant more than twice and discussing discovery, the elements of the crimes, and any possible defenses. Plea counsel also recalled discussing Applicant's education and background. Plea counsel testified Applicant was good natured, communicative, and cooperative. However, plea counsel had Applicant evaluated because he had some concerns about his mental functioning. The evaluation came back showing Applicant had some mild mental retardation and substance abuse, but was otherwise competent to assist in his defense and capable of conforming his conduct to the requirements of the law. Plea counsel testified he had no reason to doubt the findings of the evaluation.

Plea counsel further testified Applicant was arrested for a third armed robbery while out on bond and awaiting the results of the evaluation. In light of this arrest, the State withdrew the offer for a recommendation of ten (10) years. Plea counsel testified he communicated to

Applicant that the recommendation was off the table. He also testified he communicated to Applicant the State's new offer to recommend concurrent time and drop the weapons charge. Plea counsel recalled telling Applicant he would argue to the plea judge for the minimum sentence. Plea counsel testified Applicant was hesitant to go to jail, but never indicated he wanted to go to trial. He also testified Applicant made the ultimate decision to plead guilty.

Plea counsel also testified he did not speak to Applicant between the day he pled and the day his sentence was unsealed. He testified it was clear to all parties Applicant was to return to court that Monday to be sentenced. Plea counsel did not recall if he was in court that Monday morning. However, he did testify Applicant never called or reached out to him that day. Plea counsel did attempt to locate Applicant before sentencing by contacting his family, but Applicant's stepfather did not know Applicant's whereabouts. Plea counsel testified he argued for mitigation as best he could in light of Applicant's absence.

#### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

##### **A. Ineffective Assistance of Plea 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). 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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

The Court finds Applicant failed to meet his burden of proving plea counsel ineffective. The Court finds trial counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. Regarding the claim counsel failed to investigate Applicant's mental condition, the Court finds this allegation is not supported by the record. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). The record reflects plea counsel had Applicant evaluated for his capacity to conform his conduct to the requirements of the law and for his capacity to assist with his defense. The Court finds plea counsel's testimony he had no reason to doubt the findings of the evaluators be very credible. Plea counsel also discussed the results of the valuation with Applicant. (Plea Tr. 3:24-25 June 13, 2007). Both evaluations were presented to Judge Russo and made part of the record. (Plea Tr. 4:4-15). Accordingly, Judge Russo found Applicant was competent at the time of the robberies and at the time of the plea. Applicant presented no evidence at the PCR hearing to refute these findings. Therefore, he has not shown how any further investigation into his mental condition would have changed the outcome of his case.

#### **B. Plea Agreement**

The Court also finds Applicant's allegations regarding the plea agreement to be without merit. The State may withdraw a plea offer at any time prior to the court accepting the defendant's plea. Reed v. Becka, 333 S.C. 676, 688, 511 S.E.2d 396, 402 (Ct. App. 1999) ("A plea agreement is only an 'offer' until the defendant enters a court-approved guilty plea. A defendant accepts the 'offer' by pleading guilty. Thus, until formal acceptance of the plea by the

court has occurred, the plea binds no one, not the defendant, the State, or the court.” (citing Harden v. State, 453 So.2d 550 (Fla. Dist. Ct. App. 1984))). The only exception to this rule is when the defendant detrimentally relies on the plea offer. Id. The Court finds very credible plea counsel’s testimony the State withdrew the ten (10) year offer when Applicant was subsequently arrested for a third armed robbery. The Court finds not credible Applicant’s testimony he thought he would still receive ten (10) years when he pled. Furthermore, Applicant presented no evidence he relied on the State’s offer to his detriment. Accordingly, the Court finds plea counsel was not ineffective in advising Applicant of his potential sentence and the State has not breached any plea agreement.

The record also reflects Applicant entered his plea freely, knowingly, and voluntarily. Simpson v. State, 317 S.C. 506, 508, 455 S.E.2d 175, 176 (1995) (“To knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him.” (citing Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991))). Judge Russo clearly advised Applicant of the potential sentence he was facing. (Plea Tr. 5:5-23). Judge Russo also discussed with Applicant the State’s recommendation was merely for concurrent sentences. (Plea Tr. 12:5-23). Thus, the record shows Applicant was not under the impression he was guaranteed a ten (10) year sentence. Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible errors by counsel regarding sentencing advice cured by plea colloquy). Therefore, Applicant has not met his burden of proof to show he was entitled to a ten (10) year sentence. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should

be allowed to depart from the truth of his statements.” (citing Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976))).

### **C. All Other Allegations**

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

### **V. CONCLUSION**

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

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant’s behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED THAT:**

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

AND IT IS SO ORDERED this 27 day of November, 2013.



THE HONORABLE WILLIAM H. SEALS, JR.  
Presiding Judge

Mari, South Carolina

2013 DEC 11 PM 4:36  
CONNIE REEL-SHEPHERD  
COP & GS  
FLORENCE COUNTY, SC

FILED

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*Connie Reel-Shepherd*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

H. JAMES RODGERS FPD  
CITRWAY

DOCKET NO. 2007 - GS - 21 - 01162

The State of South Carolina,

County of FLORENCE

JCI

COURT OF GENERAL SESSIONS

JUNE TERM 2007

THE STATE

vs.

SHAQUAN BURGESS

ARREST WARRANT NO.

.56(1)

ACTION OF GRAND JURY

Indictment for

ARMED ROBBERY

Foreman of Grand Jury

VERDICT

For Name of Petit Jury

Date

CERTIFIED: A TRUE COPY  
*Cynthia Spivey*  
CLERK OF COURT C.P. & G.S.  
FLORENCE COUNTY, S.C.

INDICTMENT FOR

STATE OF SOUTH CAROLINA	)	ARMED ROBBERY
	)	
COUNTY OF FLORENCE	)	

At a Court of General Sessions, convened on JUNE 11, 2007, the Grand Jurors of FLORENCE

County present upon their oath:

**COUNT ONE - ARMED ROBBERY**

That SHAQUAN BURGESS did in FLORENCE County on or about May 23, 2007, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a pistol, did feloniously rob Anthony Johnson, by means of force or intimidation, goods or monies of the said Anthony Johnson, to-wit: radio, rings, wallet, hat and other sundry items.

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



*E. L. Clements*  
 \_\_\_\_\_  
 SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF FLORENCE )  
 STATE VS. )  
 Shaquan V. Burgess )  
 AKA: )  
 Race: )  
 Sex: )  
 DOB: )  
 Address: )  
 City, State, Zip )  
 DL# ) SID# )

IN THE COURT OF GENERAL SESSIONS  
 INDICTMENT/CASE#: 07 -GS- 21 - 1162  
 AWW#: 5396456  
 Date of Offense: 5/23/07  
 S.C. Code §: 16-11-330(A)  
 CDR Code #: 0 1 1 1 3 1 2  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment, comes now the Defendant who was  CONVICTED OF or  PLEADS TO: Armed Robbery (1CT) (10-3042) in violation of §16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0 1 1 3 1 9  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
 ATTEST: John C. Jenkins Solicitor SHAQUAN BURGESS Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 20 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_ years and/or to pay a fine of \$ \_\_\_; provided that upon the service of \_\_\_ days/months/years and/or payment of \$ \_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: W/07-GS-21-636  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

**SPECIAL CONDITIONS:**

RESTITUTION:  Heard,  Waived,  Ordered  
 Total: \$ \_\_\_ plus 20% fee: \$ \_\_\_  
 Payment Terms: \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

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

Recipient: \_\_\_\_\_  
 Fine: \$ \_\_\_\_\_

14-1-206 (Assessments 107.5%)	\$
14-1-211(A)(1) (Conv. Surcharge)	\$100
14-1-211(A)(2) (DUI Surcharge)	\$100
56-5-2995 (DUI Assessment)	\$12
35.13 (Public Def/Prob)	\$500
73.3, 1B TP (Law Enforce. Funding)	\$25
33.7, 1B TP (Drug Court Surcharge)	\$100
50-21-114(BUI Breath Test Fee)	\$50
16-5-2942(J) (Vehicle Assessment)	\$40/ea
6 to County (if paid in installments)	\$
JTAL	\$

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.  
 PRESIDING JUDGE  
 Clerk of Court  
 Sentence Date: 6-18-07

CERTIFIED: A TRUE AND CORRECT COPY  
 CLERK OF COURT  
 FLORENCE COUNTY, S.C.

Clerk of Court/ Deputy Clerk  
 Court Reporter: \_\_\_\_\_

# The State of South Carolina,

County of FLORENCE

JCI

COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE

vs.

SHAQUAN BURGESS

RONDELL J. MOORE

Godwin

FPD

PROS: JCI

D/O: 01-30-2006

ARREST WARRANT NO.

1304480 (1); 1304514 (1-2); 1304480 (2-3).

ACTION OF GRAND JURY

**TRUE BILL**

*Deputy P. Moore*  
Foreman of Grand Jury

VERDICT

**Indictment for**

ARMED ROBBERY (TWO COUNTS) AND  
POSSESSION OF WEAPON DURING THE  
COMMISSION OF VIOLENT CRIME

108

Foreman of Petit Jury

Date:

FILED  
2006 APR - 6 A 11: 06  
CORRELL  
COUNTY

INDICTMENT FOR

STATE OF SOUTH CAROLINA )	ARMED ROBBERY (TWO COUNTS) AND POSSESSION
)	OF WEAPON DURING THE COMMISSION OF VIOLENT
COUNTY OF FLORENCE )	CRIME

At a Court of General Sessions, convened on APRIL 6, 2006, the Grand Jurors of FLORENCE

County present upon their oath:

**COUNT ONE - ARMED ROBBERY**

That SHAQUAN BURGESS AND RONDELL J. MOORE and another co-defendant did in FLORENCE County on or about January 30, 2006, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that they were armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun did feloniously rob James Bacote by means of force or intimidation, goods or monies of the said James Bacote to-wit: shoes, clothing and one hundred forty- five dollars (\$145.00) cash.

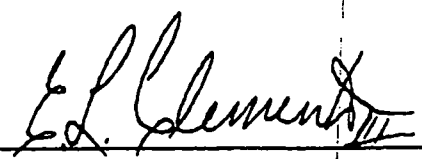
**COUNT TWO - ARMED ROBBERY**

That SHAQUAN BURGESS AND RONDELL J. MOORE and another co-defendant did in FLORENCE County on or about January 30, 2006, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that they were armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun did feloniously rob Robert Heathman by means of force or intimidation, goods or monies of the said Robert Heathman to-wit: clothing, a wallet and its contents, shoes, and a prepaid cell phone.

**COUNT THREE - POSSESSION OF WEAPON DURING THE COMMISSION OF VIOLENT CRIME**

That SHAQUAN BURGESS did in FLORENCE County on or about January 30, 2006, violate Section 16-23-0490 of the Code of Laws of South Carolina (1976), as amended, in that he was in possession of and did visibly display a weapon, to wit: a handgun during the commission of a violent crime, to wit: Armed Robbery.

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

  
 \_\_\_\_\_  
 SOLICITOR

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHEROKEE )  
 STATE Cherokee VS. J. Moore )  
 AKA: \_\_\_\_\_ )  
 Race: C Sex: M Age: 22 )  
 DOB: [REDACTED] )  
 City, State, Zip \_\_\_\_\_ )  
 DL# \_\_\_\_\_ SID# \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: \_\_\_\_\_  
06 -GS- 21 - 631  
 A/W#: 1307574  
 Date of Offense: 1/20/06  
 S.C. Code #: 16-11-230(A)  
 CDR Code #: \_\_\_\_\_  
 CASE RESTORED  
 SENTENCE  
 PLEA  TRIAL

In disposition of the said indictment comes now the Defendant who was  CONVICTED OF or  PLEADS  
 TO: Strong Armed Robbery 1st to 3rd  
 in violation of § 16-11-230 of the S.C. Code of Laws, bearing CDR Code # 011317  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury.  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.  
 ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 3 days/months/years or  under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
 of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probati  
 which are incorporated by reference.  
 CONCURRENT or  CONSECUTIVE to sentence on: Aug 15, 2006  
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
 Department of Corrections. 298 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

RESTITUTION:  Heard,  Waived,  Ordered  
 Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
 Payment Terms: \_\_\_\_\_  
 set by SCDPPPS \_\_\_\_\_

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

Recipient: \_\_\_\_\_

*Fine:	\$
\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$100
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$ 35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Appointed PD or appointed other counsel, \$35.13 TP  
 Requires \$500 be paid to Clerk during probation.

\_\_\_\_\_  
 Clerk of Court/ Deputy Clerk  
 Court Reporter: \_\_\_\_\_

PRESIDING JUDGE [Signature]  
 Judge Code: \_\_\_\_\_  
 Sentence Date: \_\_\_\_\_

11 Godwin  
11  
PPD

PROS: JCJ  
D/O: 01-30-2006

ARREST WARRANT NO.  
1304480 (1), 1304514 (1-2), 1304480 (2-3).

Case No. 2006-GS-21-00636  
**The State of South Carolina,**  
County of FLORENCE

JCJ  
COURT OF GENERAL SESSIONS

APRIL TERM 2006

THE STATE  
vs.

SHAQUAN BURGESS  
RONDELL J. MOORE

FILED  
2006 APR -6 A 11:06  
COURT CLERK  
FLORENCE

ACTION OF GRAND JURY  
**TRUE BILL**

Deputy Bailiff  
Foreman of Grand Jury  
VERDICT

**Indictment for**  
ARMED ROBBERY (TWO COUNTS) AND  
POSSESSION OF WEAPON DURING THE  
COMMISSION OF VIOLENT CRIME

Foreman of Petit Jury Date: