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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

EDDIE PILCHER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000807

APPENDIX

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

KAREN RATIGAN
Assistant Deputy Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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Audio Recording on file with this
court

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) PARTIAL TRANSCRIPT OF RECORD
6 Eddie James Pilcher, Jr.,) 2012-GS-23-2618, -2619, -2620
7 Defendant.) June 26, 2012
8 Greenville, South Carolina
9

10 B E F O R E:
11
12 HONORABLE EDWARD W. MILLER, JUDGE
13

14 A P P E A R A N C E S:
15
16 L. MARK MOYER, ESQUIRE
17 Attorney for the State
18
19 JOHN "JAKE" KENNETH ERWIN, JR., ESQUIRE
20 Attorney for the Defendant
21

22
23 Margaret A. Woods
24 Circuit Court Reporter
25

ORIGINAL

1 THE CLERK: Your Honor, this is case number
2 2012-GS-23-2618 Eddie James Pilcher, Jr., indictment for
3 kidnapping, pleading to the same.

4 THE COURT: Wait a minute, it's Mr. Connor, Connor's ---

5 THE CLERK: Oh, I'm ---

6 THE COURT: --- supposed to be first.

7 THE CLERK: --- sorry.

8 MR. MOYER: Yeah, ---

9 THE CLERK: I'm ---

10 MR. MOYER: --- Connor.

11 THE COURT: That's alright.

12 THE CLERK: --- so sorry. Yes. 2010-GS-23-9037 Aryless
13 Theodore Connor, Jr. indictment for fraudulent check, pleading
14 to fraudulent check a thousand or more first offense, it is a
15 true bill and there is an order of restitution;
16 2012-GS-23-2618 Eddie James Pilcher, Jr. indictment for
17 kidnapping, pleading to kidnapping, it is a waiver,
18 2012-GS-23-2619 indictment for armed robbery, pleading to the
19 same, it is a waiver, 2012-GS-23-2620 indictment for burglary
20 first degree, pleading to the same, it is a waiver;
21 2011-GS-23-8364, Wayne Ford indictment for attempted armed
22 robbery, pleading to sa -- to attempted strong-arm robbery, it
23 is a true bill and 2011-GS-23-9014, Jerry Leon Wi -- Widener,
24 indictment for resisting arrest with assault, pleading to the
25 same, it is a waiver. Please raise your right hand.

1 (Whereupon, the defendants were sworn.)

2 THE COURT: Okay, got jail days?

3 MR. MOYER: I do, Your Honor. Mr. Connor has 84,
4 Mr. Pilcher he just been in SCDC so he doesn't have any,
5 Mr. Ford has 289, Mr. Widener has 264.

6 THE COURT: Alright, the last twenty-four hours you had
7 any drugs, alcohol, or medication, Mr. Connor?

8 THE DEFENDANT: No, sir.

9 THE COURT: Mr. Pilcher?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Wha'd ya have?

12 THE DEFENDANT: I take psychotropic medicine.

13 THE COURT: Okay, what do ya take?

14 THE DEFENDANT: Tegretol, Cogentin (phonetic).

15 THE COURT: All prescribed to ya?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Over the last three days have you had the
18 correct dosage?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Alright. Does it limit your ability to
21 understand what you're doin'?

22 THE DEFENDANT: I don't think.

23 THE COURT: You don't think?

24 THE DEFENDANT: No, sir.

25 THE COURT: I gotta find out if you know what's goin' on.

1 What are you doin' up here?

2 THE DEFENDANT: I think I know what's goin' on.

3 THE COURT: You sound like the little engine that could.

4 What's goin' on, tell me.

5 THE DEFENDANT: I was promised somethin', Your Honor. I

6 was told by my attorney that the solicitor recommend 15

7 year ---

8 THE COURT: Well ---

9 THE DEFENDANT: --- running concurrent ---

10 THE COURT: --- I I -- what what are ya doin' up here?

11 THE DEFENDANT: I guess to get sentenced.

12 THE COURT: Do do you, I mean, you feel like you

13 understand what's goin' on?

14 THE DEFENDANT: I don't fully understand, Your Honor.

15 THE COURT: Okay, see ya.

16 POLICE OFFICER: This way, sir.

17 THE COURT: Bring him back when he's able to understand

18 what's goin' on. Ya think that 15 years will sti -- still be

19 there when he comes back?

20 MR. MOYER: I don't know.

21 THE COURT: Okay. Sorry, Jake.

22 MR. ERWIN: That's Alright.

23 (Whereupon, Defendant Pilcher's plea was stood down.)

24 (Whereupon, Defendant Pilcher's plea resumed.)

25 (Whereupon, a discussion was held off the record.)

1 THE COURT: Tell me jail days while she's gettin' it
2 worked up.

3 MR. MOYER: Hudgins has one day, Pilcher has none.

4 MS. TESSITORE: And Mr. Lewallen has 64 days and then
5 SCDC since then 202 days so a total of 266.

6 THE CLERK: Your Honor, this is Case Number
7 2011-GS-23-8682, Thomas Ray Hudgins, indictment for unlawful
8 conduct toward a child, pleading to the same, it is a waiver
9 and there is an order of restitution; 2012-GS-23-2618 Eddie
10 James Pilcher, Jr., indictment for kidnapping, pleading to the
11 same, it is a waiver, 2012-GS-23-2619 indictment for armed
12 robbery, pleading to the same, it is a waiver, 2012-GS-23-2620
13 indictment for burglary first degree, pleading to the same, it
14 is also a waiver; 2012-GS-23-3680 Christopher Edward Lewallen
15 indictment for possession of a stolen motor vehicle, pleading
16 to the same, it is a waiver, 2012-GS-23-3679 indictment for
17 grand larceny, pleading to grand lar -- grand larceny more
18 than 2 but less than 10,000, it is a waiver and there is an
19 order of restitution, 2012-GS-23-3677 indictment for grand
20 larceny, pleading to grand larceny value more than 2 but less
21 than 10,000, it is a waiver and 2011-GS-23-7589 indictment for
22 possession of a stolen motor vehicle, pleading to the same, it
23 is a waiver. Would you please raise your right hand.

24 (Whereupon, the defendants were sworn.)

25 THE CLERK: Thank you.

1 THE COURT: Alright, the last twenty-four hours you had
2 any drugs, alcohol, or medication, Mr. Hudgins?

3 THE DEFENDANT: No.

4 THE COURT: Mr. Pilcher?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: What?

7 THE DEFENDANT: Tegretol and Cogentin.

8 THE COURT: Alright. Now do you -- in the last three
9 days had the correct dosage?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Does it limit your ability to understand
12 what's goin' on here?

13 THE DEFENDANT: No, sir.

14 THE COURT: You've had an epiphany since this morning?

15 THE DEFENDANT: No, sir.

16 THE COURT: No?

17 THE DEFENDANT: I don't know what that means.

18 (Laughter.)

19 THE COURT: You you got it all together, you understand
20 what's happenin'. This morning you said ---

21 THE DEFENDANT: Yes, sir.

22 THE COURT: --- you didn't ---

23 THE DEFENDANT: Yes, sir.

24 THE COURT: --- know what was goin' on.

25 THE DEFENDANT: Yes, I know what's goin' on.

1 THE COURT: Okay. If you at some point become confused,
2 you let me know, okay?

3 THE DEFENDANT: Yes, sir, I will.

4 THE COURT: Alright. How 'bout you, Mr., is it Lewallen?

5 THE DEFENDANT: Lewallen.

6 THE COURT: Lewellen.

7 THE DEFENDANT: I'm currently on Prozac and Remeron.

8 THE COURT: Alright, the last three days you had the
9 correct dosage?

10 THE DEFENDANT: Not this mornin'.

11 THE COURT: In the last three days, other than this
12 mornin' -- you supposed to get it in the morning?

13 THE DEFENDANT: No.

14 THE COURT: The fact that you have not received it impair
15 your ability to understand what's goin' on?

16 THE DEFENDANT: No.

17 THE COURT: Alright. Any competency issues here,
18 Mr. Godfrey?

19 MR. GODFREY: None, Your Honor.

20 THE COURT: Okay. Alright, each of ya has at least one
21 indictment that has not been presented to the grand jury, you
22 have an absolute right to require the State present those
23 cases to the grand jury where they would have to prove more
24 probably than not that a crime was committed and you did it,
25 you wanna give that right up which would allow you go forward

1 today, Mr. Hudgins?

2 THE DEFENDANT: Yes.

3 THE COURT: Mr. Pilcher?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is that your answer or is that your lawyer's
6 answer?

7 THE DEFENDANT: My answer.

8 THE COURT: Alright. How 'bout you, Mr. Lewellen?

9 THE DEFENDANT: Yes.

10 THE COURT: Alright. Mr. Hudgins, you're up here on
11 2011-8682 alleges you did Greenville County September 1, 2011
12 being the legal custodian, parent, or guardian you placed a
13 child E.H. at unreasonable risk or harm, that carries up to 10
14 years, you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Pilcher, you're up here on 2012-2618
17 alleges you did Greenville County September 8, 2010 unlawfully
18 seize, abduct, confine, inveigle, decoy, or carry away Oveneil
19 Ramos Morales without the authority of law, that carries up to
20 30 years in prison, it's a violent offense, no parole, it's a
21 most serious offense. If you get convictions for two or more
22 most serious offenses, you're eligible for life in prison
23 without parole, do you understand that?

24 THE DEFENDANT: Yes, sir. I got a question.

25 THE COURT: Fire away.

1 THE DEFENDANT: If I done been convicted of a arm robbery
2 but I ain't got outta prison and it happened within like two
3 days apart, can I still get a life sentence?

4 THE COURT: This a bar exam question?

5 (Laughter.)

6 THE DEFENDANT: Nah, I mean, I don't know, I'm just
7 sayin' I just got convicted.

8 THE COURT: You're you're -- if you have separate
9 convictions for most serious offenses and you commit another
10 offense, you can get served with a life notice.

11 (Attorney/client discussion held off the record.)

12 THE DEFENDANT: Oh, I understand, yes, sir.

13 THE COURT: Okay. If they didn't serve a LWOP notice on
14 ya on this one, they're not goin' after ya ---

15 THE DEFENDANT: Yes, sir.

16 THE COURT: --- this time, okay?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Alright, you're also up here on 2012-2620
19 alleges you did Greenville County September 8, 2010 unlawfully
20 enter the residence of Oveneil -- is it Oveneil or Oveneil?

21 THE DEFENDANT: I don't know, sir.

22 THE COURT: Okay. Ramos Morales, Wade Hampton, Greer
23 without consent with the intent to commit a crime durin' the
24 nighttime or and/or you were armed with a weapon. Burglary in
25 the first degree 15 years to life in prison, it is a violent

1 offense and a most serious offense, you understand all that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Lewellen, you're up here on -- wait a
4 minute, did I leave out one?

5 MR. ERWIN: Think you did, Your Honor.

6 THE COURT: Alright, you're also up here, Mr. Pilcher,
7 you're up here on 2012-2619 it alleges you did in Greenville
8 County September 8, 2010 while armed with a deadly weapon or
9 alleging you were using a representation of one you took by
10 force or intimidation goods or monies, jewelry, money and/or
11 ATM cards from Oveniel Ra -- Ramos Morales. Armed robbery
12 carries up to 30 -- 10 to 30 years in prison, this is a
13 violent and most serious offense, you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Alright, Mr. Lewallen, you're up here on
16 2012-3680, it alleges you did Greenville County November 23,
17 2011 unlawfully receive, possess, conceal, sell or dispose of
18 motor vehicle belonging to Hassan Robinson a '91 Cur -- Acura
19 Integra value less than \$2,000 and you knew or shoulda known
20 it was stolen, 30 days, you understand that? No, what is it?

21 MS. TESSITORE: Ten years, Your Honor. He has prior
22 property ---

23 THE COURT: Oh, it's ---

24 MS. TESSITORE: --- convictions.

25 THE COURT: --- enhanced. Okay, ---

1 MS. TESSITORE: Yes.

2 THE COURT: --- you have at least two prior property
3 offense convictions carries up to 10 years in prison. Do we
4 have the right CDR code and all that on there?

5 MS. TESSITORE: Yes, Your Honor.

6 THE COURT: Okay.

7 MS. TESSITORE: Should be twenty, um, hundred sixteen one
8 fifty-seven ---

9 THE COURT: Thirty-four sixty-six?

10 MR. MOYER: They changed those around.

11 MS. TESSITORE: Yeah.

12 MR. MOYER: I don't know what they ---

13 THE COURT: Check on that. Okay, you're also here on
14 2012-3679, it alleges you did Greenville County September 16,
15 2011 feloniously carry away the personal property of Jerry --
16 Jeffery Gilliam a '94 Honda Accord valued at more than \$2,000,
17 that carries 5 -- well is this a 10-year offense too?

18 MS. TESSITORE: Yes, Your Honor.

19 THE COURT: Okay, 10 years 'cause you got prior
20 convictions, two prior property offense convictions. You
21 better check all these CDR codes. Alright, you're also up
22 here on 2012-3677 and it alleges you did Greenville County
23 September 11, 2011 feloniously carry away a '95 Honda Accord
24 belonging to Sylvia Lively value more than \$2,000, this is
25 also a property or an enhancement case, you can get 10 years,

1 you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: And finally you're up here on 2011-7589, it
4 alleges you did Greenville County July 5, 2011 unlawfully
5 possess a stolen '97 Honda Civic belonging to Sebastian
6 Francisco and you knew or shoulda known it was stolen and
7 that's another 10 years, you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Alright, understanding the nature of the
10 charges against you and the maximum possible punishment, how
11 do you wanna plead, Mr. Hudgins?

12 THE DEFENDANT: Guilty.

13 THE COURT: Mr. Pilcher?

14 THE DEFENDANT: Guilty.

15 THE COURT: Mr. Lewellen?

16 THE DEFENDANT: Guilty.

17 THE COURT: Has anybody forced you in any way or coerced
18 you, threatened you, or promised you anything to get you to
19 enter that plea, Mr. Hudgins?

20 THE DEFENDANT: No, sir.

21 THE COURT: Mr. Pilcher?

22 THE DEFENDANT: No, sir.

23 THE COURT: Mr. Lewellen?

24 THE DEFENDANT: No.

25 THE COURT: Alright, do you each understand you have an

1 absolute right to a trial by jury where you would be presumed
2 innocent unless and until the State could prove you guilty
3 beyond any reasonable doubt of each and every element of each
4 offense that you're charged with, you would have a right to
5 confront and cross-examine the witnesses and the evidence put
6 up against you by the State, you'd have a right to compel in
7 court all relevant and competent evidence in your own defense
8 or you could remain silent, your silence cannot be held
9 against you and you can never be compelled to incriminate
10 yourself, do you understand all those rights, Mr. Hudgins?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Pilcher?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Lewellen?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: You wanna give all those rights up to enter
17 this plea, Mr. Hudgins?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Pilcher?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Lewellen?

22 THE DEFENDANT: Yes.

23 THE COURT: Are ya guilty, Mr. Hudgins?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Pilcher?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You sure?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay, Mr. Lewellen?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you totally satisfied with your lawyer,
7 Mr. Hudgins?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Pilcher?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Lewellen?

12 THE DEFENDANT: Yes.

13 THE COURT: And have you had enough time to review the
14 evidence that the State has against you, Mr. Hudgins?

15 THE DEFENDANT: Yes, sir, I think so.

16 THE COURT: Mr. Pilcher?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Lewellen?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay, tell us about it.

21 MR. MOYER: Thank Your Honor. May it please the Court.

22 Thomas Ray Hudgins the recommendation for him is for
23 probation, that he -- and that during probation he cooperates
24 with DSS and pays \$300 restitution. On September the 1st of
25 2011 law enforcement responded to the home of the defendant

1 and his co-defendant on Butler Road in Mauldin for a welfare
2 check on the minor children. Upon arriving at the home the
3 defendant's mother came to the door, expressed her reluctance
4 to allow law enforcement into the trailer for fear of removal
5 of the children from her custody. When allowed in the law
6 enforcement found trash at least 2 feet deep throughout the
7 trailer, officers remarked the stench was overwhelming. The
8 kitchen refrigerator were filled with rotted food and maggots,
9 feces appeared on the walls, the minor children were dirty and
10 covered with flea bites. The condition of a -- of the home
11 made it necessary for law fo -- law enforcement to wear HazMat
12 suits in order to enter and remove the children. The trailer
13 was condemned and demolished. The minor children ages 3, 7
14 and 10 were placed in the care of relatives.

15 THE COURT: Does he have a record?

16 MR. MOYER: He does not.

17 THE COURT: All that true?

18 THE DEFENDANT: Yes.

19 THE COURT: Why would you live in a place like that?
20 Drugs?

21 THE DEFENDANT: No, there's really no excuse. There's no
22 drugs involved just is I was workin' full-time and tryin' to
23 go to school full-time to better a life for my family and I
24 got overwhelmed with everything, depression had set in and I
25 just kinda gave up and that's that's really what had happened

1 and I I've since started gettin' treatment for my depression
2 and I'm tryin' to do things better this time around for my
3 kids' sake.

4 THE COURT: You got the kids back?

5 THE DEFENDANT: Yes.

6 MR. KORNFELD: Two of 'em.

7 THE COURT: Is the co-defendant ---

8 THE DEFENDANT: We have two of 'em back.

9 THE COURT: --- co-defendant the wife?

10 THE DEFENDANT: Yes.

11 THE COURT: Alright. Alright, 7 years provided upon the
12 time he's done, probation for 3, random drug and alcohol
13 testing, obey all DSS treatment plans, mental health
14 counseling, pay restitution pursuant to the order. Good luck.

15 MR. KORNFELD: Thank you, Your Honor.

16 THE DEFENDANT: Thank you.

17 PROBATION AGENT: Have a seat on the front row.

18 MR. MOYER: May it please the Court.

19 THE COURT: Okay.

20 MR. MOYER: The recommendation for Mr. Pilcher is for a a
21 sentence of 15 years concurrent with an active sentence that
22 he is now serving for I believe 25 years which started October
23 the 3rd 2010. The incident happened on September the 8th of
24 2010 at the Quality Inn in Greer within Greenville County.
25 The defendant along with co-defendant, two co-defendants,

1 gathered at Oakview Village and borrowed this defendant's
2 girlfriend's car and they armed themselves with an AK-47 and a
3 pistol, they then drove to the Quality Inn where this
4 defendant knocked on the room where they saw a Hispanic male
5 enter. The victim came to the door and the two co-defendants
6 entered while armed with the weapons and robbed the victim of
7 his money, his gold chain and car keys. This defendant waived
8 his rights and gave Greer Police Department a voluntary
9 statement admitting his guilt and implicating the other
10 co-defendants.

11 THE COURT: All that true? Tell me.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: What's what's your version?

14 THE DEFENDANT: It ain't go quite like that but ---

15 THE COURT: Well how'd it go?

16 THE DEFENDANT: How did what go?

17 THE COURT: Well you said it didn't go quite like that,
18 how did it go?

19 THE DEFENDANT: I aint never, ---

20 THE COURT: What happened?

21 THE DEFENDANT: --- I ain't never seen a AK in my life.
22 I ain't been in the military, none a that but ---

23 THE COURT: Well what what kinda, what kinda gun was it?

24 THE DEFENDANT: I don't own guns, sir.

25 THE COURT: Well ya had one, right?

1 THE DEFENDANT: I didn't have a gun, sir.

2 THE COURT: Well somebody had one in your group, right?

3 THE DEFENDANT: That's what they say.

4 THE COURT: No gun?

5 THE DEFENDANT: I didn't have a gun, sir, no.

6 THE COURT: Who had the gun? Who had one?

7 THE DEFENDANT: They say my, ---

8 THE COURT: You got a deal cut, you want me to go along

9 with it, tell me the truth.

10 THE DEFENDANT: --- they say my co-defendants had a gun,

11 sir.

12 THE COURT: Well who's they?

13 THE DEFENDANT: The people, ---

14 THE COURT: Who's they?

15 THE DEFENDANT: --- the people that got robbed they said

16 they seen two individual individuals with guns.

17 THE COURT: And you didn't see a gun.

18 THE DEFENDANT: Yes, sir, I seen a gun.

19 THE COURT: Who had it?

20 THE DEFENDANT: I guess the people I was with.

21 THE COURT: Oh, Lord. When's his trial date? How how

22 you gonna plead to an armed robbery if there's no weapon, ---

23 THE DEFENDANT: I mean, ---

24 THE COURT: --- Mr. Pilcher?

25 THE DEFENDANT: --- because I feel as if though I had

1 some involvement so why not ---

2 THE COURT: I ask ---

3 THE DEFENDANT: --- take responsibility.

4 THE COURT: --- you to tell me your version of the
5 events, what happened?

6 THE DEFENDANT: I was the driver, sir.

7 THE COURT: You're the driver.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. So you drove these guys, these other
10 two guys over there, right?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: What did you see when they got outta the car?

13 (No response.)

14 THE COURT: Mr. Pilcher, I'm not gonna take your plea.
15 If you -- I mean, you're not -- c'mon, it's the second time
16 you've been out here with me and you you're you're playin'
17 games.

18 THE DEFENDANT: I'm not. I mean, I admitted I did it. I
19 said I plead guilty.

20 THE COURT: Well I I know you said you plead guilty and I
21 know wh -- but if you didn't see a gun, you're not guilty
22 armed robbery. If you didn't have a gun, nobody had a gun,
23 how you guilty of armed robbery? I mean, the guys got outta
24 the car, you're ri -- you're drivin' 'em around in the car and
25 you didn't know they had a gun? I don't believe that, not

1 reasonable, so talk to me.

2 THE DEFENDANT: A gun was involved, Your Honor.

3 THE COURT: Well what kinda gun?

4 THE DEFENDANT: I don't know. I ne -- really I don't

5 know. I mean, ---

6 THE COURT: Who had it?

7 THE DEFENDANT: My co-defendant.

8 THE COURT: Which one?

9 THE DEFENDANT: I I mean, you might not believe me ---

10 THE COURT: Hey, I'm not asking you to make anything up,

11 I just want you tell me the truth.

12 THE DEFENDANT: The little guy.

13 THE COURT: A little guy.

14 THE DEFENDANT: Yes, sir. I was the biggest guy, I felt

15 I didn't need a gun.

16 THE COURT: Okay. What's that old sayin', God made some

17 men big and some men small and Smith & Wesson made 'em all

18 equal?

19 THE DEFENDANT: Never heard it, sir.

20 THE COURT: Hadn't heard that?

21 THE DEFENDANT: No, sir.

22 THE COURT: Mr. Erwin, help us out here. What ---

23 MR. ERWIN: Your Honor, ---

24 THE COURT: Do you believe if you went to trial that the

25 State has enough evidence that you'd get convicted?

1 THE DEFENDANT: I don't know how to answer that, Your
2 Honor. I mean, ---

3 THE COURT: Well I'm tryin' to help ya out 'cause you're
4 you're not saying you saw a gun. I mean, di -- who had the
5 gun? Was it a pistol? You said you'd never seen an AK-47 ---

6 THE DEFENDANT: A pistol ---

7 THE COURT: Who said, who said ---

8 THE DEFENDANT: --- a pistol, Your Honor.

9 THE COURT: --- it was an AK-47?

10 MR. MOYER: Your Honor, he did. This isn't my case but
11 I'm reading over the report and he gave a a confession on that
12 was recorded in an audio recorder in which he he told the
13 police that he used his girlfriend's car, they went to Oakview
14 Village, borrowed an AK-47 and a pistol, he went up to the
15 door with them, the other two people had the guns. I mean, he
16 gave all this in his confession according to the police report
17 that I'm reading right now.

18 THE DEFENDANT: Well, Your Honor, I never had a
19 ex-girlfriend. I was stayin' with a female who said she my
20 baby mama so I didn't borrow nobody's car for one and for
21 two ---

22 THE COURT: Whose car was it?

23 THE DEFENDANT: A girl that was supposed to be my baby
24 mama but she wasn't. I I know it sound crazy but that's how I
25 feel too, Your Honor.

1 THE COURT: Have you been -- has he been evaluated? Who
2 treats you? I ---

3 THE DEFENDANT: Nobody.

4 THE COURT: --- got somebody right here who could
5 evaluate you. Who treats you? You you told me you're on
6 psych -- psychotropic medication.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: This is not makin' sense, Mr. Pilcher. I
9 mean, I'm -- if you're gu -- you know, if you're guilty and ya
10 did it you just and you you're up here, you wanna face charges
11 but I don't -- I mean, you told the police you got an AK-47,
12 now you say there was no gun; ya told the police that you
13 were -- you borrowed your ex-girlfriend's car, now you say
14 there was no car.

15 THE DEFENDANT: There was a car but it wasn't my
16 ex-girlfriend. It was supposed to be my baby mama's car and I
17 was stayin' with her at the time.

18 THE COURT: Mr. Erwin, help us out here.

19 MR. ERWIN: Your Honor, I think Mr. Pilcher we reviewed
20 the discovery and I think that we agree that he would be more
21 than likely convicted if this was put in front of a jury. I
22 think the crucial parts of the statement that he made he would
23 affirm and would admit that's what happened. Perhaps we got a
24 little, case of a little bitta stage fright but, um, ---

25 THE COURT: Stage fright? Alright.

1 MR. ERWIN: Your Honor, he's servin' 25-year sentence,
2 I ---

3 THE COURT: Alright.

4 MR. ERWIN: --- just ask you ---

5 THE COURT: Alright.

6 MR. ERWIN: --- to follow the recommendation if you see
7 that's appropriate.

8 THE COURT: Well, how 'bout it? Anything else you wanna
9 tell me?

10 THE DEFENDANT: No, sir.

11 THE COURT: You sure ya did this? Is your statement true
12 and correct? Do ya even know?

13 THE DEFENDANT: I know I, I know I participated in the
14 crime, Your Honor.

15 THE COURT: Okay, and then you gave a statement, right?

16 THE DEFENDANT: Okay, yes, sir.

17 THE COURT: And is that right? Is that correct? I mean,
18 it's your statement.

19 THE DEFENDANT: I didn't quite go like that, Your Honor,
20 but, I mean, for the most part I did the crime, I
21 participated.

22 THE COURT: Alright. Anything else?

23 THE DEFENDANT: No, sir.

24 THE COURT: What happened to the co-defendants?

25 THE DEFENDANT: They all got 25 and 20.

1 THE COURT: How come you're gettin' such a sweetheart
2 deal?

3 THE DEFENDANT: I mean, no, this is Spartanburg.

4 MR. ERWIN: There was another incident in -- on the
5 Spartanburg side of Greer.

6 THE COURT: Are you from Spartanburg?

7 THE DEFENDANT: No, sir.

8 THE COURT: You from Gaffney.

9 THE DEFENDANT: No, sir, I was just stayin' in Gaffney
10 with my ex-ol' lady. I'm from Georgia but I've been in
11 Greenville since '95.

12 THE COURT: Now is this ex-old lady the same ---

13 THE DEFENDANT: No, sir, it's not.

14 THE COURT: --- girl who claimed to be your mama's ---

15 THE DEFENDANT: No, ---

16 THE COURT: --- ba ---

17 THE DEFENDANT: --- no, sir.

18 (Whereupon, a discussion was held off the record.)

19 THE COURT: Alright, well 15 years on all of 'em, each of
20 them concurrent. Good luck.

21 MR. ERWIN: Thank Your Honor.

22 POLICE OFFICER: Okay, Mr. Pilcher.

23 MS. TESSITORE: Your Honor, with -- sorry, with respect
24 to Mr. Lewallen, the CDR codes on the the larceny should be
25 2367 and I can go ahead and ---

1 THE COURT: Twenty-three sixty-seven?

2 MS. TESSITORE: Which is the under South Carolina Code
3 16-1-57 property enhancement.

4 THE COURT: Twenty -- how 'bout on the receiving?

5 MS. TESSITORE: Also 2367.

6 THE COURT: Okay, go ahead.

7 MS. TESSITORE: Okay, Your Honor, with respect to the
8 facts, on July 5th of 2011, this defendant was found in
9 possession of a 1997 Honda Civic that had been reported stolen
10 from the victim on July 4th and it was valued at approximately
11 \$4,000. This defendant sold the car at Adams Scrap Yard on
12 July 5th 2011 for which there's a receipt indicating the sale
13 for \$343 for it to be scrapped.

14 On September 11th of 2011, this defendant was seen on
15 video surveillance from Kmart on Sulphur Springs Road in
16 Greenville County stealing a 1995 Honda Accord valued valued
17 at approximately \$6,000 from the victim Ms. Lively who was
18 inside shopping. The manager retrieved the footage from a
19 camera that captured the parking lot where this occurred and
20 the defendant's sister Terri Lewallen then sold the Honda to
21 Adams Recycling two days later and received \$451 in cash.

22 On the 20th of September when deputies located this
23 defendant for whom they had active warrants at his residence,
24 his girlfriend surrendered and they observed vehicle tags in
25 plain view, one of which belonged to Ms. Lively and a search

1 warrant was executed and the officers then found paperwork
2 connecting him to several other Hondas and license tags as
3 well as rivets that were used to alter and remove VIN numbers.

4 On September 16th of 2011 between 1:30 and 2 p.m. that
5 afternoon, he and a co-defendant stole a 1994 Honda Accord
6 valued at approximately \$2500 from the Bi-Lo parking lot while
7 the owner of that vehicle was working inside as an employee at
8 Bi-Lo. This defendant then went to Norris Metals and sold it
9 within about a half hour later and the vehicle was half
10 crushed when officers arrived to verify the ownership of that
11 vehicle, then on November 23rd 2011 this defendant was stopped
12 by highway patrol in Greenville County and he was in
13 possession of a 1991 Acura reported as stolen by the victim
14 the day before. The car car in that case was valued at
15 approximately \$2500.

16 Basically, Your Honor, this defendant along with
17 co-defendants had had been involved in conspiracy to go around
18 and steal cars that they could then scrap because of the age
19 of the vehicle and the value being you -- as ---

20 THE COURT: And ---

21 MS. TESSITORE: --- you can hear ---

22 THE COURT: --- what's the prior record?

23 MS. TESSITORE: --- Hondas. Your Honor, he was on
24 probation when all of these offenses occurred. He had gotten
25 locked up and then released and then locked back up. We

1 finally had his bond revoked. He had been in -- let's see,
2 his prior record began in 2006 with a burglary second degree,
3 five counts of auto breaking, arson third degree, three counts
4 of burglary second non-violent and three counts of grand
5 larceny; he got a YOA sentence in 2008, that was revoked and
6 he also had auto breaking and burglary second; 2009 financial
7 transaction card fraud, possession of a stolen vehicle and
8 auto breaking, I believe he received a 3-year sentence on
9 those and then then all of these inci -- incidents occurred
10 between July and November of 2011. His bond was revoked and
11 he just recently received a 12-year sentence on the violation
12 of probation. Your Honor, he was -- his sentence start date
13 was March 2nd of 2012 and I'd just let the Court know that the
14 State has agreed to dismiss eight charges in exchange for his
15 plea to these with the agreement that he has signed the
16 restitution order and that that restitution needs to be paid.
17 Essentially, Your Honor, these these are cases where a lotta
18 these owners of these cars they did not have full insurance on
19 the vehicle so once it ---

20 THE COURT: Okay.

21 MS. TESSITORE: --- was crushed, ---

22 THE COURT: Well what's ---

23 MS. TESSITORE: --- you know, ---

24 THE COURT: --- the recommendation, ---

25 MS. TESSITORE: Well the rec -- there is no

1 recommendation, Your Honor, um, simply the the State would ask
2 that you consider his prior record, consider the amount of
3 charges that he had committed while he was on probation. We
4 had to revoke his bond, uh, ---

5 THE COURT: Okay, ---

6 MS. TESSITORE: --- Investigator Hendricks ---

7 THE COURT: --- alright.

8 MS. TESSITORE: --- is here for the sheriff's office and
9 he would just like to let the Court know that they were deeply
10 involved in in investigating this case and if you wish to hear
11 from him he can answer any questions.

12 THE COURT: Oh, I think we got a pretty good picture of
13 this.

14 MS. TESSITORE: Okay. Well, Your Honor, we do -- we
15 would ask for a sentence that would require him to pay
16 restitution ---

17 THE COURT: Okay.

18 MS. TESSITORE: --- when he is out and to, uh, if ---

19 THE COURT: Okay. Alright, Mr. ---

20 MS. TESSITORE: --- PTUP is appropriate ---

21 THE COURT: --- Godfrey, tell me about it.

22 MR. GODFREY: May it please the Court. Judge, my client
23 is here because of pills, crack and heroin. He does have a
24 mental disorder, he has bipolar and he also is schizophrenic.
25 There's no question he is competent today, he's been competent

1 every time that I've talked with him. My conversations with
2 him today were very direct from questions from his part about
3 the charges. Your Honor, this young man was doing okay until
4 he stopped taking his medication. He first started usin'
5 pills and he got in trouble and he got a YOA sentence and then
6 he comes out, then he starts usin' crack and heroin and I said
7 why are ya doin' that, why did ya do that, and he said he
8 wanted to, wanted to end the pain that he had. He wasn't
9 taking any of the prescription medication whatsoever and,
10 Judge, it got to the point he was on heroin back during this
11 time frame and his craving for it was so great that he would
12 steal a car and he would go and crush it and then he would buy
13 heroin. In my conversations with him and with his family, I
14 know that he has attempted suicide in the past. When he was
15 in the jail about six months ago, he jumped off the second
16 tier head first then twisted in the air and really broke his
17 leg and messed his leg up pretty bad. He's lost just about
18 everything. One of the things that started him off on the
19 heroin when he got back is his grandmother died and he was
20 very, very close to his grandmother. She really helped raise
21 him. His father committed suicide when he was 5-years-old.
22 Judge, this young man is standing here because of drugs, his
23 addiction to 'em and his need for money to buy 'em. Judge,
24 when he was on probation, basically he did nothing correct on
25 probation because he was on drugs. He had 13 years over his

1 head on probation violation and Judge Simmons gave him 12
2 years, that was on March the 2nd. I know the State is
3 interested in restitution. Judge, my client he's clean now
4 because he's been locked up and he wants to get his life back,
5 we would respectfully submit that a 12-year sentence is long
6 enough.

7 THE COURT: Okay.

8 MR. GODFREY: Judge, I know you can hang something
9 consecutive suspended so he can get his restitution ---

10 THE COURT: Alright, here we go: 2012-3679 10 years;
11 3677 10 years; 7589 10 years, those are concurrent; 3680
12 10 years consecutive, suspended with probation for 5 years,
13 restitution pursuant to the order, substance abuse counseling,
14 random drug and alcohol testing, mental health counseling,
15 probation to begin upon release from SCDC, okay.

16 MR. GODFREY: May it please the Court. Would you allow
17 PTUP?

18 THE COURT: Make him, if he does well on probation,
19 they'll they'll they'll take care of him. He can't pay it
20 then good Lord it's gonna be over \$10,000.

21 MR. GODFREY: Well his restitution is total is 4000 I
22 think joint and several.

23 THE COURT: Well he can -- they'll cut him loose early if
24 he does well. Alright, good luck.

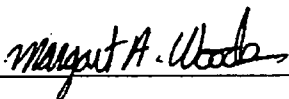
25 THE DEFENDANT: Thank you, Judge.

1 CERTIFICATE OF REPORTER
2

3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on June 26, 2012 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 2 through 30, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

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

13 February 12, 2013

14
15 

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
18
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24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenville)

IN THE COURT OF COMMON PLEAS

Eddie James Pitcher JR #303616
 Full name and prison number (if any) of Applicant

2012-CP-23- 07210

v.

State of South Carolina

APPLICATION FOR
 POST-CONVICTION RELIEF

FILED CLERK OF COURT
 GREENVILLE CO S.C.
 2012 DEC 14 P 4:59

INSTRUCTIONS B 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 Pem/ Correctional Institution
130 Oak Lawn Rd, Pelzer, SC 29669
2. Name and location of Court which imposed sentence Greenville Co. Court-
house 305 E North St Greenville, SC 29601
3. Name(s) of co-defendant(s) (if any) (A) Curtis A. Wakee (B) Schwathow
A. Cross
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-23-002618
 - (b) 2012-GS-23-002619

(c) 2012-GS-23-002620

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 6-26-2012 15 years Con Current

(b) 6-26-2012 15 years Con Current

(c) 6-26-2012 15 years Con Current

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ☒

(b) after a plea of not guilty ☐

(c) after a plea of nolo contendere ☐

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

No

8. If you answered Ayes@ to (7), list:

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

i.

ii.

iii.

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

i.

ii.

iii.

(c) the date of each such result:

i.

ii.

iii.

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

i.

ii.

iii.

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) I wasn't aware that I had Grounds until I
Got my Rule 5 motion July 12, 2012 after my Conviction.

- (b) _____
- (c) _____

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

- (a) The Process Violations (Detention)
- (b) Prosecution MISconduct assistance of
- (c) subject matter Jurisdiction Counsel

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

- (a) _____
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

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

- (a) the specific nature thereof:

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

iv. _____

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

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

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

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

i.

ii.

iii.

iv.

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

NO

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

(a) which grounds have been presented:

i.

ii.

iii.

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

i.

ii.

iii.

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

(a) This is my first time filing.

(b) _____

(c) _____

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

(a) your arraignment and plea? ☒

(b) your trial, if any? _____

(c) your sentencing? ☒

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

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

i. John E. Egan, Esq. 13th Circuit Public Defender
Greenville Co. Courthouse 305 E North St,
Greenville, SC 29601

iii. _____

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

i. John E. Egan - represented me at
both hearings

ii. _____

iii. _____

(A) DUE PROCESS VIOLATION

I was arrested on Oct. 4, 2010 by the Greer Police Dept. for similar charges occurring in Greer S.C. on the Spartanburg side, but unrelated. as a result these charges: Armed Robbery 1-582446, Burglary 1st Degree 1-582449 Kidnapping 1-582453 Came about in Greer S.C. on the Greenville County side, in which Judge Gale Sdao issued the arrest warrants on Oct. 5, 2010 while I was still incarcerated as a result of me getting arrested on Oct. 4, 2010 I was sentenced to 25 years on June 21, 2011. here let it be noted that I still wasn't served with the Oct. 5, 2010 warrants. now at the bottom of the warrants issued by Judge G. Sdao it clearly states "having found probable cause and the affiant having sworn before me, you are empowered and directed to arrest the said Defendant and bring him or her before me 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." I wasn't served with the Oct. 5, 2010 warrant until Nov. 3, 2011, That's 1 year 1 month and 26 days later which violates the Code of Laws of S.C. 1976 Rules of Criminal Procedures rule 1. Sheriff to file affidavits on arrest. The Sheriff and/or Law Enforcement officer shall file with the appropriate magistrate the affidavit and/or proof of service

■. STATEMENT OF CLAIM - continued.

on which the arrest is made within 5 days after the arrest. This should have occurred on Oct. 10, 2010. The failure of the law enforcement officer or constable to abide by and serve the warrants as required by the S.C. rules of ~~criminal~~ Criminal procedures rule 1 opened up the doors for further violations of the rules of Criminal procedures Rule 3. (A) + (B).

Rule 3 (A) Transmittal to Clerk, magistrate, municipal Judge, and officials authorized to issue warrants shall in all cases within the jurisdiction of the Court of General Session, forward to the clerk of the Court of General session all documents pertaining to the case including, but not limited to the arrest warrant and bond within (15) days from the date of the arrest in the case of an arrest warrant, and date of issuance in the case of the documents. In my case this should have occurred on Oct 25, 2010.

rule 3 (B) The clerk of Court of General Session shall forward a copy of an arrest warrant received pursuant to paragraph (A) above to the superior within (2) business days from the date of receipt from the issuing official. The clerk of Court should have forwarded the superior the above mentioned documents no later than Oct. 27, 2010, but this did not occur which leads to my second claim.

(B) prosecutorial misconduct.

The record will show that Judge G. S. Dan issued the warrants on Oct. 5, 2010 for armed robbery, burglary 1st degree, and kidnapping which happened on the Greenville Co. side of Green, and

IV. STATEMENT OF CLAIM - continued.

Investigating officer Dale afterburns deliberately, intentionally, and willfully withheld the warrants until Nov. 30, 2011 before having them served on me. Furthermore, the Solicitor in Greenville Co. knew that my due process had been violated, but he still indulged in this misconduct instead of upholding the law. A prosecutor's duty is not to convict a defendant but to see justice done on both sides according to S.C. Rule of Criminal Procedures Rule 3(c) Action on warrant within 90 days after receipt of an arrest warrant from the Clerk of Court the Solicitor shall take action on the warrant by (1) preparing an indictment for presentation to the Grand Jury, which indictment shall be filed with the Clerk of Court, assigned a Criminal Case number, and presented to the Grand Jury, formally dismissing the warrant noting on the face of the warrant the action taken, or (2) making other affirmative disposition in writing and filing such action with the Clerk of Court. Action was supposed to be taken on my warrants by the Solicitor no later than June 25, 2011, but this did not occur. It appears that the indictments weren't presented by the Solicitor to the Greenville Co. Clerk of Court until April 13, 2012 to be assigned a case #, stamped, and filed. That's 556 days after the warrants were issued on Oct. 5, 2010. Therefore the failure of the Solicitor to act on the warrants within 90 days as required by the S.C. Rules of Criminal Procedures rule 3(c) should have invalidated the warrants and the case should have been dismissed because no ~~prosecution~~ ^{prosecution} was issued granting a extension which is required by the S.C. rule of Criminal procedures rule 3(d). This

(8)

IV. STATEMENT OF CLAIM - continued.

did not occur which leads to my 3rd claim.

(C) Subject matter Jurisdiction. First defense pursuant to this provision on March 5, 1999 the Chief Justice of the S.C. Supreme Court Ernest A. Tammely Jr. mandated "That all Cases in the State of South Carolina shall be disposed of within 180 days from the date of defendants arrest provided, however, that the Circuit Court may Continue a Criminal Case beyond 180 days by written order if the Court determines that Exceptional Circumstances exist in the Case."

Pursuant to State v. Holbrook, 350 S.E.2d 151 "No day time limitation imposed under the interstate agreement on detainers act is mandatory and this required dismissal of Charges against Defendants with prejudice where at no time during these 124 days incarcerated in jurisdiction did the state move for a Continuance." The Commonly Called "180 day rule" is analogous to South Carolina Code of Laws Ann. § 17-11-10 et seq., The interstate agreement on detainer act, holding that pursuant to: Article

V(c) "If the appropriate authority shall refuse or fail to accept temporary Custody of such person, or in the event that an action on the indictment, information or Complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate Court of the Jurisdiction where the indictment, information, or Complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect, as with ~~the~~ the 180 rule Court retains subject matter Jurisdiction for

IV. STATEMENT OF CLAIM - continued.

a set time, in the interest of fundamental fairness. here let it be noted that the Judge issued the arrest warrants on Oct. 5, 2010, I wasn't served until Nov. 30, 2011, and sentenced on June 26, 2012. That's 630 days after the arrest warrants was issued. At no time during the 630 days of my incarceration did the Solicitor move for a Continuance. Therefore the Court did not have Subject Matter Jurisdiction. Moreover the 180 day rule imposes on the Solicitor to dispose of the Case within 180 days or timely move for a Continuance upon showing of exceptional Circumstances on the Solicitor waives the rights to prosecute the Case. Such waiver must be held by the Court and "One dismissed with prejudice & waiver is a voluntary and intentional abandonment or relinquishment of a known right See *Tomasik v. Farway Oaks Villa horizontal property regime*" 115 S.F.2d 381 (1982) a waiver may be expressed or implied "an implied waiver results from the act and conduct of the party against whom the doctrine is invoked for which and intention, relinquishment of rights is reasonably inferable see *Lyles v. DMI inc*" 355 S.F.2d 252 (Ct. App. 1987). Therefore the Solicitor's failure to move to dispose of the Case within 180 days from the date of defendant's arrest or, timely petition the Court for a Continuance indicated a voluntary and intentional relinquishment of the rights to due say and uphold. Such waiver this Case should have been dismissed with prejudice.

second defense Subject Matter Jurisdiction

IV. STATEMENT OF CLAIM - continued.

although the Clerk of Court stamped, filed, and assigned a case number to my indictment on April 13, 2012 my indictments still never went before a Grand jury. Due to the time elapsed the Solicitor knew that it was too late to have me indicted and my due process had been violated but still he indulged, disregarding the laws of the land as well as my Constitutional rights. The Solicitor didn't act on my indictments until 556 days after my arrest. It is well established that no person shall be held to stand trial unless they have been indicted by the Grand jury or waived presentment, according to S.C. Code of Law Title 17-23-130 through 150. By their plain language make a waiver of presentment of indictment not presented to the Grand jury mandatory before the trial judge can accept the guilty plea. Citing "Summerall" 278 S.C. at 286, 281 S.E.2d at 381. In my case I never was indicted and I did not sign a written waiver waiving presentment to the Grand jury. Therefore the Circuit lacked subject matter jurisdiction to try the case. The failure of the State to have me properly waive presentment to the indictment by signing a written waiver as required by S.C. Code of Law Title 17-23-130 through 150 further invalidated Guilty plea applicant was denied a sense of justice, due process, and equal protection of the law under the 5th, 6th, and 14th amendment of the United States Constitution as well as article I § 3 of the South Carolina Constitution. Following the applicant ~~being~~ coerced and manipulated Guilty plea, when

The Judge lacked subject matter jurisdiction to try the Case also see Carler v State 329 S.C. 355, 362, 495 S.E. 2d 773, 777 (1998) "oral waiver of indictment fail to satisfy statutory requirements Title 17-23-130 through 150."

(1) Ineffective assistance of Counsel

In deciding on ineffective assistance of Counsel claim the appropriate questions are whether "Counsel representation fell below an objective standard of reasonableness" and if so, whether there is a discernable probability that "the deficient performance prejudiced the defense." Strickland v. Washington, 46 U.S. 668, 687, 688, 104 S.Ct. 2052, 2064, 2065, 80 L.Ed. 2d 674 (1984)

To establish prejudice, a defendant must show not only that the outcome of his trial would have been different absent the ~~deficient~~ deficient representation, but also that the deficient representation rendered the result of his proceedings fundamentally unfair or unreliable. Lockhart v. Fretwell, 113 S.Ct. 538, 541, 122 L.Ed. 2d 180 (1993)

(a) Counsel representation was ineffective for failing to provide applicant with his motion of discovery pursuant to rules of the S.C. Rule of Criminal Procedures, even after applicant requested him to do so on several occasions.

On March 2, 2012 applicant was summoned to Greenville Municipal Court for a Prelim. for the following charges, Armed Robbery, Burglary 1st degree, and ~~kidnapping at his home~~ applicant met with Counsel and instructed him to provide him with all of the evidence pertaining to his case to include, but not limited to his indictments. Counsel then state to applicant that he did not have any of the evidence in his case yet, and that he would have to wait.

Subsequently, applicant was summoned to Greenville Co. Court of Criminal sessions on June 26, 2012 for sentencing. applicant then again met with his Counsel and again requested Counsel to provide him with his motion of discovery, so that he could prepare for trial. at this time Counsel avoided applicant question and stated to applicant that I should Plead Guilty instead of going to trial because he was sure I would lose. applicant took the advice, his Counsel then stating that his Counsel had in fact obtained his motion of discovery and had do a thorough investigations, but in all actuality Counsel never even he applicant motion of discovery. The record will show that Counsel waited until July 10, 2012 to request applicant motion of discovery. Finally mailing him a copy on July 12, 2012 45 days after applicant Plead Guilty. Counsel was clearly ineffective for this

applicant demanded his right to examine the evidence in his case and Counsel deprived applicant of his right. Counsel failure to request applicant motion of discovery to prepare applicant defense cripple Case and Can but be considered a strategic decision; requesting applicant motion of discovery and providing applicant with a copy is a purely ministerial task and failure to do so only reflected that Counsel performance while representing applicant was deficient. If Counsel would have provided applicant with his motion of discovery as requested to do so by applicant, applicant would not have Pleaded Guilty. Applicant discovered after he finally received his motion of discovery after his manipulated and Coerced Guilty Plea that his indictments were faulty, better yet no indictment at all. Counsel knew this and still help the state violate my Constitutional rights when he should have told me let go to trial, you'll win because you haven't even been indicted.

(B) Counsel's performance was also ineffective for failing to advise applicant that his due process rights had been violated and to his arrest warrants being served to him 1 Year 1 month and 26 days past the statute of limitations deadline. Had applicant known that his due process had already been violated by this he would not have Pleaded Guilty.

(C) Counsel's representation was ineffective for failing to ensure that applicant was mentally evaluated before his Plea hearing. Counsel knew that applicant was a mental health patient and a heavily medicated at the time of the Guilty Plea hearing and as a result did not enter his Plea knowingly, intelligently, or voluntarily but the Guilty Plea was entered only as a result of his not being in his right state of mind, and following his Counsel advice.

Counsel knew this and even after the Court suggested that applicant be mentally evaluated before he Plea Guilty, Counsel looked at applicant and shook his head no. Even the Judge sensed something wrong with me because he sent me out the courtroom because I did not understand what was going on. Applicant was brought back in 10 or 20 mins. later and sentenced.

(D) After applicant was sentenced applicant and his attorney walked out the courtroom, applicant expressed to his attorney that something did not feel right, and that he wanted his attorney to file a Appeal, but this never took place which is a violation of applicant due process as well.

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

Case Vacated with prejudice

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

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

Eddie J. Fletcher Jr.

SWORN to and subscribed before me this 30th

day of October, 2010

Steven J. Milavich (L.S.)
Notary Public

My Commission Expires: January 7, 2014

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

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

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

Eddie James Pichler Jr.
Applicant

SWORN or affirmed to and subscribed before me this
30th day of October, 2012.
Stewart M. Lantry
Notary Public

My Commission Expires: January 7, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-7210
COUNTY OF GREENVILLE	)	
	)	
Eddie James Pilcher, Jr.,	)	
S.C.D.C. No. 303616,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed November 14, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant waived presentment to the Greenville County Grand Jury on charges of kidnapping (2012-GS-23-2618), armed robbery (2012-GS-23-2619), and first-degree burglary (2012-GS-23-2620). John "Jake" Kenneth Erwin, Jr., Esquire represented the Applicant.

On June 26, 2012, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to fifteen years for kidnapping, fifteen years for armed robbery, and fifteen years for first-degree burglary. The Applicant did not appeal.

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

II.

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

1. Ineffective assistance of counsel:
 - a. Failed to provide the Applicant with his discovery.
 - b. Failed to advise the Applicant his due process rights had been violated.
 - c. Failed to ensure the Applicant had an evaluation.
 - d. Failed to file an appeal.
2. Due process violations:
 - a. Warrants were not timely filed and served.
3. Prosecutorial misconduct:
 - a. Failure to act on the warrants pursuant to Rule 3, SCRCrimP.
4. Subject matter jurisdiction:
 - a. Charges were not disposed of within 180 days.
 - b. Charges were not presented to the Grand Jury and the Applicant did not sign a written waiver of presentment.

III.

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

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

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

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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

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

IV.

The Respondent submits the Applicant’s issue related to prosecutorial misconduct must be dismissed. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) (“[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself

invalidate a warrant or prevent subsequent prosecution.”). The Applicant has failed to demonstrate wither actual vindictiveness or any resulting prejudice. See Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding the burden is on the defendant to prove actual vindictiveness); see also State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order to prevail on an allegation that one’s speedy trial rights were violated).

V.

The Respondent submits the Applicant’s assertion that the plea court lacked subject matter jurisdiction is without merit. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). The Respondent further notes that indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. There are written waivers of presentment and the indictments in this case were clearly sufficient to put the Applicant on notice of the charges he was facing.

VI.

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

VII.

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

Respectfully submitted,

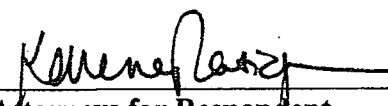
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

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

By: 
Attorneys for Respondent

May 3, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2012-CP-23-7210

EDDIE JAMES PILCHER, JR., 303616)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

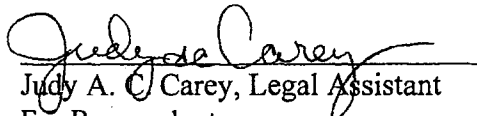
STATE OF SOUTH CAROLINA,)

Respondent.)

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

**Eddie James Pilcher, Jr., 303616
 Perry Correctional Institution
 430 Oaklawn Road
 Pelzer SC 29669**

DATED this 3rd day of May, 2013.


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

EDDIE PILCHER,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2012-CP-23-07210

FEBRUARY 19, 2014

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

MILLS ARIAL
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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PLAINTIFF'S/ EXHIBITS

NO	DESCRIPTION	ID	E
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DEFENDANT'S EXHIBITS

	(NONE)		
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1 **FEBRUARY 19, 2014**

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

4 THE COURT: All right. Ms. Ratigan.

5 MS. RATIGAN: Thank you, Your Honor, may it
6 please the court. This is the case of Eddie Pilcher
7 versus the State of South Carolina. Docket number is
8 2012-CP-23-7210. Mr. Pilcher waived presentment on
9 charges of kidnaping, armed robbery and first degree
10 burglary. He was represented on these charges by Mr.
11 Erwin. On June 26th of 2012, he pled guilty before
12 Judge Miller. He received concurrent sentences of
13 fifteen years for kidnaping, fifteen for armed robbery
14 and fifteen years for first degree burglary. Mr.
15 Pilcher did not file an appeal and the state is ready
16 to proceed.

17 THE COURT: Mr. Ariail.

18 MR. ARIAIL: Yes, Your Honor. I represent
19 Mr. Pilcher in this matter and I want to let the court
20 know that he has requested that I let the court know
21 that he does not want my services anymore as his
22 attorney. He wants me to, I guess, make a motion to be
23 relieved as his counsel. He believes I'm not
24 representing his interests the way he wants me to.

25 If that motion is denied, then he would request a

Eddie Pilcher -vs- State of South Carolina (2012-CP-23-7210)
PCR Hearing

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1 continuance so that he can be more fully prepared in
2 regards to this case. And I just want to represent
3 that to the court so you understand where we're
4 starting from.

5 THE COURT: Mr. Pilcher, you want to
6 represent yourself; is that right? You don't want Mr.
7 Ariail to represent you?

8 MR. PILCHER: No, sir. Not right now. I
9 asked him to do certain things for me which he totally
10 disregarded. I asked him to amend my PCR complaint.
11 He didn't do it. I asked him to subpoena the
12 solicitor. He didn't do it. He tells me he's not
13 going to subpoena the solicitor. I guess out of
14 favoritism. I'm not sure what it is. But I mean, the
15 man didn't do nothing I asked him to do. I've asked
16 him to file a motion to get a recording; I ain't got
17 that yet. And I didn't hear nothing from him. I had
18 to write the Office of Disciplinary Counsel just for
19 him to send me the list of stuff that you've got right
20 that day. I mean, ---

21 THE COURT: How many amendments do you have
22 to your application? What other issues?

23 MR. PILCHER: Nothing.

24 THE COURT: But what do you want him to amend
25 them to?

1 MR. PILCHER: To add prosecutorial
2 misconduct, involuntary guilty plea, *Brady* violation.
3 I just feel like, you know, it's not fair right now. I
4 mean, if I was to get it overturned and get a life
5 sentence, I could deal with that. I just want to give
6 it to me right. You know what I'm saying?

7 THE COURT: Was there an appeal in this case?
8 I'm sorry. There was no appeal?

9 MR. ARIAIL: No, Your Honor.

10 THE COURT: Okay.

11 MR. ARIAIL: And just for the record, I think
12 he's already put in prosecutorial misconduct as part of
13 his initial application. I thought he also did an
14 involuntary guilty plea as part of the initial package
15 that I have, initial application. Yeah, his guilty
16 plea was coerced and manipulated.

17 THE COURT: That would be involuntary, I
18 believe.

19 MR. PILCHER: But I also wanted to add the
20 fact that, on the prosecutorial misconduct, that the
21 solicitor withheld an audio recording, which is a *Brady*
22 violation as far as under prosecutorial misconduct. I
23 didn't have that written beside my initial paperwork,
24 so I wanted my attorney to straighten it up for me, but
25 he disregarded it and told me I'm not going to subpoena

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PCR Hearing

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1 no solicitor. I guess you know his dad used to be a
2 solicitor his self, I guess. I don't know if they got
3 some type of -- I don't know what's going on. One hand
4 wash the other, I guess.

5 THE COURT: What would the testimony of the
6 solicitor, what would that do as far as the issues that
7 we're here on now, how Mr. Erwin didn't perform right?

8 MR. PILCHER: Well, Greer turned over what
9 they had in regards to the case to Greenville County.
10 And it stated on the cover sheet that we have a copy of
11 an audio recording, a confession. Now, this recording
12 had some things in it that's exculpatory. And we ain't
13 got it. And I never received it because the solicitor
14 didn't turn it over. After Jake Erwin filed a Rule 5
15 motion ---

16 THE COURT: Okay. So Mr. Erwin knew that,
17 that they were holding it, and he didn't ask for it; is
18 that what you're saying?

19 MR. PILCHER: I'm saying that, too. I mean,
20 he didn't even investigate my case.

21 THE COURT: Okay. So he didn't -- what
22 you're saying today is the solicitor withheld some
23 evidence from Mr. Erwin?

24 MR. PILCHER: Yes, sir.

25 THE COURT: And Mr. Erwin didn't ask for

1 something that he didn't know existed?

2 MR. PILCHER: He had to know it existed if he
3 investigated the case.

4 THE COURT: Oh, okay.

5 MR. PILCHER: What I'm saying he's
6 ineffective for not investigating the case, too,
7 because any reasonable -- any attorney, they would have
8 seen that. I mean, it's on the cover sheet. I mean,
9 why won't you press to get it?

10 THE COURT: All right.

11 MR. PILCHER: And I wanted that to be my
12 exhibit -- one of my exhibits today, but I don't have
13 it.

14 THE COURT: What is your exhibit?

15 MR. PILCHER: I want the recording to be
16 here, ---

17 THE COURT: Okay.

18 MR. PILCHER: --- because of certain things
19 that's said in the recording that said that that wasn't
20 on the recording. Well, here it is. I got paperwork
21 today and the attorney general going to try to make
22 y'all believe today what the supplement says in the
23 police report in which the police wrote down that I
24 told him I did everything, I did it. The tape ---

25 THE COURT: Well, I'll leave the record open

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1 for us to get a tape. That won't be any problem. I'll
2 make sure I review it, if it's available to me. I'll
3 review that before any ruling I make. I'll review the
4 tape.

5 MR. PILCHER: What about subpoenaing the
6 solicitor?

7 THE COURT: Well, you haven't told me yet
8 what he's going to -- let's ---

9 MR. PILCHER: I don't know what he's going to
10 attest to in court.

11 THE COURT: Well, I don't understand your
12 theory of what -- maybe I need to hear Mr. Erwin's
13 testimony to know how prosecutorial misconduct, how he
14 participated in that?

15 MR. PILCHER: Who, the Solicitor?

16 THE COURT: No. Your attorney. We're here
17 to decide whether or not your attorney acted properly
18 back in the plea.

19 MR. PILCHER: Okay. And also I want to raise
20 this ground, too, because when I get to the Supreme
21 Court, I can't turn around and say, oh, the prosecutor
22 didn't do this. He didn't do that. I've got to bring
23 it in today. See what I'm saying? And if he was here,
24 we could question here and put it on the table today.
25 By him not being here, I mean, it's fruitless. I mean,

1 I can't say Jake Erwin committed prosecutorial
2 misconduct without having the tape. It's the
3 solicitor's job to overturn it to my ...

4 THE COURT: Well, we're looking today at what
5 your attorney did wrong; aren't we? Isn't that the
6 basis of the PCR hearing and how Mr. Erwin did not
7 perform to the standard that *Strickland* requires?

8 MR. PILCHER: Yeah, and also about the
9 prosecutorial misconduct because Rule 5 states that all
10 statements supposed to be turned over. This is what
11 the solicitor did. He didn't turn it over. I mean,
12 the only thing Jake Erwin can go off of is what he got.

13 THE COURT: Well, that's ---

14 MR. PILCHER: If the solicitor say, well, I'm
15 going to keep this and hold this right here. The
16 trick, I'm going to keep this out because it's
17 everything I said, you see. I'm just going to hold
18 this. And what can Mr. Erwin do? I mean, he was
19 ineffective for allowing me to take the plea. And not
20 going over the state's ---

21 THE COURT: Well, I'll be glad to hear that.
22 I'm not going to grant your continuance. I'll
23 certainly be glad to leave the record open to get any
24 kind of evidence that we need as far as the tape if
25 it's available.

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Eddie Pilcher - Direct Examination by Mr. Ariail

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1 Mr. Ariail, are you prepared to proceed today?

2 MR. ARIAIL: Oh, yes, Your Honor, I'm
3 prepared to go forward if you see fit. I've got his
4 discovery up and reviewed it. Actually, I've talked
5 with him in regards to it, and I think we can go
6 forward.

7 THE COURT: All right. I deny your motion.
8 We'll proceed and I'll leave the record open.

9 You may call your first witness, Mr. Ariail.

10 MR. ARIAIL: I call Mr. Pilcher to the stand.

11 THE CLERK: Mr. Pilcher, please place your
12 left hand on the bible and raise your right hand as
13 best you can.

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

18 THE WITNESS: I affirm.

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

21 THE WITNESS: Eddie James Pilcher, Jr.

22 THE CLERK: Thank you.

23 **EDDIE PILCHER,**

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

25 **DIRECT EXAMINATION**

1 BY MR. ARIAIL:

2 Q. Mr. Pilcher, let's start off, first of all, you
3 were represented by Jake Erwin; correct, on these
4 cases?

5 A. Yes, sir.

6 Q. Okay. And you pled guilty to them on, I think it
7 was June 26, 2012; is that right?

8 A. Hold on for me.

9 Q. Okay.

10 A. I think it was like the 21st. I ain't sure.

11 Q. But he represented you on all the charges you're
12 going forward today; correct?

13 A. Yes. Yes, sir.

14 Q. Okay. And as part of that -- how long had he
15 represented you before you went to and did this guilty
16 plea?

17 A. About four months, a hundred and twenty days.

18 Q. Okay. And how many conversations did you have
19 with him?

20 A. One.

21 Q. You only talked with him one time?

22 A. Yeah.

23 Q. So the one time would have only been on the day
24 of the guilty plea?

25 A. No. We spoke on -- no, actually twice. We spoke

1 at the preliminary hearing and at the guilty plea.

2 Q. Okay. So you had the preliminary hearing and
3 then the guilty plea. He didn't come to see -- were
4 you incarcerated during this time?

5 A. Yes.

6 Q. Okay. So he didn't come down to see you at all?

7 A. No.

8 Q. Okay. So on the two occasions you talked in the
9 preliminary hearing, did y'all discuss the cases and
10 the facts and the elements of the charges and all that?

11 A. No, we didn't.

12 Q. What did y'all discuss?

13 A. He just told me, I mean, I had three charges, and
14 since I'm already doing a twenty-five year sentence, I
15 really just went ahead and took the plea.

16 Q. Say that again?

17 A. I guess I just took the plea. I mean, I wasn't
18 really thinking.

19 Q. I mean, my question was, what did y'all discuss
20 in regards to the case the first time you met?

21 A. He told me everything that the police said. He
22 told me that the police had a supplemental report
23 saying that I told them I committed the crime. He said
24 he didn't see that I could beat it. But all that's
25 relative. He didn't have all the evidence.

1 Q. Okay. And you got fifteen years on those charges
2 when you pled; is that correct?

3 A. Yeah.

4 Q. You pled in front of Judge Miller?

5 A. Yeah.

6 Q. Okay. Now, you're saying you didn't have all the
7 evidence when you went in. Now, I know we've talked a
8 little about that. What evidence are you saying you
9 didn't have that either, I guess, Mr. Erwin had or Mr.
10 Erwin should have gotten?

11 A. My biggest issue is the recording, because it
12 would have reviewed it, what Mr. Arterburn had said. I
13 mean, if I had the recording, I wouldn't have never
14 pled guilty in the first place.

15 Q. Let me go back. Detective Arterburn, he was with
16 the Greer P.D.; right?

17 A. Yeah.

18 Q. Okay. And he had a recording that he took of you
19 when you came in and met with him, I guess?

20 A. A hid recording, yeah.

21 Q. A hidden recording?

22 A. Yeah. It was hid in his pocket.

23 Q. Okay. So you didn't know it existed?

24 A. Never knew.

25 Q. But at some point it came up that there was a

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Eddie Pilcher - Direct Examination by Mr. Ariail

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- 1 recording; right?
- 2 A. During my PCR in Spartanburg.
- 3 Q. But I mean, you've got your copy or discovery;
- 4 correct?
- 5 A. Yeah.
- 6 Q. I mean, there's a note, we just discussed it
- 7 downstairs. It says on it, it was an audio tape that
- 8 he had at the Greer Police Department; right?
- 9 A. Yeah.
- 10 Q. Okay. So before you pled guilty, did you ever
- 11 know that existed?
- 12 A. No. I didn't get my motion until forty-five days
- 13 after I pled guilty.
- 14 Q. So you never even got a copy of your discovery
- 15 before you pled guilty?
- 16 A. No, I didn't.
- 17 Q. Okay. And ---
- 18 A. I got proof of it, too.
- 19 Q. You've got proof of what? Proof of ---
- 20 A. I've got copies from the mail room showing when
- 21 he actually sent my discovery to me.
- 22 Q. Okay. So you have discovery now, but you didn't
- 23 have it before you pled?
- 24 A. No.
- 25 Q. So you pled guilty without, I guess, fully

1 understanding that there was an audiotape out there?

2 A. Correct.

3 Q. When did you find out about this audiotape?

4 A. When I went to -- when I got this motion of
5 discovery forty-five days later after I pled guilty.

6 Q. Okay. So that was the first time you got it in
7 there? I mean, did you call back up or ask, you know,
8 Mr. Erwin what this audiotape said?

9 A. I wrote him some letters, but he never responded.

10 Q. Okay. When was the first time -- I mean, do you
11 have a copy of this audiotape? Have you been given a
12 copy or transcript of the audiotape?

13 A. Yeah. My attorney in Spartanburg had to subpoena
14 a copy of it, same tape, in my Spartanburg case.

15 Q. So you -- and that's Chris Brough; correct?

16 A. Yeah.

17 Q. He's a PCR attorney over there?

18 A. Yeah.

19 Q. So he has a copy of the tape or a copy of the
20 transcript; correct?

21 A. Yes, sir, copy of the tape.

22 Q. And we discussed, he wrote you a letter; correct?

23 A. Yes, sir.

24 Q. And he told you what the issues are with the tape
25 or what he heard on there; is that correct?

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Eddie Pilcher - Direct Examination by Mr. Ariail

17

1 A. Yes, sir.

2 Q. What did he tell you about that tape? What does
3 it say?

4 A. He told me that the tape stated that it wasn't
5 me.

6 Q. Do you have a copy of that letter?

7 A. Yes, I do.

8 Q. In your stuff over here?

9 A. Yeah.

10 Q. I want you to find it so I can make it an
11 exhibit. And it says -- it's a letter from Chris
12 Brough; correct?

13 A. Yes, sir.

14 Q. Okay. Let me have show ... Read that out for
15 the court. If you would tell me what he said to you?

16 A. The letter states: In reference to Eddie Pilcher
17 versus the State of South Carolina, Case Number 2011-
18 CP-42-5117. This is the Spartanburg case. The letter
19 states: Dear Mr. Pilcher. Enclosed please find the
20 cases that you requested. Also, an audio statement.
21 The approximate time that the *Miranda* rights was 0847.
22 The approximate time that you stated that wasn't me was
23 43.58. And the approximate time that you stated, I'm
24 an accessory no doubt, is 0521.

25 Q. Okay. So you're saying that's what was on the

1 tape that you didn't have knowledge of?

2 A. Yes, sir.

3 Q. Okay. Saying that you, I guess, weren't the one
4 that did it?

5 A. Yes, sir.

6 Q. But you're saying you were an accessory, too;
7 correct?

8 A. Yes, sir. Now, if my attorney would have had
9 this, then he shouldn't have let me plead to the actual
10 charges of kidnaping, armed robbery, and burglary. It
11 should have been an accessory charge.

12 Q. Okay. Did you ever discuss any type of accessory
13 charge with Mr. Erwin or anything of that nature?

14 A. No, sir, I didn't.

15 Q. Did you ever know that that -- so you're saying
16 that that tape, the first time you found out about it,
17 was when you were represented by Chris Brough after you
18 pled guilty to these charges?

19 A. Yes, sir.

20 Q. Okay.

21 A. And furthermore, although I did say, I'm an
22 accessory no doubt, however, my *Miranda* warnings wasn't
23 read until eight minutes and forty-seven seconds into
24 the CD. When all actuality, you're supposed to read my
25 *Miranda* rights before you even question me.

1 Q. Okay. I think we'll just let the judge deal with
2 that *Miranda* issue that you've raised. Now in regards
3 to the -- I mean, I'm still trying to wrap my brain
4 around how -- are you saying -- this tape was made
5 available through discovery; correct?

6 A. Yes, sir.

7 Q. I guess what our conversation was downstairs was,
8 you're saying that the Greer Police Department had the
9 tape?

10 A. Yes, sir.

11 Q. That when you got discovery from the solicitor's
12 office, they didn't provide a copy of the tape and
13 apparently either they didn't have it in their file at
14 the time or they should have gone and gotten a copy
15 from Greer P.D. to give to you; is that right? Is that
16 my understanding?

17 A. What I'm saying is the Greer Police Department
18 stated they have a tape, a audio confession, that was
19 taped. If what you claim is said, why won't you turn
20 it over when you gave him my discovery? I've got a
21 letter right here for an exhibit.

22 MR. ARIAIL: Yeah. I want to make these two
23 exhibits, Your Honor, if I can. The first one is a
24 letter from Chris Brough.

25 (WHEREUPON, Plaintiff Exhibits 1 and 2 marked for

1 identification.)

2 A. They acknowledging they had the tape. Why would
3 you withhold it? Apparently they're going to say what
4 you said they said. I mean, that's all I can say.

5 MR. ARIAIL: Your Honor, I'd just move both
6 of these in.

7 THE COURT: Any objection.

8 MS. RATIGAN: No objection, Your Honor.

9 THE COURT: All right. Without objection,
10 Exhibits 1 and 2 are admitted into evidence.

11 (WHEREUPON, Plaintiff Exhibit Numbers 1 and 2
12 admitted into evidence.)

13 Q. Now, this document, this is a City of Greer
14 Police Department prosecutive summary form, general
15 sessions cover sheet; is that right?

16 A. Yes, sir.

17 Q. It basically says on here: Audio confession by
18 defendant Eddie Pilcher available upon request. It's
19 dated 11/30/2011; right?

20 A. Yes, sir.

21 Q. Okay. So at no time did you get a copy of that
22 tape or have a discussion with Mr. Erwin before you
23 pled guilty; right?

24 A. No, sir.

25 Q. Okay.

1 A. And my attorney filed the Rule 5 motion and he
2 still didn't file -- this is February the 29th. Make
3 that Exhibit 2. It was not like he didn't ask for it.

4 Q. Did you go over hand-of-one hand-of-all legal
5 theory? Did you talk to Mr. Erwin about that?

6 A. No, sir.

7 Q. Okay. Did you understand that being involved in
8 it, that you could be held accountable for the crime,
9 too, even if you didn't have the gun?

10 A. Well, under the hand-of-one hand-of-all theory,
11 that does not actually mean everybody will have the
12 same charge. That just means that you'll be charged
13 with something.

14 Q. My question was, did you have any type of legal
15 discussion ---

16 A. No, sir, I didn't.

17 Q. Okay. Now, and I'm still going back to this
18 prosecutorial misconduct issue and I don't know if it
19 really applies, but I'm just trying to figure out how
20 is Mr. Marchant tied in with this or how is he in
21 connection with Mr. Erwin in regards to withholding
22 this tape or hiding it or anything of that nature?

23 A. I lacked knowledge of the material evidence that
24 the prosecutor had in their possession. So therefore,
25 my constitutional rights could not be deemed nor were

1 they voluntary.

2 Q. Okay. So that -- I think we're finding out a
3 little bit. So you're saying since you didn't have
4 that information; therefore you had an involuntary
5 guilty plea ---

6 A. Yes, sir.

7 Q. --- because you didn't have the information?

8 A. Yes, sir.

9 Q. Okay. That really doesn't involve Lucas
10 Marchant; correct?

11 A. Yeah. He's the prosecutor. He's the solicitor.
12 He had the tape or could have got it.

13 Q. All right.

14 A. That's his job to go get it. It's his job to
15 know his case he's prosecuting.

16 Q. And it does say it's available upon request;
17 correct?

18 A. And my attorney requested it.

19 Q. Okay. Now, what other -- are there any other
20 items that were withheld that you didn't get other than
21 your discovery and this tape?

22 A. Not that I know of.

23 Q. Did he ask -- did you ask him to do any
24 investigation or talk to any witnesses or anything of
25 that nature?

1 A. Did I ask who?

2 Q. Mr. Erwin?

3 A. No. I shouldn't have to. It's his job to
4 investigate the case.

5 Q. I mean, it's kind of difficult to investigate a
6 case if you don't know who to go talk to that could be
7 potential witnesses. Did you tell him who witnesses
8 were in your case?

9 A. No. I didn't have no witnesses.

10 Q. Okay. So you didn't have an alibi?

11 A. No. That's not, that's not a issue. My issue
12 was, if he would have read this paperwork that Greer
13 sent him, he wouldn't have let me take this plea. See
14 what I'm saying?

15 Q. You're saying if he had the tape and had gone and
16 listened to the tape, he should have relayed to you not
17 to take the plea?

18 A. Yeah. That's the job of an attorney.

19 Q. Okay. Did you go over with him any of the other
20 witnesses or co-defendants or any statements they were
21 going to give to the police?

22 A. No.

23 Q. Did y'all talk about if anybody else was going to
24 say, hey, Eddie was the one that did this or ---

25 A. Me and the man only spoke, like I said, twice;

1 preliminary hearing, guilty plea.

2 Q. Did you ever discuss who was going to testify
3 against you at trial?

4 A. No, we didn't.

5 Q. So I mean, I'm trying to get down to -- the only
6 piece of information that I've heard that they were
7 going to convict you on right now was an audiotape?

8 A. Yeah.

9 Q. An audiotape and a confession you gave to him;
10 correct?

11 A. That's what they say, but we ain't got the
12 audiotape. We don't know what it says.

13 Q. So if Dale Arterburn comes in here and he
14 testifies -- you've read his report and his discovery;
15 correct?

16 A. Those are his words. I mean, if -- why didn't he
17 put in his report that I said I'm an accessory no
18 doubt? Why didn't he put that in there? That's
19 nowhere in this supplemental report.

20 Q. Right. But ---

21 A. Shouldn't it have been in there? I said I'm an
22 accessory; put that in there.

23 Q. Okay.

24 A. That's the charge; isn't it?

25 Q. What other issues do you have other than -- I

1 mean, the main ones we talked about are the *Brady* Rule
2 5 violation or in conjunction with prosecutorial
3 misconduct, involuntary guilty plea based off of not
4 having the tape?

5 A. Yeah. The solicitor withholding that evidence,
6 yeah.

7 Q. Okay. Well, we've gone through that. And your
8 packet of information that you submitted is made a part
9 of the record and preserves these issues. Are there
10 other issues that you want to raise?

11 A. Oh, yeah. The judge never advised me that I have
12 a right to appeal my conviction. Which before he take
13 my guilty plea, before he accept it, he's supposed to
14 tell me I have ten days in which to appeal the
15 conviction. He never told me that.

16 Q. Okay. So you ---

17 A. That's supposed to be done during the colloquy
18 phrase [verbatim].

19 Q. Okay. Hold on a second. Let's go back to that.
20 You went through and you had a recommendation; correct?

21 A. Yeah.

22 Q. Fifteen years; right?

23 A. Yes.

24 Q. And you got fifteen years?

25 A. Yeah.

1 Q. So you go into a plea and you get what you want.

2 What's the deal ---

3 A. It's the judge still have to do this. This is
4 his job before he take my plea.

5 Q. Okay. So ---

6 A. I mean, he got to do that. He can't just say,
7 okay, you take the fifteen years, here you go. He's
8 still got to advise me of what rights I'm giving up.

9 Q. Okay. My question is, would you have appealed?

10 A. Yeah.

11 Q. You would have appealed, even though you got the
12 same recommendation ---

13 A. I even told my attorney to appeal.

14 Q. Okay.

15 A. I told him to appeal this conviction for me;
16 something don't feel right.

17 Q. Okay. But here's another question. I mean, I
18 had one of these earlier this morning. Did you ask him
19 if -- sometime during the plea if you weren't
20 comfortable with it, did you ask him to withdraw the
21 plea afterwards?

22 A. No. But I'll tell you what happened. The judge
23 actually sent me out of the courtroom because I didn't
24 understand what was going on. And I am a mental health
25 individual. I have mental health issues. Extensive.

1 See what I'm saying? So he should have ordered me a
2 mental health evaluation, which he didn't do. That
3 should be in that package you got. I put that in
4 there.

5 MR. ARIAIL: Your Honor, I have no further
6 questions.

7 MS. RATIGAN: I don't have any questions,
8 Your Honor.

9 THE COURT: All right. Thank you. You may
10 step down, Mr. Pilcher.

11 MR. PILCHER: Oh, what about this exhibit
12 right here from my attorney -- Rule 5.

13 THE COURT: Those are in there.

14 MR. PILCHER: And I also want to put my
15 guilty plea transcript as an exhibit, too.

16 THE COURT: It's in the record. I got a copy
17 of it.

18 MR. PILCHER: I'd feel better if it was
19 marked as an Exhibit. I mean, you know. I understand,
20 you know, your word good, but I just want that marked
21 exhibit on there. On that transcript.

22 MR. ARIAIL: Hold on a second. This is a
23 November 7, 2012 letter where he was in receipt -- a
24 letter from the clerk's office saying they got his
25 letter on 10/23/2012. Enclosed please find a copy

1 which has the information you requested. And it
2 appears to be a notice of motion and motion to produce
3 pursuant to Rule 5, filed by Mr. Erwin. I don't know
4 if he wants to ---

5 MR. PILCHER: Yeah. I want to put that in as
6 an exhibit to show he did ask for it.

7 MR. ARIAIL: Okay. Part of the record.

8 THE COURT: Any objection?

9 MS. RATIGAN: May I ---

10 MR. ARIAIL: Here. I'm sorry.

11 MR. PILCHER: Get it all in. No exhibits in,
12 see, he tried to rush me through. He don't even care.
13 We're going to get it right though.

14 MS. RATIGAN: That's fine, Your Honor. I
15 have no objection to that.

16 THE COURT: No objection to Exhibits 3 and 4.
17 They'll be made a part of the record.

18 (WHEREUPON, Plaintiff Exhibit Numbers 3 and 4
19 marked and admitted into evidence.)

20 MR. PILCHER: I want to make my transcript an
21 exhibit. This is going to show proof that the judge
22 did not tell me I have a right to appeal my conviction.
23 And you a judge yourself. He's supposed to advise me
24 of my right to appeal.

25 THE COURT: That's -- when you're saying it's

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29

1 made a part of the record, the record is the file and
2 it's already in the file.

3 MR. PILCHER: Okay. I'd just feel better if
4 it's marked ---

5 MS. RATIGAN: It's attached to the state's
6 return. It's a part of the record filed with the clerk
7 of court.

8 MR. PILCHER: I just want it as an exhibit.
9 I'll feel better.

10 THE COURT: All right. We'll make it an
11 exhibit.

12 MR. PILCHER: I don't want nothing to be left
13 out, because, as you see, Mr. Mills, he didn't want to
14 put no exhibits in.

15 THE COURT: Okay. We'll have it twice then.

16 MR. PILCHER: Okay. Thank you, sir. I'll
17 just feel better.

18 THE COURT: Okay. That'll be a court
19 exhibit. How about that?

20 THE REPORTER: You want it a court exhibit?

21 THE COURT: Let's make that a court exhibit.

22 (WHEREUPON, Court Exhibit Number 1 was marked for
23 identification.)

24 MR. PILCHER: What that mean? What court
25 exhibit mean?

1 THE COURT: That just means it's put in by me
2 as part of the record.

3 MR. ARIAIL: I have no further questions,
4 Your Honor.

5 THE COURT: It'll be there for appeal
6 purposes.

7 MR. PILCHER: Okay. What about what the
8 solicitor did, Mr. Marchant? You going to hold him
9 accountable? It is prosecutorial misconduct; ain't it?

10 THE COURT: Well, that's what we're going --
11 we're going to leave the record open to get that tape
12 and see what it says.

13 MR. PILCHER: I never had a PCR this quick
14 right here, man. The last one took two hours. Mr.
15 Mills just -- I don't know.

16 THE COURT: Mr. Ariail, are you going to see
17 if you can acquire that tape?

18 MR. ARIAIL: Yes, Your Honor, I'm going to
19 get that. I'll try to ask Mr. Marchant to get it for
20 me.

21 MR. PILCHER: I asked him that about three,
22 four months ago. We still ain't got it. Maybe you
23 need to order him to do that, Your Honor. I don't
24 think this ---

25 THE COURT: I'll decide what I need to do;

1 all right, sir?

2 MR. PILCHER: I done wrote him some letters.

3 I asked him the same thing; had it notarized.

4 THE COURT: Okay. You can step down now.

5 MR. ARIAIL: I call Mr. Erwin to the stand,

6 Your Honor.

7 THE COURT: Come around and be sworn, please,

8 sir.

9 THE CLERK: Mr. Erwin, please place your left
10 hand on the bible and raise your right hand.

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

15 THE WITNESS: I do.

16 THE CLERK: Thank you. You may be seated.
17 Please state your full name for the record.

18 THE WITNESS: John Kenneth Erwin, Jr.

19 THE CLERK: Thank you.

20 JOHN KENNETH ERWIN, JR.,

21 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MR. ARIAIL:

24 Q. All right. Mr. Erwin, thanks for coming today.

25 And you've heard the testimony of Mr. Pilcher in

1 regards to this. First and foremost, I think the key
2 issue in this case is an audiotape, apparently, existed
3 or was not turned over. Do you remember reviewing that
4 or getting a copy of that?

5 A. I never had a copy of the actual tape. What we
6 had was a supplemental report that's in discovery that
7 had the substance of the interview. The morning of the
8 guilty plea, we went over -- me and Mr. Pilcher
9 reviewed that. And he wanted to plead guilty. He
10 acknowledged that that was what he said. Never had the
11 actual tape, but he acknowledged that the report that
12 we had was what he had said.

13 Q. Okay. And the report, I read the report, and
14 basically it says how it happened and all that and I
15 guess going into the room and all that. Now, the tape,
16 he's saying there was -- and I can give you a copy of
17 what came from the Brough Law Firm, if I can. This is
18 Exhibit Number 1. Basically it says the approximate
19 time that you stated, that was 4358, the approximate
20 time that you stated, I'm an accessory no doubt, at
21 521. That's what he says -- that's what Chris Brough
22 says is on the tape. Now, I don't have a copy of the
23 tape. But in your evaluation of everything, you got
24 what the officer said?

25 A. Right.

1 Q. You have that now?

2 A. Uh-huh (affirmative).

3 Q. Would that have changed your position in this
4 case?

5 A. It doesn't seem like it would. I'm an accessory
6 no doubt, you know, we talked about hand-of-one is the
7 hand-of-all. Him being involved in ---

8 MR. PILCHER: Your Honor.

9 THE COURT: Let him finish his testimony,
10 then you'll have a chance to talk to your attorney.

11 All right, sir.

12 A. Like I said, I haven't heard the tape, but it
13 sounds like this would not have changed anything that
14 we talked about.

15 Q. Okay. And that was -- in going back through it,
16 was that inconsistent with, I guess, the statement that
17 he gave or what was in the supplemental report? Did
18 you see anything that was different from that?

19 A. No.

20 Q. Okay. In this case he went up and I guess there
21 was a plea and he stepped down, I think, a couple of
22 times in regards to it?

23 A. Yes.

24 Q. One of the issues during the plea, and we can --
25 the transcript will speak for itself -- was he said, I

1 didn't have a gun.

2 A. Right.

3 Q. At some point he acknowledges that he was part of
4 it and went on with the plea; is that correct?

5 A. Correct.

6 Q. Now, were there -- I know we've gotten into this
7 prosecutorial misconduct, whether or not Lucas turned
8 things over. Do you know, I mean, if Lucas withheld
9 this from you or didn't give it to you? I mean, what's
10 the standard process with that?

11 A. I'm not aware of there being intentional
12 withholding in this case. I mean, the -- you know,
13 when we get discovery, we have this cover sheet with
14 the table of contents on it. There's not a tape listed
15 on there. And in fact, there is one mentioned in the
16 discovery.

17 Q. Right.

18 A. So we knew one existed. But I don't think that
19 Lucas was withholding it from me.

20 Q. Okay. And it was specifically referenced in one
21 of those documents; correct?

22 A. Yes.

23 Q. Okay. Did you ever talk to Detective Arterburn
24 on this?

25 A. I don't think so, no.

1 Q. Okay. Do you remember having a discussion with
2 my client in regards to the audio or saying there's an
3 audiotape?

4 A. I remember reviewing discovery with him. And I'm
5 going off my notes here, because I don't necessarily
6 remember, you know, frame by frame exactly what
7 happened. It's been a while. I know we reviewed
8 discovery. I know we talked about the statement. I
9 don't remember, nor is there anything in my notes,
10 reflecting that there was some kind of outcry about
11 there not being a tape or wanting to hear the tape or
12 needing to hear the tape, you should plead guilty. I
13 don't remember anything like that.

14 Q. Right. So I mean, the way I look at it, I mean,
15 the way -- you tell me if this is -- he had a statement
16 that he gave to the detective.

17 A. Uh-huh (affirmative).

18 Q. Then there was potentially some inconsistencies
19 in that statement, but the detective was going to
20 testify that he admitted to doing it; is that correct?
21 Is that ---

22 A. Yeah. If we were going to go to trial,
23 obviously, the detective would have testified about
24 what he heard and he had a written report that would
25 let us know at that point, you know, pre-plea, pre-

1 trial, to have an idea of what the officer would be

2 testifying to ---

3 Q. Correct.

4 A. --- because we've got his report.

5 Q. But you thought, and correct me if I'm wrong, you

6 thought that was enough to get him convicted, what the

7 officer had said?

8 A. Yes.

9 Q. Were there any other witnesses or any other co-
10 defendants or anybody give any statements against him?

11 A. Against Mr. Pilcher?

12 Q. Yeah. Did anybody ---

13 A. I'd have to look. I don't ---

14 Q. I think at one point during the plea, I think

15 there's some reference that his co-defendants got

16 twenty and I think one of them got twenty-five?

17 A. Yeah. The co-defendants had already plead at

18 that point. Whether or not they had made statements

19 against him, I couldn't tell you right sitting here

20 today. But I know that they had already plead at that

21 point.

22 Q. Okay. When he plead, do you think he had full

23 knowledge and understanding of the facts of the case,

24 elements of the charges and his potential sentence

25 ramifications?

1 A. Yeah. That's all the stuff that we talked about
2 right before the plea.

3 Q. Okay. He's stated there might be some issues
4 understanding -- mental issues maybe -- that he didn't
5 understand what was going on. Do you remember at the
6 time if he had any potential issues there?

7 A. I don't remember there being a mental health
8 complaint. I do, from the transcript in reviewing it,
9 I remember this episode because it was kind of that he
10 was -- we went up for the first time for the plea. The
11 first time through, Judge Miller going through the
12 colloquy, you know, do you understand what's going on
13 here today and talking about his mental health
14 medications, that came up. And eventually the plea was
15 stood down because Mr. Pilcher seemed to indicate that
16 he did not understand what was going on. We went -- I
17 went back into the holding cell with him right after
18 that to find out what was going on and talk to him and
19 he -- basically he told me that he had been on a hunger
20 strike and that's why he was kind of loopy and maybe he
21 didn't understand, but what he wanted to do was have
22 lunch and then try to plead during the afternoon and
23 perhaps he would be clearer headed then. And so that's
24 what we did.

25 Q. Okay. Do you remember giving him a copy of his

1 discovery before his plea?

2 A. No. We reviewed the discovery together.

3 Q. Okay.

4 A. I know that at that point he did not have a copy.

5 He asked for one right after the plea and we had one

6 sent down to him in SCDC, you know, as soon as we

7 could.

8 Q. Okay. But you fully went over the written

9 discovery, I guess, that you have in your file?

10 A. Oh, yeah.

11 Q. How many times do you think you met with him

12 before?

13 A. Twice. I know it was twice total. I met him

14 first at a preliminary hearing in Greer, city court

15 with Judge Mimms. That would have been March 2nd,

16 2012. That was the first time I met Mr. Pilcher. And

17 he was in SCDC at the time for charges from

18 Spartanburg, I believe.

19 Q. Right.

20 A. And so the next time I saw him was when they

21 brought him up for a plea day, and that was the day he

22 ended up pleading guilty. We reviewed discovery. He

23 told me he wanted to plead guilty. So that's what we

24 did.

25 Q. Okay.

1 A. So it was only twice.

2 MR. ARIAIL: Your Honor, I have no further
3 questions.

4 THE COURT: Cross examination?

5 CROSS EXAMINATION

6 BY MS. RATIGAN:

7 Q. Did you file the usual *Brady* and Rule 5 motions?

8 A. I did.

9 Q. And with the exception of this audiotape, do you
10 believe you received full discovery?

11 A. Oh, yeah.

12 Q. And you independently reviewed that?

13 A. Yeah. I mean, I would have gone over it before
14 we went over it together.

15 Q. And then you did review all that with Mr.
16 Pilcher?

17 A. Yes, ma'am.

18 Q. Okay. So you knew, because of the discovery,
19 that he had given that statement to the Greer police?

20 A. Yes, ma'am.

21 Q. And did he tell you the facts and circumstances
22 behind or surrounding how and why he gave that
23 statement?

24 A. Let's see. You know, I don't remember if he -- I
25 don't remember if we specifically went over like the

1 facts and circumstances of him giving this statement.

2 He acknowledged that he had given the statement, and
3 that basically the report and the discovery as we went
4 over it was a pretty accurate representation of that
5 statement.

6 Q. Okay. Did you review with him the elements of
7 all these charges?

8 A. Yes, ma'am.

9 Q. In your opinion, based on your conversations with
10 Mr. Pilcher and a review of the discovery, were there
11 any viable defenses?

12 A. There were not.

13 Q. And you were aware that he, Mr. Pilcher, had been
14 taking various psychiatric drugs?

15 A. To tell you the truth, I was not aware of that
16 until we were in front of Judge Miller for the first
17 shot at the plea and he said all that stuff. That was
18 the first time I had heard that.

19 Q. Okay.

20 A. So after that I was aware of it.

21 Q. In meeting with him at the preliminary hearing,
22 did you have any red flags about his ability to
23 understand your conversations?

24 A. No.

25 Q. And the day of the plea, after y'all stood down

1 and he had lunch, had a full stomach, did he appear to
2 understand why he was there and what the purpose of the
3 hearing was?

4 A. Yes.

5 Q. Do you believe if you had additional time you
6 would have achieved a different outcome in this case?

7 A. No.

8 Q. Did you discuss with Mr. Pilcher the right to
9 file an appeal?

10 A. I don't remember if we did or not. I know that,
11 I know that he didn't tell me he wanted an appeal. I
12 know that I probably would have told him that he had
13 the right to appeal his guilty plea. Again, it's been
14 a while. I couldn't tell you for certain that we did.
15 I'm pretty sure I would have, and I know for a fact he
16 didn't ask me to.

17 Q. And if he had asked you to file an appeal, would
18 you have done so?

19 A. Absolutely.

20 Q. In your opinion were there any appealable issues
21 from this guilty plea?

22 A. None at all.

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

24 THE COURT: Any redirect?

25 MR. ARIAIL: No, Your Honor.

1 THE COURT: All right. Thank you, Mr. Erwin,
2 you may step down.

3 MR. ARIAIL: Your Honor, that's our case.
4 And if we can just keep the record open so I can submit
5 the tape.

6 MR. PILCHER: Can I say something?

7 THE COURT: All right. We've got four
8 exhibits ---

9 MR. PILCHER: Can I say something?

10 THE COURT: Sir?

11 MR. PILCHER: I asked can I say something?

12 THE COURT: What do you need to say?

13 MR. PILCHER: This is on the record; right?

14 THE COURT: Yes, sir.

15 MR. PILCHER: Okay. I would like for my
16 attorney to file a memorandum of law in support of my
17 allegations, one. And for two, if you do not rule on
18 every issue I raised, I would like for my attorney to
19 file a 59(e) motion on the issues and also file an
20 appeal if you deny my PCR. Just so if he don't do it,
21 it's on record in case I didn't ask it.

22 THE COURT: You put on the record what you
23 want your attorney to do. Thank you, sir.

24 All right. I'll take this under advisement and
25 issue an order.

3 THE COURT: You, too.

4

5 [END OF REQUESTED TRANSCRIPT OF RECORD]

CERTIFICATE OF REPORTER

1
2 I, the undersigned Danette P. Hanks, Official
3 Court Reporter for the Thirteenth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate, and complete transcript
6 of record of all the proceedings had and evidence
7 introduced in the trial/hearing of the captioned case,
8 relative to appeal, in the Court of Common Pleas for
9 Greenville County, South Carolina, on the 19th day of
10 February, 2014.

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

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

15 July 2, 2014

16
17
18 

19 Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-7210
COUNTY OF GREENVILLE	)	
	)	
Eddie James Pilcher, Jr.,	)	
S.C.D.C. No. 303616,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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PAUL B. WICKENSIMER
2014 APR -9 P 3:11

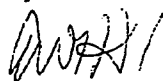
This matter is before the Court by way of an application for post-conviction relief (PCR) filed November 14, 2012. The Respondent made its return on May 3, 2013. An evidentiary hearing into the matter was held on February 19, 2014 at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified at the PCR hearing. Also testifying was the Applicant's trial counsel, John "Jake" Kenneth Erwin, Jr., Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and Court's Exhibit 1, and Applicant's Exhibits 1-4.¹

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant waived

¹ This Court left the record open in order to allow PCR counsel to obtain an audio recording. Counsel provided copies of this recording to both the Court and the Respondent. This Court has reviewed that recording.

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presentment to the Greenville County Grand Jury on charges of kidnapping (2012-GS-23-2618), armed robbery (2012-GS-23-2619), and first-degree burglary (2012-GS-23-2620). He was represented by John "Jake" Kenneth Erwin, Jr., Esquire.

On June 26, 2012, the Applicant pled guilty. The Honorable Edward W. Miller sentenced the Applicant to concurrent terms of fifteen years for kidnapping, fifteen years for armed robbery, and fifteen years for first-degree burglary. The Applicant did not appeal.

ALLEGATIONS

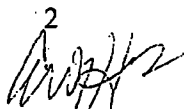
In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failed to provide the Applicant with his discovery.
 - b. Failed to advise the Applicant his due process rights had been violated.
 - c. Failed to ensure the Applicant had an evaluation.
 - d. Failed to file an appeal.
2. Due process violations:
 - a. Warrants were not timely filed and served.
3. Prosecutorial misconduct:
 - a. Failure to act on the warrants pursuant to Rule 3, SCRCrimP.
4. Subject matter jurisdiction:
 - a. Charges were not disposed of within 180 days.
 - b. Charges were not presented to the Grand Jury and the Applicant did not sign a written waiver of presentment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Set forth below are the relevant findings of fact and conclusions of law as required by

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S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

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

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

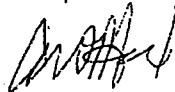
The Applicant stated plea counsel represented him for four months and that they had one meeting at the preliminary hearing and a second meeting on the day he pled guilty. The Applicant stated he had extensive psychiatric issues but that plea counsel did not request an evaluation. The Applicant stated he did not see all of the evidence but that plea counsel told him what the officers said. The Applicant stated an audio recording from the Greer Police Department would have refuted the State's case and he would not have pled guilty if plea counsel had this recording. The Applicant stated plea counsel should have obtained this recording because it was mentioned in the discovery materials. The Applicant stated plea counsel should not have let him plead guilty to these charges because he was an accessory. The



Applicant stated plea counsel never explained the theory of accomplice liability. The Applicant stated he had no witnesses for plea counsel to contact. The Applicant stated the plea judge never advised him of the right to appeal but that, regardless, he asked plea counsel to file an appeal.

Plea counsel testified he had two meetings with the Applicant and that they reviewed the discovery materials (including the Applicant's statement to the Greer Police Department), the elements of the charges, and that there were no viable defenses. Plea counsel testified the Applicant did not say he was taking any psychiatric medication and that he did not learn about this until the plea hearing. Plea counsel testified the Applicant appeared to understand their conversations. Plea counsel testified he was aware of the existence of the Greer recording and was not aware of it being intentionally withheld by the State. Plea counsel testified his file did not reflect the Applicant wanted to hear the recording. Plea counsel testified he did not recall whether they discussed the right to appeal but that there were no appealable issues in this case and the Applicant never asked him to file an appeal. Plea counsel testified he did not need additional time to prepare this case.

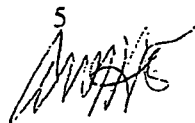
Regarding the Applicant's general claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. The Applicant admitted to the plea judge that he was guilty and that he participated in the crime. (Plea transcript, pp.13-14; p.23). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.12-14). Plea counsel testified he met with the Applicant and they discussed the discovery materials, elements of the charges, and the facts of the case. Plea counsel testified the outcome of this case would not have been different if he had additional time for preparation. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's



testimony is credible. This Court finds that, while the Applicant and plea counsel only had two meetings before the plea hearing, the Applicant has failed to demonstrate that additional time or preparation would have affected the outcome of his case. See Smith v. State, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Harris v. State, 377 S.C. at 75, 659 S.E.2d at 145) (“The brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.”).

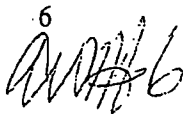
This Court finds the Applicant failed to meet his burden of proving plea counsel should have requested a competency evaluation. Plea counsel testified the Applicant never advised him of any mental health issues and that he was unaware the Applicant was taking psychiatric medication until the day of the guilty plea hearing. Plea counsel further testified the Applicant appeared to understand their discussions about his case. This Court finds plea counsel is credible and notes he was not obligated to request a competency evaluation when he had no indications from the file or his interactions with the Applicant that such may be necessary. See, e.g., Lee v. State, 396 S.C. 314, 721 S.E.2d 442 (Ct. App. 2011). Regardless, the Applicant “bears the burden of proof and is required to show by a preponderance of the evidence he was incompetent at the time of his plea.” Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992). To sustain a claim that plea counsel was ineffective for failing to request competency hearing, the petitioner must show reasonable probability that he would have been found incompetent. Id. at 233, 417 S.E.2d at 596. This Court finds that, as the Applicant has failed to present any evidence or testimony to support his claim that he should have undergone a competency evaluation, he has failed to meet his burden of proof.

This Court finds the Applicant failed to meet his burden of proving plea counsel should have obtained the audio recording made by the Greer Police Department before his guilty plea

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hearing. The Applicant argued he was never aware of the recording until the day of the plea hearing and that he would not have pled guilty if plea counsel had received this recording. The Applicant argues plea counsel's actions forced him to enter an involuntary guilty plea. Plea counsel testified he was aware of the existence of the recording and that it was not intentionally withheld by the assistant solicitor. This Court finds plea counsel's testimony is credible. This Court notes that when there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). This Court finds the Applicant was aware of the charges against him, the potential penalties, and the consequences of pleading guilty. See Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (finding that, before a defendant can enter a guilty plea, he "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived"). This Court notes the Applicant has failed to demonstrate he would have gone to trial if plea counsel had obtained the recording. This is especially true in light of the fact that the Applicant gave a statement to the police in which he admitted his involvement. (Plea transcript, p.17).

This Court finds the Applicant failed to meet his burden of proving plea counsel should have filed a notice of appeal. Plea counsel testified there were no appealable issues from the guilty plea hearing and that the Applicant never asked him to file an appeal. This Court finds

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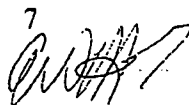
plea counsel's testimony is credible. This Court notes plea counsel has a constitutionally imposed duty to consult with the defendant about an appeal only when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). This Court finds the Applicant has failed to meet his burden of proving either that he asked plea counsel to file an appeal or that plea counsel had reason to think he would have wanted to file an appeal after he voluntarily pled guilty.

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

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

Due Process

In his PCR application, the Applicant argues his right to due process was violated because the State did not comply with Rule 3(c), SCRCrimP. This Court finds this allegation is without merit. See State v. Culbreath, 282 S.C. 38, 40, 316 S.E.2d 681, 681 (1984) (“[T]he failure of the solicitor to act upon a warrant within ninety (90) days . . . does not within itself invalidate a warrant or prevent subsequent prosecution.”). Further, this Court finds the Applicant failed to provide evidence of any prejudice that may have resulted from any delay. See, e.g., State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007) (noting one must prove prejudice in order

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to prevail on an allegation that one's speedy trial rights were violated).

Prosecutorial Misconduct

The Applicant argued there was prosecutorial misconduct in this case because the assistant solicitor either had the Greer recording (and did not disclose it) or he could have obtained the Greer recording. This Court finds the allegation is without merit. To establish vindictive prosecution a defendant must prove "that (1) the prosecutor acted with genuine animus toward the defendant and (2) the defendant would not have been prosecuted but for that animus." United States v. Wilson, 262 F.3d 305, 314 (4th Cir. 2001). This Court notes the Applicant's argument that the recording was withheld fails because of plea counsel's testimony that he was aware of the existence of this recording. Regardless, this Court finds the Applicant has failed to meet his burden of demonstrating the assistant solicitor in this case acted with "genuine animus."

Subject Matter Jurisdiction

In his PCR application, the Applicant argues the plea judge did not have subject matter jurisdiction to accept his guilty pleas. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005). Indictments are not evidentiary or jurisdictional documents – they are merely notice documents. Id. at 102, 610 S.E.2d at 500. The Applicant initialed the appropriate area of the sentencing sheets and indicated he wished to waive presentment of these indictments. The plea judge also explained the waiver and the Applicant agreed to go forward. (Plea transcript, pp.7-8). This Court finds the Applicant was on notice of the charges he was facing. This Court further finds

the Applicant has failed to meet his burden of proving the plea judge did not have subject matter jurisdiction to accept his guilty pleas and impose sentences.

All Other Allegations

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

CONCLUSION

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

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



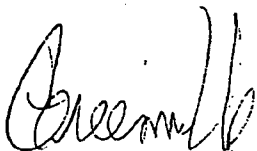
IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 3 day of April, 2014.



G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit



South Carolina.

WITNESSES

Dale A Arterburn

Greer Police Department

11/30/2011

ARREST WARRANT NUMBER
1582453**ACTION OF GRAND JURY***Foreperson of Grand Jury***VERDICT***Foreperson of Petit Jury*
Date:**DOCKET NO. 2012-GS-23-**

LCM

002618

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS**TERM 2012****THE STATE****VS.****EDDIE JAMES PILCHER, JR.***sup**Emark*

0095

Indictment for

KIDNAPPING**VIOLATION § 16-03-0910****RECEIVED****APR 13 2012**Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR KIDNAPPING

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That EDDIE JAMES PILCHER, JR. did in Greenville County, on or about the 8th day of September, 2010, unlawfully seize, abduct, confine, inveigle, decoy or carry away OVENEIL RAMOS-MORALEZ, without the authority of law. This is in violation of §16-03-0910 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Eddie James Pilcher Jr

AKA:

Race: BLACK Sex: M Age: 28

DOB: SS#:

Address:

City, State, Zip: Gaffney, SC 29341

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Kidnapping / Kidnapping

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2302618

A/W#: 1582453

Date of Offense: 9/9/2010

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS/CSC ☐ §17-25-45

w/minor 1st or 2nd 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

Marchant, Lucas

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUJ Breath Test Fee)

§ 56-5-2942(I) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$100

\$12

\$25

\$500

\$25

\$150

\$50

\$40/ca

\$5

\$

\$

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:

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

Clerk of Court/ Deputy Clerk

Court Reporter: Woods

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2130

Sentence Date: 6-26-2012

WITNESSES

Dale A Arterburn

Greer Police Department

11/30/2011

ARREST WARRANT NUMBER
1582446

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-23-
LCM

002619

The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS

TERM 2012

THE STATE

vs.

EDDIE JAMES PILCHER, JR.

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

RECEIVED

APR 13 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

**INDICTMENT FOR
ARMED ROBBERY**

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That EDDIE JAMES PILCHER, JR. did in Greenville County, on or about the 8th day of September, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Jewelry, money, and/or ATM Cards from the person or presence of Oveneil Ramos-Moralez. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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

John C. McA
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Eddie James Pilcher Jr

AKA: _____

Race: BLACK Sex: M Age: 28

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Gaffney, SC 29341

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Armed Robbery

INDICTMENT/CASE#: 2012GS2302619

A/W#: 1582446

Date of Offense: 9/9/2010

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
w/minor 1st or 2nd 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.

ATTORNEYS: Marchant, Lucas 72747 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.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 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) \$500 \$

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

§ 14-1-213 (Drug Court Surcharge) \$150 \$

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

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

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

TOTAL \$

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: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Words

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2130

Sentence Date: 6-26-2012

002620

WITNESSES

Dale A Arterburn

Greer Police Department

11/30/2011

ARREST WARRANT NUMBER
1582449

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012-GS-23-
LCM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2012

THE STATE

vs.

EDDIE JAMES PILCHER, JR.

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

RECEIVED

APR 13 2012

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

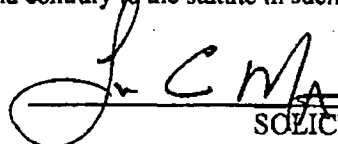
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That EDDIE JAMES PILCHER, JR. did in Greenville County, on or about the 8th day of September 2010, willfully and unlawfully enter the residence of OVENEIL RAMOS-MORALEZ located at [REDACTED] Greer, South Carolina, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: the entering or remaining occurred during the nighttime hours, and/or while armed with a deadly weapon. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Eddie James Pilcher Jr

INDICTMENT/CASE#: 2012GS2302620
A/W#: 1582449
Date of Offense: 9/9/2010
S.C. Code §: 16-11-0311
CDR Code #: 0079

AKA:
Race: BLACK Sex: M Age: 28
DOB: SS#:
Address:
City, State, Zip: Gaffney, SC 29341
DL#: SID#:
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First 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 2nd 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: Inc. Lucas 72742 SC Bar# Defendant Attorney for Defendant 79941 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.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100
§ 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) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCJA Surcharge) \$5 \$ 5
3% to County (if paid in installments) \$
TOTAL \$

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: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/ Deputy Clerk Paul B. Woods
Court Reporter: Woods
SCCA/217 (03/2011)

Presiding Judge 2130
Judge Code: 2130
Sentence Date: 4-24-2012