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OCT 29 2014

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

TYRONE DENNIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000472

APPENDIX

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STATE OF SOUTH CAROLINA)	
)	
COUNTY OF CHARLESTON)	COURT OF GENERAL SESSIONS
State of South Carolina,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 11-GS-10-3961 et al
Demmoriek Green,)	
<i>Tyone Dennis</i>)	
Defendant.)	

TRANSCRIPT OF HEARING

The within HEARING was held in above-captioned action on October 15, 2012, before The Honorable R. Markley Dennis, Jr., in Courtroom 4D of the Charleston County Court of General Sessions, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Randall Stoney, Assistant Solicitor
9th CIRCUIT SOLICITOR'S OFFICE
100 Broad Street
Charleston, South Carolina 29401
Appearing for State of South Carolina

Cantrell Frayer, Public Defender
CHARLESTON COUNTY PUBLIC DEFENDER
100 Broad Street, 3rd Floor
Charleston, South Carolina 29401
Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 901
Johns Island, South Carolina 29457
dGarrison@sccourts.org

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before The Honorable R. Markley Dennis, Jr.

1 THE COURT: You are Tyrone Dennis?

2 DEFENDANT: Yes, sir.

3 THE COURT: Mr. Dennis, Indictment
4 Number 2011-3961 charges you with Burglary in
5 the first degree; Indictment Number 2011-4927
6 charges you with another Burglary 1st offense.
7 Do you understand that?

8 DEFENDANT: Yes, sir.

9 THE COURT: You are standing with Ms.
10 Frayer. Does she represent you?

11 DEFENDANT: Yes, sir.

12 THE COURT: Has she explained these
13 charges to you?

14 DEFENDANT: Yes, sir.

15 THE COURT: Has she explained to you
16 that these are Most Serious offenses?

17 DEFENDANT: Yes, sir.

18 THE COURT: And you understand the
19 meaning of that term?

20 DEFENDANT: Yes, sir.

21 THE COURT: Has she explained to you
22 that they are Violent offenses?

23 DEFENDANT: Yes, sir.

24 THE COURT: And has she explained to
25 you that it is a nonparoleable offense?

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1 DEFENDANT: Yes, Your Honor.

2 THE COURT: And you understand the
3 significance of that term?

4 DEFENDANT: I do.

5 THE COURT: Do you understand that
6 normally I can sentence you up to life
7 imprisonment on each of those?

8 DEFENDANT: I do.

9 THE COURT: You, through your lawyer,
10 have apparently negotiated a sentence which you
11 are asking me to impose; is that true?

12 DEFENDANT: Yes, sir.

13 THE COURT: All right. What are the
14 terms of the negotiated sentence, Mr. Stoney?

15 SOLICITOR: Fifteen years,
16 concurrent.

17 THE COURT: Ms. Frayer, is that your
18 understanding?

19 MS. FRAYER: Yes, sir, Your Honor.

20 THE COURT: Mr. Dennis, I am going to
21 ask you to raise your right hand.

22 DEFENDANT: (Complies).

23 THE COURT: Do you swear or affirm
24 that all of your responses to my questions will
25 be the truth and nothing but the truth, so help

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1 you God?

2 DEFENDANT: Yes, Your Honor.

3 THE COURT: Understanding then, Mr.
4 Dennis, and you have previously indicated to me
5 that your lawyer has explained to you what a
6 negotiated sentence means. Do you understand
7 that?

8 DEFENDANT: Yes, sir.

9 THE COURT: Basically a negotiated
10 sentence is that you're asking me to accept what
11 you've worked out with the State and to impose a
12 fifteen year sentence on each of these charges.
13 Is that correct?

14 DEFENDANT: Yes, Your Honor.

15 THE COURT: Understanding that I
16 would sentence you to fifteen years on each
17 offense, give you credit for the time that you
18 have served and run them concurrently, what is
19 your plea? Guilty or not guilty?

20 DEFENDANT: Guilty.

21 THE COURT: You are totally satisfied
22 with your lawyer sir?

23 DEFENDANT: I am.

24 THE COURT: Are you today under the
25 influence of any alcohol or any medication?

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1 DEFENDANT: No, I am not.

2 THE COURT: Have you consumed any
3 alcohol or any type of medication within the
4 last twenty-four hours?

5 DEFENDANT: I have not.

6 THE COURT: In the past, sir, have
7 you been treated for any emotional problems, any
8 mental illness?

9 DEFENDANT: No, I have not.

10 THE COURT: You've reviewed with your
11 lawyer the result of her investigation on your
12 behalf?

13 DEFENDANT: Yes, sir.

14 THE COURT: And she's addressed any
15 concerns that you may have and has answered all
16 of the questions you may have had concerning
17 these charges?

18 DEFENDANT: She has.

19 THE COURT: And it is your decision
20 to enter this plea; is that correct?

21 DEFENDANT: It is.

22 THE COURT: Ms. Frayer, you have
23 investigated this matter fully on your client's
24 behalf?

25 MS. FRAYER: Yes, sir, Your Honor, I

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1 have.

2 THE COURT: And you, as he has
3 indicated, have shared fully the results of your
4 investigation with him?

5 MS. FRAYER: Yes, Your Honor. I even
6 went back, just to be sure, because this was
7 scheduled for trial -- we were always working it
8 up for trial. I got a letter from Mr. Dennis
9 telling me that he wanted to plea. So I spoke
10 with the solicitor, went back to Mr. Dennis,
11 even last night I visited with him at the jail.
12 I told him that I work for him and asked what he
13 wanted me to do. We looked at the cases and
14 everything and Mr. Dennis tells me that this is
15 still what he wants to do, today.

16 THE COURT: Okay. After fully
17 discussing it with him, you negotiated the best
18 arrangements that you could for him?

19 MS. FRAYER: Yes, sir.

20 THE COURT: And the record now
21 reflects the results of your efforts; that is, a
22 fifteen year sentence on each of these, to run
23 concurrently?

24 MS. FRAYER: Yes, sir.

25 THE COURT: Based on your

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1 investigation, do you concur with his decision
2 to enter the guilty pleas on each indictment?

3 MS. FRAYER: Yes, sir.

4 THE COURT: And based on your
5 investigation and your discussions, do you
6 believe the negotiated sentence to be in your
7 client's best interest?

8 MS. FRAYER: Yes, sir.

9 THE COURT: Mr. Dennis, is that true,
10 sir?

11 DEFENDANT: It is, sir.

12 THE COURT: Then you realize and
13 understand, sir, that if I accept your plea that
14 you will not have a jury trial, nor will you
15 confront the witnesses against you in either of
16 these cases?

17 DEFENDANT: Yes, I do.

18 THE COURT: Do you realize that you
19 are giving up your Constitutional rights to
20 remain silent, as well?

21 DEFENDANT: Yes, sir.

22 THE COURT: Has anyone threatened or
23 promised you anything to enter this sentence?

24 DEFENDANT: No they haven't, sir.

25 THE COURT: Other than the promises

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1 which are contained in the negotiated sentence,
2 any other promise been made to you to get you to
3 plead guilty, sir?

4 DEFENDANT: No, sir.

5 THE COURT: Is there any question of
6 your guilt in either case, sir?

7 DEFENDANT: No, sir.

8 THE COURT: Solicitor, if you would,
9 please tell me the facts.

10 SOLICITOR: Thank you, Your Honor.

11 I am going to start with 2011-4927, which
12 occurred on April 8th, 2010, at [REDACTED]
13 Street. This defendant broke into the victim's
14 residence through a window. He attempted to
15 steal a 40 inch television. He detached all the
16 cables, except failed to detach the one that was
17 attached to the computer next to it. The victim
18 woke up and this defendant fled through the
19 window. Latent prints from the television
20 matched positive to this defendant.

21 Then on December 4th, 2010, at [REDACTED]
22 [REDACTED] Charleston County, the defendant
23 entered the victim's apartment through an
24 unlocked french door. He walked in and stole a
25 laptop computer off of the table in the kitchen.

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1 Video surveillance captured him walking down the
2 stairs of the apartment complex, sticking the
3 laptop in his jacket. He was picked up four
4 days later. A BOLO was sent out with his
5 picture and police recognized him as a hotdog
6 vendor.

7 As we've said, this is a negotiated
8 fifteen years. His prior record within the last
9 ten years, all he has is a 2009 breaking and
10 entering motor vehicle and a 2009 trespass.

11 THE COURT: Okay. Mr. Dennis, are
12 those facts correct?

13 DEFENDANT: They are, sir.

14 THE COURT: Have you truthfully
15 responded to all of my questions, sir?

16 DEFENDANT: I have, sir.

17 THE COURT: You realize and
18 understand that I will be relying on your
19 responses here today?

20 DEFENDANT: I do, sir.

21 THE COURT: Very well. I find that
22 Mr. Dennis has had the benefit of very competent
23 counsel, with whom he has indicated he is
24 totally satisfied. I find that there is a
25 sufficient factual basis to support the plea. I

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1 therefore find the plea to be freely,
2 voluntarily, knowingly and intelligently made.

3 Ms. Frayer, I will be happy to hear
4 from you now as to why I should impose and
5 accept the negotiated sentence.

6 MS. FRAYER: Thank you, Your Honor,
7 may it please the court. Mr. Dennis is a hotdog
8 vendor, self-employed. He usually has his stand
9 out by the Beer Works on King Street. Pretty
10 good hotdogs. He is originally from Brooklyn,
11 New York, moved here in like 1980. He only has
12 one family member here and that was his aunt,
13 Ms. Dorothy Brown (phonetic).

14 We talked about these cases and, like
15 I said, originally we were going to go to trial
16 and everything and -- (pause). You know, I just
17 want to make sure that people, when they're
18 getting sentenced to fifteen years that that is
19 the minimum that could be sentenced, that this
20 is really what he wanted to do. Charles Cochran
21 and I went and saw him just to make sure that's
22 what he wanted to do. He told us that on
23 Thursday, last week. I went back and saw him
24 Friday. I went back again Sunday, just to be
25 sure because fifteen years -- as I explained to

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1 him, he is now fifty-one years old, so fifteen
2 years. So fifteen years to a fifty-one year old
3 man is different than one who is twenty or
4 twenty-one, Your Honor.

5 Your Honor, he is asking you for this
6 sentence. This is the minimum that was allowed
7 based on his prior record, the prior ten-year
8 history that was read. You know, the sentence
9 couldn't be reduced to something less.

10 THE COURT: Sure.

11 MS. FRAYER: We appreciate the State
12 going along with this fifteen year negotiation.
13 We ask that you sentence him to that today.
14 Your Honor, thank you. That is the best that we
15 could do.

16 THE COURT: Thank you, ma'am. Mr.
17 Dennis, is there anything that you wish to add?

18 DEFENDANT: No, Your Honor, if you
19 look at the time that I had in my past, that I
20 tried somewhat briefly to correct it. But being
21 that drugs interfered in my life, they hindered
22 me from doing the things that I needed to do in
23 life to progress ahead. I just hope that you
24 will come to some kind of conclusion to get me
25 some kind of help along the way, along with your

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1 decision where I can get some kind of counseling
2 and be able to come to a program and come out of
3 the institution being able to have some kind of
4 work ethics or some kind of self-sufficiency to
5 where I would be able to do something positive
6 entering back into society.

7 THE COURT: Well, Mr. Dennis, you
8 understand that it is a nonparoleable offense.
9 According to my math, eighty-five percent of
10 fifteen years is twelve-point-seven-five years
11 (12.75). That means that's the earliest that
12 you could be released. Do you understand that?

13 DEFENDANT: (Affirmative nod).

14 THE COURT: Assuming that you're
15 successful in being released after 12.75 years,
16 your lawyer has explained to you that you still
17 have to satisfactorily complete a two-year
18 community supervisor program? Do you understand
19 that? It's basically strict probation for two
20 years. If you're not successful, you can be
21 returned in one-year increments for the 2.25
22 years that you have remaining. Do you
23 understand that? Do you realize that, sir?

24 DEFENDANT: Yes, sir.

25 THE COURT: I hope that -- and I am

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1 going to recommend ATU while you're incarcerated
2 but, to be candid with you, the financial
3 situation of this state and other states,
4 they've cut programs. One of the programs that
5 they seem to cut are programs for the treatment
6 of people incarcerated, which makes no sense to
7 me. That being said, doesn't stop it being --
8 from happened. But whatever programs you have
9 available, you ought to take advantage of.

10 You ought to be a self-starter. You
11 ought to be looking for them yourself, not
12 waiting for somebody to order you to do it.
13 You ought to be saying, 'What can I get in to
14 help me?'

15 You, and a lot of other people, have
16 been victimized by your own actions of having
17 addictions. Nobody -- you'd made the decision
18 at some point in your life to do it. The
19 consequences that we just talked about
20 previously, those are there. It shouldn't come
21 as any great shock that you have an addiction to
22 drugs if you've used them. That is just the
23 consequences of using them. It makes no sense,
24 does it? I mean, realistically?

25 But none of us think about that kind of

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14

1 thing when we're deciding to do it, do we? I've
2 made those types of decisions for myself.
3 Fortunately I haven't -- to my knowledge I don't
4 have an addiction to any substance that you have
5 had, but I am not saying that I couldn't have
6 had. I could have easily made the same
7 mistakes.

8 I wish you well, sir. The sentence of
9 the court -- I will accept the recommendation on
10 each indictment.

11 On 2011-3961 and 2011-4927, you are to
12 be committed to the Department of Corrections
13 for a term of fifteen (15) years. As I stated,
14 I am going to recommend ATU while you're
15 incarcerated. They are concurrent. You are
16 given credit for time served.

17 MS. FRAYER: Six hundred and fifty-
18 five (655) days.

19 THE COURT: Six Hundred and fifty-
20 five days of credit on each one. Good luck to
21 you, sir.

22 (HEARING CONCLUDED)
23
24
25

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15

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9th Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the hearing
8 held before The Honorable R. Markley Dennis,
9 Jr., on October 15, 2012;

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

13



14

Deborah Garrison

15

Circuit Court Reporter

16

9th Judicial Circuit

17

18

19

20

21

22 Charleston, South Carolina

23 April 2, 2013

FORM 5

STATE OF SOUTH CAROLINA)
County of Charleston)

2013-CP-10-359
IN THE COURT OF COMMON PLEAS

Tyrone Dennis 199175)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2013 JAN 18 PM 4:27
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (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 Kirkland Correctional Inst R-E Center
4344 Broad River Road Columbia, S. C 29210
2. Name and location of Court which imposed sentence Charleston County house
100 Broad Street 106 Charleston South Carolina 29401
3. Name(s) of co-defendant(s) (if any) NA
NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011-GS-1003961 Burglary 1st degree

- (b) N/A
- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Oct 15 2012
- (b) 15 years sentence 85%
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty Yes
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
N/A
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. N/A
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) I never knowed I could have appeal my sentencing

- (b) My lawyer never told me that I could have appeal the
- (c) The Judge decision

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

- (a) INEFFECTIVE ASISTANCE OF COUNSEL
- (b) VIOLATION OF DUE PROCESS
- (c) SUBJECT MATTER OF JURISDICTION

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

- (a) STICKLAND VS WASHINGTON 466, 468, 686 (1984)
- (b) HILL VS LOCKHART 474 U.S. 52 (1985)
- (c) HENDERSON VS MORGAN U.S. 637, 645, 13 (1976)

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

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

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

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

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

NO

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

- (a) I didn't have knowledge about the law at the time
- (b) I'll leave what I know through the legal system
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? NO
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. Cantrell M. Frayer Charleston County
Public defender offices Charleston South Carolina
 - ii. 29403
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment and Plea - Cantrell M Frayer
Sentencing - Cantrell M. Frayer
 - ii. _____
 - iii. _____

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

time reduction and sentence reduce to second degree
Burglary Non Violent 51% in which That's what I plead to
Second degree Burglary Not A First degree. My plea was to a lesser Charge.

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

N/A
N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of _____)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Spence Dennis

SWORN to and subscribed before me this 14th day of January, 2013

[Signature] (L.S.)
Notary Public

My Commission Expires
October 8, 2014

My Commission Expires: _____



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

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

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



 Applicant

SWORN or affirmed to and subscribed before me this

14th day of January, 2013



 Notary Public

My Commission Expires

My Commission Expires: October 8, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
)
 Tyrone Dennis, #199175,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-10-0359

2013 NOV - 1 PM 2:42
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 18, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the July 2011 term of the Charleston County Grand Jury for burglary-first degree (2011-GS-10-3961). The Applicant was represented by Cantrell Frayer, Esquire.

On October 15, 2012, the Applicant pled guilty as indicted. The Applicant was sentenced by the Honorable R. Markely Dennis to confinement for a period of fifteen (15) years. The Applicant did not appeal his conviction or sentence.

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

II.

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

1. Ineffective assistance of counsel.
2. Violation of due process.
3. Subject matter jurisdiction.

III.

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

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

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

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

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

IV.

The Respondent construes the Applicant's second claim as an allegation of infringement upon the Applicant's constitutional rights. However, the Applicant does not explain with any specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should summarily dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

V.

Lastly, the Applicant alleges the court did not have subject matter jurisdiction over his charges. An Applicant may challenge the subject matter jurisdiction of the trial court and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. 93; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction. The Respondent submits the Applicant has failed to present any evidence that the convictions he challenges in this application are in a class over which the circuit court does not have the authority to provide. Therefore, the Respondent requests that this allegation be summarily dismissed.

VI.

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

VII.

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

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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By: 
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Nov. 1, 20 13.

STATE OF SOUTH CAROLINA)
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 COUNTY OF CHARLESTON)
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)
 TYRONE DENNIS, #199175)
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 Applicant,)
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 vs)
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 STATE OF SOUTH CAROLINA,)
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 Respondent.)
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IN THE COURT OF COMMON PLEAS

2013-CP-10-0359

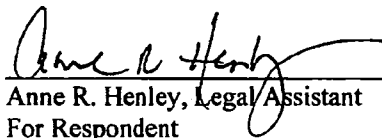
AFFIDAVIT OF SERVICE BY MAIL

FILED
 2013 NOV -1 PM 2:42
 JULIE J. ARMSTRONG
 CLERK OF COURT

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

William L. Runyon, Jr.
 # 3 Gamecock Avenue, Ste 303
 Charleston, SC 29407

DATED this 1st day of November, 2013


 Anne R. Henley, Legal Assistant
 For Respondent

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NO EXHIBITS WERE INTRODUCED

1 Tuesday, January 14, 2014

2 THE COURT: Sir, if you'd state your full name for
3 the record.

4 THE APPLICANT: Tyrone Dennis.

5 THE COURT: All right. Mr. Dennis, is Mr. Runyon
6 your attorney?

7 THE APPLICANT: Yes, he is.

8 THE COURT: And do you need any additional time to
9 meet with him before we get started here today?

10 THE APPLICANT: No, Your Honor.

11 THE COURT: You ready to go forward on your PCR
12 application?

13 THE APPLICANT: Yes, I am.

14 THE COURT: And let's swear Mr. Dennis.

15 TYRONE DENNIS, after having been duly sworn,
16 testified as follows:

17 THE COURT: So as I understand it you were -- you
18 pled guilty to a burglary first; is that correct?

19 THE APPLICANT: No.

20 THE COURT: No. What did you plead guilty to?

21 THE APPLICANT: To second degree burglary.

22 THE COURT: You pled guilty to second degree
23 burglary. And what was your sentence that you received?

24 THE APPLICANT: Fifteen years.

25 THE COURT: And, Mr. Runyon, what was the plea to?

1 MR. RUNYON: Judge, the sentencing sheet and I
2 think the transcript will confirm that Mr. Dennis pled
3 guilty to burglary first. He maintains that the deal was
4 a plea to burglary second with a 15-year sentence.
5 That's his position, which we respectfully submit for the
6 consideration of the Court.

7 THE COURT: All right. The sentencing sheet
8 clearly indicates burglary first. The transcript
9 indicates that he pled to burglary first, correct?

10 MR. RUNYON: That's correct, Your Honor.

11 THE COURT: But your position is that your client
12 understood, even though he signed the sentencing sheet
13 and went through the plea colloquy with Judge Dennis,
14 that he believes he pled to burglary in the second?

15 MR. RUNYON: That's Mr. Dennis's position, Judge.

16 THE COURT: All right. And so, Mr. Dennis, you
17 understand that on a burglary first degree you could be
18 sentenced the minimum mandatory, is 15 years up to a life
19 sentence; you understand that's the potential?

20 THE APPLICANT: My understanding was, during my
21 research by being in the county jail for 600 and some odd
22 days, I could have got a life sentence on a first degree
23 burglary.

24 THE COURT: All right. So you agree with me?

25 THE APPLICANT: Yes.

1 THE COURT: Yes. And you understand that you pled
2 guilty and all my documentation indicates that you pled
3 guilty to a burglary in the first degree, but I
4 understand it's your position that you thought you were
5 pleading to a burglary in the second degree. But
6 regardless, you really received the same number of years,
7 15.

8 THE APPLICANT: Exactly.

9 THE COURT: All right. I believe that -- was this
10 a negotiated sentence? Was it negotiated?

11 MS. WILSON: I believe so. The sentence was
12 negotiated.

13 MR. RUNYON: It's not reflected in the sentencing
14 sheet, Judge, but it appears that it was a negotiated
15 sentence based on my research.

16 THE COURT: The sentencing sheet is checked that
17 it's negotiated.

18 All right. Mr. Dennis, you understand that
19 regardless if I grant your application, if I give you
20 what you want here today do you understand what's going
21 to happen to you, in the future to you? The charge
22 doesn't go away. It comes back here. It's a Charleston
23 County charge. It comes back here as a burglary in the
24 first and you'll be facing the potential of a life
25 sentence; do you understand that, sir?

1 THE APPLICANT: Yes, ma'am.

2 THE COURT: And I understand there was some
3 discussion, there was a burg first that was sentenced the
4 same day. What happened on the other burglary in the
5 first degree?

6 MS. WILSON: He also got 15 years on that.

7 THE COURT: So it was a concurrent sentence?

8 MS. WILSON: Yes, Your Honor.

9 MR. RUNYON: It wasn't doubled up, Judge. It was
10 15 years --

11 THE COURT: Concurrent.

12 MR. RUNYON: -- concurrent.

13 THE COURT: Was that part of the negotiation? Was
14 that part of the negotiation, Ms. Frayer?

15 MS. FRAYER: Yes, Your Honor, and the property
16 crime was nolle prossed.

17 THE COURT: All right. So again, my understanding
18 is you would be facing then if I grant your PCR, this
19 could expose you to a potential of two life sentences; is
20 that correct, Mr. Runyon?

21 MR. RUNYON: That's correct.

22 THE COURT: Or are we just here on one?

23 MR. RUNYON: He's here on one. Your Honor, for the
24 Court's edification, just so the Court is aware of the
25 fact that I think -- I understand where I stand.

1 Assuming for the sake of argument that Mr. Dennis would
2 be entitled to relief on one thinking that he was
3 pleading to a second instead of a first he pled to
4 another first, they run concurrent, the treatment of him
5 under classification in the prison system would be the
6 same because of the second burglary first 15 years; and
7 therefore, we might be arguing about a moot question here
8 for the purpose of sentencing, and I recognize that fact,
9 for the record.

10 THE COURT: All right.

11 MR. RUNYON: My client doesn't, but I recognize
12 that fact, Judge.

13 THE COURT: Okay. I just want Mr. Dennis to
14 understand that this could be the best that -- the best
15 position he is right now because sometimes when we send
16 them back, if he gets what he wants, if I grant his
17 request then he is going to be exposed to more time.

18 MR. RUNYON: Absolutely, Judge. I understand that.

19 THE COURT: You understand that, Mr. Dennis?

20 MR. RUNYON: Yes, sir.

21 THE COURT: All right. Be careful what you ask for
22 sometimes. That's what we are doing here. Are you ready
23 to go forward on this post-conviction relief?

24 THE APPLICANT: Yes, I am.

25 THE COURT: All right. And, Mr. Runyon, the

1 grounds are ineffective assistance of counsel, that you
2 failed to make applicant aware that he could appeal his
3 sentence; are those still the grounds you are going
4 forward on?

5 MR. RUNYON: That would be his -- that would be
6 essentially his -- those two grounds.

7 THE COURT: All right. And then, again, the other
8 issue is the plea was to -- he understood it was a
9 burglary second non violent plea, not a burg first?

10 MR. RUNYON: That's correct. Although, Your Honor,
11 for the sake of brevity and clarification of the record,
12 you know, as far as the appeal issue is concerned even if
13 the Court hears testimony that would lead the Court to
14 conclude that he might be subject to relief under Austin,
15 which doesn't require the Court to send it back so...

16 THE COURT: Is the State ready to proceed on those
17 two issues?

18 MS. WILSON: Yes, Your Honor. The State ready to
19 proceed.

20 THE COURT: All right. Call your first witness.

21 MR. RUNYON: Mr. Dennis, come around. You've
22 already been sworn, Mr. Dennis. Come around.

23 TYRONE DENNIS, after having been duly sworn,
24 testified as follows:

25 THE CLERK: Give us your full name and spell your

1 last, please.

2 MR. RUNYON: Now, Mr. Dennis --

3 THE COURT: Hold on one second.

4 State your full name and spell your last name.

5 THE WITNESS: Tyrone Dennis. Last name

6 D-e-n-n-i-s.

7 THE COURT: All right. Now, Mr. Runyon. Thank

8 you.

9 DIRECT EXAMINATION

10 BY MR. RUNYON:

11 Q. Mr. Dennis, how old are you, sir?

12 A. I'm 43 -- 53.

13 Q. And how far did you go in school?

14 A. To the 12th.

15 Q. And where did you go to school?

16 A. Saint South, Brooklyn, New York.

17 Q. So you finished at a Catholic school in the City of

18 New York?

19 A. Yes, I have.

20 Q. And you can read, write and understand the English

21 language?

22 A. Yes, I can.

23 Q. Now, let's just cut right to the chase. You pled

24 guilty to essentially two burglaries; did you not, sir?

25 A. I pled guilty with the understanding that I was

1 pleading to second degree burglary.

2 Q. Now, you understand that you did -- at the time of
3 the hearing, did you -- at the time of your plea did you
4 sign sentencing sheets?

5 A. I signed paperwork that came to me, rushed to me,
6 with the understanding that the plea agreement for second
7 degree burglary was already established.

8 Q. All right. Now, I want to show you what is part of
9 the record, the sentencing sheet that purports to be a
10 plea to burglary first degree. Did you, in fact, sign
11 this sentencing sheet?

12 A. That sentencing sheet was rushed to me, briefly,
13 yes.

14 Q. That's not my question. Did you sign that,
15 Mr. Dennis?

16 A. Yes.

17 Q. Okay. And was the essence of your plea agreement
18 that you understood that you would receive 15 years?

19 A. Yes.

20 Q. And was the essence of the plea agreement that you
21 would have one of your sentences -- one of your charges
22 would be nolle prossed, correct?

23 A. No.

24 Q. You didn't have a property crime enhancement that
25 was to be dismissed?

TYRONE DENNIS - DIRECT BY MR. RUNYON

11

1 A. Property crime enhancement didn't having nothing to
2 do with the first degree burglary -- the two first degree
3 burglaries that I had.

4 Q. Okay. You had two first degree burglaries, and
5 it's your contention that one of them was to be a second?

6 A. I was supposed to plead to a second degree
7 burglary. The plea was going to be dropped from first
8 degree burglary to second degree burglary, second degree
9 burglary with 15 years.

10 Q. Now, do you recall appearing in court before Judge
11 Dennis, I believe it is?

12 A. Yes.

13 Q. And did you have a conversation with Judge Dennis
14 when he asked you about your plea?

15 A. Yes.

16 Q. Did you understand what he was asking you about?

17 A. Yes.

18 Q. Did he explain to you what you were pleading to?

19 Do you recall if he explained to you what you were
20 pleading to?

21 A. To a burglary.

22 Q. He didn't say burglary first degree?

23 A. No.

24 Q. And he didn't say burglary second degree?

25 A. The negotiated plea was already established, so he

1 already knew that I was pleading to a second degree
2 burglary.

3 Q. Okay. So as far as the matter goes, whatever the
4 Judge talked to you about would be reflected in the
5 transcript, correct?

6 A. Yes.

7 Q. And you understand you are kind of bound by what
8 the transcript says; isn't that correct?

9 A. Yes.

10 Q. Now, once you had -- strike that. Let's go back.
11 Who represented you in this matter?

12 A. Ms. Cantrell.

13 Q. Okay. Is she in the courtroom today?

14 A. She is.

15 Q. All right. Now, upon the case being over with did
16 you have any conversation with her about an appeal?

17 A. Yes.

18 Q. Did she advise you you had a right to appeal?

19 A. Yes.

20 Q. And did you desire to appeal, at the time she
21 discussed it with you?

22 A. No. I was rushed out.

23 Q. Okay. And when did you finally decide that you
24 thought you might want to appeal your sentence? Was it
25 after two weeks of finding paperwork you said that didn't

TYRONE DENNIS - CROSS BY MS. WILSON

13

1 -- you didn't agree with?

2 A. After I went to R and E and got my process
3 situation going through up in there they told me that I
4 received a 15 years for a first degree burglary, and they
5 gave me a sentencing sheet a month later. I looked at
6 the sentence sheet and once I realized that it was a
7 first degree burglary that I pleaded to and I looked at
8 the sentencing sheet that I had in 1998 for the same
9 charge of burglary and I received a 15 years for that.

10 Q. And that was more than 10 days after the court
11 wherein you entered a plea; isn't that correct?

12 A. Yes.

13 Q. And so it's your contention that the sentencing
14 sheets are in error that you signed?

15 A. Yes.

16 MR. RUNYON: No further questions of this witness,
17 Your Honor.

18 THE COURT: Ms. Wilson?

19 MS. WILSON: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. WILSON:

22 Q. Mr. Dennis, do you recall how many times you met
23 with Ms. Frayer before you pled guilty?

24 A. About three or four.

25 Q. Did you correspond with her via phone or mail? Did

1 you write back and forth or talk to her on the phone?

2 A. Yes.

3 Q. Did she go over the discovery that she received
4 from the State with you?

5 A. Yes.

6 Q. Did she talk to you about any possible defenses
7 that you could present at trial?

8 A. Say that --

9 Q. Did she talk to you about the strategy that she
10 could present if you all went to trial?

11 A. Yes.

12 Q. What type of evidence you would challenge?

13 A. Yes.

14 Q. Did you give her any witnesses or people to the
15 investigate?

16 A. No.

17 Q. Was it your decision to plead guilty?

18 A. Yes.

19 Q. And did you tell the plea court that you were
20 actually guilty?

21 A. Yes.

22 Q. Did you agree with the facts presented by the State
23 during your plea proceeding?

24 A. No.

25 Q. Do you remember the Court talking to you about

TYRONE DENNIS - CROSS BY MS. WILSON

15

1 waiving your constitutional rights, such as your right to
2 a jury trial, right to the remain silent and your right
3 to confront --

4 A. Yes.

5 Q. -- witnesses? That was a yes?

6 Did you tell the Court that you were satisfied with
7 your attorney?

8 A. Did I tell Court that? Yes.

9 Q. Do you recall at the start of your guilty plea
10 proceeding the Court saying that you were indicted for
11 two counts of burglary first degree?

12 A. Yes.

13 Q. And you testified today that you did indeed sign
14 the sentencing sheet?

15 A. Yes.

16 Q. And after the Court stated that you were indicted
17 for burglary first degree did you ever indicate to the
18 Court that you were actually pleading to burglary second
19 degree throughout your guilty plea proceeding?

20 A. Once the plea was already negotiated they rushed me
21 out of the courtroom. I didn't have a chance to talk to
22 nobody. I didn't receive no sentencing sheet in the
23 courtroom. The sentencing sheet came to me 30 days after
24 I done pled.

25 Q. But you spoke to the Court during the proceeding;

1 is that correct?

2 A. Briefly.

3 Q. Well, you answered the questions the Court asked of
4 you, right?

5 A. Yes.

6 Q. And it's your testimony today that when you
7 initially spoke with Ms. Frayer about an appeal you told
8 her you didn't want an appeal?

9 A. Yes.

10 MS. WILSON: Thank you.

11 THE COURT: Mr. Runyon?

12 MR. RUNYON: Just briefly.

13 REDIRECT EXAMINATION

14 BY MR. RUNYON:

15 Q. And as it relates to the appeal and your decision
16 to request an appeal was that some two or three weeks
17 later after you were in R and E?

18 A. Yes.

19 MR. RUNYON: No further questions, Your Honor.

20 MS. WILSON: Nothing further from the State.

21 THE COURT: You may step down.

22 MR. RUNYON: Come down, Mr. Dennis.

23 THE COURT: Mr. Runyon, call your next witness.

24 MR. RUNYON: No other testimony, Your Honor.

25 THE COURT: All right. Thank you. Any motions or

CANTRELL M. FRAYER - DIRECT BY MS. WILSON

17

1 matters, Mr. Runyon?

2 MR. RUNYON: Not at this time, Your Honor.

3 THE COURT: Ms. Wilson?

4 MS. WILSON: Thank you, Your Honor. The State
5 would call Ms. Cantrell Frayer.

6 CANTRELL FRAYER, after having been duly
7 sworn, testified as follows:

8 THE CLERK: Please give us your full name and spell
9 you last, please.

10 THE WITNESS: Cantrell Murray Frayer. Frayer, F as
11 in Frank, r-a-y-e-r.

12 DIRECT EXAMINATION

13 BY MS. WILSON:

14 Q. Morning, Ms. Frayer.

15 A. Good morning.

16 Q. How long have you been practicing law?

17 A. Since 2001.

18 Q. And has a good bit of that been doing criminal law?

19 A. Yes, about eight years of that time.

20 Q. And do you recall when you were appointed to
21 represent Mr. Dennis?

22 A. Yes, in October of 2010.

23 Q. And do you recall how many times you met with him
24 before he pled guilty?

25 A. Before he pled guilty? This case was actually set

1 for a trial so we were on the trial docket. He did not
2 decide to plead guilty until the Thursday before the
3 trial. So I met with him that Thursday, that Friday,
4 that Saturday and that Sunday, so four days, and then
5 went down to the lockup that Monday morning to have him
6 sign the sentencing sheets.

7 Q. Did you file any Brady or Rule 5 motions on his
8 behalf?

9 A. Yes, I did.

10 Q. And the documents that you received, did you go
11 over that with him?

12 A. Yes, I did.

13 Q. Prior to trial did you talk to him about the
14 elements of the charges he was facing and what the State
15 had to prove?

16 A. Yes, we did.

17 Q. Did he tell you his version of the facts?

18 A. Yes.

19 Q. And did you talk to with him about possible
20 defenses?

21 A. Of course, yes.

22 Q. And were there any viable defenses to present at
23 trial?

24 A. Not really but we were going to -- if he wanted a
25 trial we always gave our best effort to fight for our

1 client until the end so...

2 Q. Can you briefly characterize the State's evidence
3 against Mr. Dennis.

4 A. The State -- in one of the cases the State had a
5 video from a business across the street. That was the
6 December 30th 2010 -- no, that was -- I'm sorry. That
7 was the January 7th, 2011 burglary. Then the other they
8 had fingerprints on the television in that home.

9 Q. Did they have any -- did he give any statements to
10 police or anything of that nature to incriminate himself?

11 A. No.

12 Q. Did he give you any potential witnesses or leads to
13 investigate?

14 A. No, he didn't.

15 Q. What type of investigation did you have to do in
16 this case?

17 A. My investigator contacted his employer. He was a
18 hotdog cart vender, so we just wanted to verify his
19 location, where he may have met some of the people that
20 may have been involved in the incidents with the video in
21 that home. He said that he met them -- I don't know how
22 much information I can tell.

23 Q. Well, you can tell whatever you feel comfortable.
24 Attorney-client privilege is waived in post-conviction
25 relief.

1 A. Okay. He indicated that he had met them while
2 working so we just wanted to verify the location where
3 his hotdog cart may have been that evening, verify that
4 he was employed as a hotdog vender. So we contacted his
5 employer just to verify stuff like that, that he would
6 have been there that night because it was an after-hour
7 hotdog cart vender.

8 Q. When did you start entering into plea negotiations
9 on Mr. Dennis's behalf?

10 A. Not until the very end when he indicated that he
11 wanted to plea because the State had indicated from the
12 beginning that they would not reduce his charge. They
13 weren't willing to negotiate because of his record.
14 They -- the solicitor indicated, no, they would not
15 reduce the charge.

16 Once the case was on the trial docket they were not
17 willing to reduce the charge. We asked them, we said,
18 Hey, he's willing to -- Mr. Dennis has indicated that he
19 wants to plea. What will you do?

20 They said the best we can do is just do a
21 negotiated 15 years.

22 So I went back to Mr. Dennis and said the State,
23 the best they can do is a negotiated 15 years. And so
24 Mr. Dennis accepted that offer, and that was October. I
25 have it as October the 14th that he would plead to two

1 counts of burg first for 15 years concurrent.

2 Q. Prior to getting this plea offer from the State did
3 you talk to Mr. Dennis about the fact that the State
4 wouldn't reduce his charges down?

5 A. Right. We had talked about that early on in the
6 case because he had written to me and asked me because of
7 his age, he'd been in prison before, he didn't want to go
8 back to prison, what were they willing to do. And at
9 that time the State had said they wouldn't reduce it, the
10 best they could do was 20.

11 And then we said, Well, no, we'll go to trial. If
12 you are going to do 20 we'll just go the trial. That was
13 what Mr. Dennis had instructed me. So I went back to the
14 State with that.

15 Then we got a new solicitor and so I went to that
16 solicitor and said, Okay, what do you want to do at the
17 very end when it was on the trial docket? And usually
18 the policy of the solicitor's office is once it's on the
19 trial docket they are not going to reduce the actual
20 charge down. And so that's what the best they could do,
21 was the 15.

22 Q. And ultimately you communicated this final offer to
23 Mr. Dennis; is that correct?

24 A. Yes. My trial partner, Charles Cochran, and I
25 communicated it to him because we were already ready for

1 trial at that point.

2 Q. And did you talk to him about the consequences of
3 pleading guilty?

4 A. Yes, we did.

5 Q. Did you talk to him about what constitutional
6 rights he'd be waiving, such as a right to remain silent,
7 right to a jury trial, right to confront the witnesses if
8 he went and pled guilty?

9 A. Yes. We talked to him about this.

10 Q. Did he ever indicate to you he didn't understand
11 something?

12 A. No. Mr. Dennis was very -- he understood the law,
13 the whole -- everything about going to prison. He could
14 tell me what age he would be, what the max out was and
15 all that.

16 Q. Okay. Is it your understanding that he knew he was
17 pleading guilty to burglary first degree?

18 A. That was my understanding, he understood. We went
19 over the sentencing sheet with him. We went over
20 everything. We knew what it was before we came to court
21 on Monday because that was what we were told by the
22 solicitor after Mr. Dennis said that he wanted to plead
23 guilty instead of going to trial.

24 Q. Do you think it was Mr. Dennis's decision to plead
25 guilty?

1 A. It was absolutely Mr. Dennis's decision to plead
2 guilty. Mr. Cochran and I were ready for trial.

3 Q. Did the State ever make any offers for Mr. Dennis
4 to plead to burglary second?

5 A. They absolutely did not.

6 Q. Okay. After Mr. Dennis's guilty plea did you talk
7 to him about the right to appeal?

8 A. I did.

9 Q. And did he indicate he wanted to appeal?

10 A. No, he didn't.

11 Q. And after his guilty plea, after he'd been sent off
12 to prison did he ever call or write to you indicating he
13 wanted to plea -- I mean, wanted an appeal?

14 A. He did write to me after he -- after a while he
15 wrote to me. Basically, he just wrote to me telling me
16 that I needed to get it straight, that he would have
17 never pled to two burg firsts, no one does that, and that
18 I just needed to get it straight. And that -- it wasn't
19 a nice letter, but I actually did not get that letter
20 until -- it wasn't written until December the 7th of
21 2013.

22 Q. But in that letter he didn't indicate that he
23 wanted to appeal?

24 A. No. He just says that this matter needs to be
25 checked or rechecked. Nothing in there specifically

1 about an appeal.

2 Q. And you didn't receive any other correspondence or
3 phone call about that?

4 A. No. And that -- again, that wasn't until December
5 the 7th of 2013.

6 Q. Okay. Thank you.

7 CROSS-EXAMINATION

8 BY MR. RUNYON:

9 Q. Let's go back to this one letter that you received
10 from him. Although it's well settled in the law you have
11 about 10 days from the entry of the sentence or the
12 rising in the Court to enter an appeal in this State; is
13 that not correct?

14 A. Yes, sir.

15 Q. And did that letter, which didn't even talk about
16 an appeal, as I understand it, but if you took that
17 letter as in getting it straight as indicating that one
18 of your courses of action might have been to appeal was
19 it within the 10 days as prescribed by the statutory law
20 of the sovereign State of South Carolina?

21 A. No, it wasn't.

22 Q. Okay. Now, as it relates to Judge Dennis's
23 colloquy with Mr. Dennis -- how many times you appear
24 before Judge Dennis, roughly?

25 A. About 50.

- 1 Q. Okay. Numerous times?
- 2 THE COURT: The entire career, Mr. Runyon?
- 3 MR. RUNYON: I beg your pardon?
- 4 THE COURT: In her entire career how many times?
- 5 MR. RUNYON: Well --
- 6 MS. FRAYER: Numerous times.
- 7 THE COURT: It's more than 50, Ms. Frayer.
- 8 MS. FRAYER: Numerous.
- 9 MR. RUNYON: I was excepting her to say numerous
- 10 times.
- 11 MS. FRAYER: Numerous times.
- 12 BY MR. RUNYON:
- 13 Q. And I apologize for trying to pin it down to a
- 14 number.
- 15 A. Yes, sir.
- 16 Q. Did he do anything different in Mr. Dennis's case
- 17 than he has done in his usual thorough fashion in other
- 18 cases that you appeared before him?
- 19 A. No, sir.
- 20 Q. Did he ask him -- did he have a colloquy with the
- 21 defendant, Mr. Dennis, independent of his discussions
- 22 with you about what Mr. Dennis was pleading to?
- 23 A. Yes, he did.
- 24 Q. All right. And the consequences of those actions?
- 25 A. Yes, he did.

- 1 Q. As well as his right to appeal?
- 2 A. Yes, sir.
- 3 Q. And did you agree with Mr. Dennis's decision in
4 this case?
- 5 A. I did.
- 6 Q. All right. Other than collateral issues, and by
7 collateral I mean classifications in the prison system,
8 the substance of his plea bargain was to receive 15
9 years?
- 10 A. Yes, sir.
- 11 Q. Okay. And we are now understanding that he said he
12 would take 15 years for burglary second, but as a
13 practical matter is there any difference between 15 years
14 and 15 years? Fifteen years is 15 years, is it not?
- 15 A. Yes, sir.
- 16 Q. All right. Not talking about collateral issues,
17 it's the same thing, isn't it?
- 18 A. Fifteen years is 15 years.
- 19 Q. Same number of days?
- 20 A. Fifteen years.
- 21 Q. And he did get credit for the 655 days in which
22 he'd been -- had been incarcerated?
- 23 A. Yes, sir. That is checked off. That is written in
24 here.
- 25 Q. All right. Thank you.

1 MR. RUNYON: No further questions, Your Honor.

2 MS. WILSON: Nothing further from the State.

3 THE COURT: You may step down. Thank you.

4 Call your next witness.

5 MS. WILSON: No further witnesses. The State

6 rests.

7 THE COURT: Any rebuttal?

8 MR. RUNYON: No rebuttal, Your Honor. We would
9 have to concede that the record would reflect that the
10 ground asserted as to the appeal has not been met. I'm
11 not authorized to stipulate to that, Judge, but I would
12 have to be candid with the Court and recognize the
13 statement -- the testimony, and we would submit the
14 balance of Mr. Dennis's application for the consideration
15 of the Court.

16 MS. WILSON: Thank you, Your Honor. The State just
17 asks that you dismiss this application for
18 post-conviction relief. With regard to the allegation
19 about Ms. Frayer's failure to advise the applicant of
20 right to appeal, the State would submit that he has
21 failed to carry his burden.

22 Mr. Frayer provided credible testimony that she not
23 only discussed with Mr. Dennis his right to appeal but he
24 indicated to her that he did not want to appeal, and
25 post-plea in his correspondence with her never indicated

1 his desire to have an appeal.

2 With regard to Mr. Dennis's, I guess allegation
3 that his plea was involuntary because he thought he was
4 pleading to second degree burglary, the record is pretty
5 clear on that, and Judge Dennis adequately advised him of
6 all his rights and the consequences of pleading guilty
7 and the State would just rest on that.

8 THE COURT: Anything further?

9 MR. RUNYON: Nothing further from the applicant,
10 Your Honor.

11 THE COURT: I'm going to take this matter under
12 advisement. You will have 10 days to submit your
13 proposed orders.

14 Mr. Dennis, I'm taking this matter under
15 advisement. I'm going to allow your attorney and the
16 State to submit proposed orders, if they wish to do so,
17 and then I'm going to make a ruling after that. Good
18 luck to you, sir. Thank you.

19 MS. WILSON: Thank you.

20 MR. RUNYON: Thank you, Your Honor.

21 (WHEREUPON, the hearing was conclude.)

22

23

24

25

1 C E R T I F I C A T E

2

3 I, Sharon L. Vizer, Official Court Reporter for the
4 Ninth Judicial Circuit of the State of South Carolina, do
5 hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had
7 and the evidence introduced in the hearing of the
8 captioned case in Circuit Court on the 14th day of
9 January 2014.

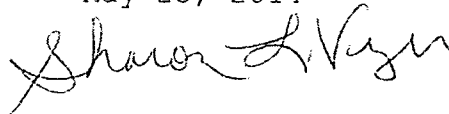
10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.

12

13

May 23, 2014

14



15

SHARON L. VIZER

16

CIRCUIT COURT REPORTER

17

18

19

20

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24

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AWG

CC
AG
AT
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Tyrone Dennis, #199175,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-10-0359

ORDER OF DISMISSAL

FILED
 2014 MAR -3 PM 3:28
 JUDGE J. HARRINGTON
 CLERK OF COURT

Presiding Judge: The Honorable Kristi L. Harrington
 Applicant's Attorney: William L. Runyon, Jr., Esquire
 Respondent's Attorney: Ashleigh R. Wilson, Esquire
 Plea Counsel: Cantrell M. Frayer, Esquire
 Date of Hearing: January 14, 2014
 Court Reporter: Sharon Vizer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 18, 2013. The Respondent made its Return on November 1, 2013. An evidentiary hearing into the matter was convened on January 14, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by William L. Runyon, Jr., Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

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

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the July 2011 term of the Charleston County Grand Jury for two counts of burglary- first degree (2011-GS-10-3961, -4927). Cantrell Frayer, Esquire, represented the Applicant. The Applicant pled guilty as indicted. On October 15, 2012, the Honorable R. Markley Dennis sentenced the Applicant to confinement for fifteen years- the minimum sentence on both counts. The sentences were to run concurrently. The Applicant did not appeal the plea or sentence.

ALLEGATIONS

The Applicant alleged in his application he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Violation of due process.
3. Subject matter jurisdiction.

At the hearing, the Applicant waived all grounds for relief except ineffective assistance of counsel for counsel's failure to file an appeal and involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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(2003).

The Applicant testified he met with counsel three or four times prior to his guilty plea. He testified they spoke on the phone and corresponded by mail. He testified he reviewed the discovery material with counsel. The Applicant also testified he discussed possible defenses with counsel and did not give her any leads or witnesses to investigate. He testified further it was his decision to plead guilty, he recalled waiving his constitutional rights and told the Court he was satisfied with his attorney.

The Applicant testified he pled guilty with the understanding that he was pleading guilty to burglary- second degree. He testified he signed the sentencing sheet and understood the plea offer was for fifteen years. The Applicant testified he recalled the plea Court saying he was indicted for burglary-first degree. He testified he believed the plea offer from the State dropped his charge to burglary- second degree. He testified the plea court told him he was pleading to burglary and the plea offer was already established.

The Applicant testified he spoke with Cantrell about an appeal. He testified Cantrell told him he had a right to appeal. He testified he never told Cantrell he wanted an appeal. The Applicant testified he decided to request an appeal two to three weeks after his guilty plea.

Plea counsel, Cantrell Frayer, Esquire, testified she has practiced criminal law for the last eight years. She testified she was appointed to represent the Applicant in October 2010. She testified she met with the Applicant several days prior to the Applicant's guilty plea which was originally on the trial docket. Counsel testified she filed Brady and Rule 5 motions on the Applicant's behalf. She testified she reviewed the discovery material with the Applicant. Counsel testified she discussed with the Applicant his version of the facts, possible defenses, and the elements of the charge he was facing and what the State had to prove. She testified the Applicant

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had no viable defenses.

Counsel testified the Applicant did not want to plead guilty until shortly before trial. She testified based on the Applicant's record the State would not agree to reduce the Applicant's charges. Counsel testified she discussed the State's inability to reduce the charges with the Applicant and there was never an offer from the State to plea to burglary- second degree. She testified the State ultimately made a fifteen year plea offer to burglary- first degree and the Applicant accepted the offer.

Counsel testified she communicated the plea over to the Applicant along with her trial partner. She testified she informed the Applicant of the consequences of his guilty plea and of his constitutional rights. She testified the Applicant never indicated he did not understand anything and knew he was pleading guilty to two counts of burglary-first degree. She testified further she reviewed the sentencing sheet with the Applicant prior to the guilty plea. Counsel testified it was the Applicant's decision to plead guilty.

Lastly, counsel testified she advised the Applicant of his right to appeal his guilty plea and he never indicated he wanted an appeal. She testified the Applicant wrote her a letter after his guilty plea, but the letter did not indicate he wanted an appeal. She testified the letter was not received within ten days of the guilty plea and she received no other correspondence from the Applicant requesting an appeal.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. As an initial matter, this Court finds credible the testimony of Cantrell Frayer, Esquire and finds the testimony of the Applicant was not credible. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C.

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

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

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969);

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Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

This Court finds that counsel is a criminal practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. This Court finds that Applicant understood the consequences of his guilty plea.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and provided thoroughly representation. This Court finds that

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counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that trial counsel was not ineffective for failing to file an appeal of the Applicant's guilty plea. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). They instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel failed to file an appeal on his behalf.¹ This Court finds that counsel gave credible testimony that she conferred with the Applicant about his right to appeal. This Court also finds that trial counsel gave credible testimony that after consulting with the Applicant about his right to appeal, he never indicated he wanted to pursue an appeal. This Court also finds telling the Applicant's testimony that he never told counsel that he wanted to appeal his guilty plea. This Court finds that there is no evidence that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal.

This Court also finds that the Applicant's guilty plea was freely and voluntarily entered. This Court finds the Applicant was fully aware that he was pleading guilty to burglary- first

¹ At the conclusion of the evidentiary hearing, the Applicant conceded that testimony presented did not support a claim of ineffective assistance of counsel for counsel's failure to file an appeal.

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degree and not burglary- second degree. This Court finds credible counsel's testimony that she discussed with the Applicant the State's decision not to allow the Applicant to plead guilty to a lesser offense based on his prior record. This Court also finds and the record reflects the Applicant was advised by the Court at the start of the plea proceeding that he was pleading guilty to two counts of burglary-first degree and the Applicant told the Court he understood (T. 2:3-8). This Court also notes the Applicant signed the sentencing sheet which indicates he was entering a plea to burglary- first degree.

The record also reflects the Applicant's guilty plea was entered freely and voluntarily and the Applicant was fully advised of the consequences of his guilty plea. The Applicant was advised of the potential sentence he was facing (T. 3:5-8), his right to a jury trial (T. 7:12-17), his right to remain silent (T. 7:18-21), and his right to confront his accusers (T. 7:12-17). The Applicant told the Court he wished to plead guilty and that he was actually guilty. (T. 4:15-20, 8:5-7). The Applicant also told the Court he had not been promised anything or threatened to plead guilty. (T. 7:22-8:4). The Applicant told the Court he was not under the influence of drugs or alcohol and did not suffer from any mental illness. (T.4:24-5:9). This Court finds and the record reflects the Applicant was fully aware of the consequences of his guilty plea and the waiver of his constitutional rights. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving his guilty plea was involuntary.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need

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not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony or argument regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

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

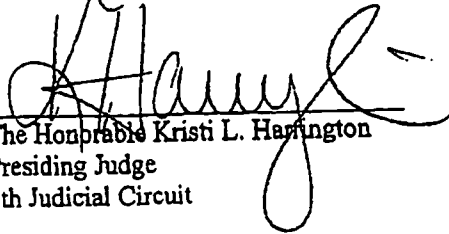
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[Signature on the following page.]

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 28th day of February.


 The Honorable Kristi L. Harrington
 Presiding Judge
 9th Judicial Circuit

Charles South Carolina.

ARREST WARRANT

K-404222

STATE OF SOUTH CAROLINA

County Municipality of Charleston

10A172J THE STATE against

Tyrone Dennis

Address: Charleston SC 29403
Phone: SSNC
Sex: M Race: B Height: 5'8 Weight: 185
DOB:
Prosecuting Agency: CPD
Prosecuting Officer: J. Brown
Offense Code: 16-11-311

This Warrant is CERTIFIED FOR SERVICE in the County Municipality of The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Tyrone Dennis on 12-29-10

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

County Municipality of Charleston

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 616

Personally appeared before me the affiant J. Y. Brown who being duly sworn deposes and says that defendant Tyrone Dennis did within this county and state on 12-24-10 violate the criminal laws of the State of South Carolina (or ordinance of County Municipality of Charleston) in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-311 Burg 1st Degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

As per attached

Signature of Affiant

STATE OF SOUTH CAROLINA

County Municipality of Charleston

Affiant's Address: 180 Lackland Dr Charleston SC 29405
Affiant's Telephone: 577-2434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 12-24-10 defendant Tyrone Dennis did violate the criminal laws of the State of South Carolina (or ordinance of County Municipality of Charleston) as set forth below:

DESCRIPTION OF OFFENSE: 16-11-311 Burg 1 degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 29 Dec 2010

Signature of Issuing Judge (L.S.) Judge Code: 590

Judge's Address: 780 3870 Loxley Ave N. Charleston SC 29405
Judge's Telephone: 746-7590

Issuing Court: Magistrate Municipal Circuit

ORIGINAL

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By [Signature] DEPUTY CLERK

BAIL set by
 Judge Lombard
 on 12-30-10
 Type and Amount No Bond
 Name of Surety _____

PRELIMINARY HEARING held by

Judge _____
 on _____

Defense Attorney _____

Prosecutor _____

Judge _____

on _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition _____

Sentence _____

SEARCHED _____
 INDEXED _____
 SERIALIZED _____
 FILED _____
 10641
 6621
 6074
 MSJ

WITNESSES

Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____
 Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
 By [Signature]
 DEPUTY CLERK

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

AFFIDAVIT

Personally appeared before me, a magistrate of this county, one, Inv. Y. Brown, first being duly sworn, deposes and says that the Defendant Tyrone Dennis did within this County and State on December 24, 2010 between 0658 hrs and 0703hrs violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

BURGLARY FIRST DEGREE
16-11-311

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth and that such probable cause is based on the following facts:

That on December 24, 2010 between 0658 hrs and 0703 hrs, while at 549 King St. Apt A located in the City and County of Charleston, South Carolina, the defendant, Tyrone Dennis, did willingly, knowingly, and unlawfully violate Section 16-11-311, Burglary First Degree in the following manner:

The defendant did during the aforementioned night time hours enter the residence of the Victim, Guy Yates, located at [redacted] Apt. A Charleston, SC by entering the unsecured french door near the open balcony area. Once inside the residence, the Defendant did steal one white Apple Macbook laptop with a black bottom covering attached (approximate value \$600.00). The Victim does not know the Defendant and at no time did the Victim give the Defendant permission to enter his residence nor take his property. The listed sunrise time on December 24, 2010 is 0717 hrs.

These facts are true and believable based on the statements of the Victim, Guy Yates, the investigations of Inv. Y. Brown of the Charleston Police Department and the recovered video surveillance from the adjoining business.

Sworn to and Subscribed before me
this 28 day of Dec, 2010.

[Signature] (L.S.) }

Complaint #: 1021721
Warrant#: K40422

[Signature]
Affiant

SAV20110100027

DOCKET NO. 2011GS1003961

71

WITNESSES

Yolanda Brown
Charleston City Police Department

The State of South Carolina
County of Charleston

AGENCY CASE NUMBER

1021721

COURT OF GENERAL SESSIONS

July Term 2011

FILED

8/4/2011 2:42:14 PM
JULIE J. ARMSTRONG
CLERK OF COURT

ARREST WARRANT NUMBER

K404222

DATE OF ARREST

December 30, 2010

THE STATE

vs.

TYRONE DENNIS
DOB: [REDACTED]

ACTION OF GRAND JURY

TRUE BILL

B/M

Indictment for

Burglary First Degree

[Signature]
Foreperson of Grand Jury
Date: JUL 12 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., SS & F.C.
By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
 COUNTY OF Charleston)
 STATE VS.)
Tyrone Dennis)
 AKA:)
 Race: BLACK Sex: M Age: 50)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: CHARLESTON, SC 294030000)
 DL#: [REDACTED] SID#: [REDACTED])

INDICTMENT/CASE#: 2011GS1003961
 A/W#: K404222
 Date of Offense: 12/30/2010
 S.C. Code §: 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Burglary, 1st degree

CONVICTED OF or PLEADS

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST: [Signature] 78683 Tyrone Dennis [Signature] 68444
 Stoney, Randell SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 15 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 655 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Del. Waiver Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
 Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
 Recipient: _____ May serve W/E beginning _____
 *Fine: _____ Substance Abuse Counseling
 § 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund
 § 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: re commuted ATU while
 Proviso 47.9 (Public Def/Prob) \$300 \$ _____ incarcerated
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Coun Surcharge) \$150 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk [Signature]
 Court Reporter: [Signature]
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2000
 Sentence Date: 10/15/2012

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 By [Signature]
 DEPUTY CLERK

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.

INDICTMENT/CASE#: 2011GS1004927

AKA: Tyrone Dennis

A/W#: K684671

Race: BLACK Sex: M Age: 30

Date of Offense: 1/7/2011

DOB: [REDACTED] SS#: [REDACTED]

S.C. Code §: 16-11-0311

Address: [REDACTED]

CDR Code #: 0079

City, State, Zip: CHARLESTON, SC 294030000

SENTENCE SHEET

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Burglary, 1st degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lowd Act) §17-25-43

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 7/16/13 [Signature] [Signature] [Signature]
Stoney, Randall SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 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.

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 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipiant:		
*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$300	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/cn	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

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: _____

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

Clerk of Court/ Deputy Clerk [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2000
Sentence Date: 10/15/2012