

RECEIVED

JAN 28 2015

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Fairfield County

William Jeffrey Young, Circuit Court Judge

ROBERT J. MILLER III,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002102

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

J. CROOM HUNTER
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

GUILTY PLEA TRANSCRIPT DATED APRIL 3, 2012 1

APPLICATION FOR POST-CONVICTION RELIEF 41

RETURN 50

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JULY 28, 2014 57

ORDER OF DISMISSAL 98

INDICTMENTS 109

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF FAIRFIELD
4 2011-CP-20-00035, 36, 37

5
6 State of South Carolina
7 vs.
8 Robert James Miller

9
10
11 Winnsboro, South Carolina
12 April 3, 2012
13 Before the Honorable Casey Manning

14
15 APPEARANCES
16 For the State: Riley Maxwell
17 For the Defendant: Mike Lifsey
18
19 Reported by: Michael C. Watkins
20 Official Court Reporter

21
22
23
24
25

1	Guilty Plea:	3
2	Sentencing:	37
3	Certificate:	39

4

5

NO EXHIBITS

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 MR. MAXWELL: This is Robert James Miller, Mr. Miller
2 is represented by Mr. Mike Lifsey. Mr. Miller has been
3 indicted for three counts of financial identity fraud, those
4 are docket numbers 2011-GS-20-35, 36, and 37, he is entering
5 guilty pleas to all three charges, that is the 10 year
6 statute. He has a host -- I think eight other charges all
7 related to those identity fraud charges, those indictments
8 will be dismissed per his guilty plea to these first three
9 charges.

10 THE COURT: All right.

11 MR. MAXWELL: This is a straight-up plea, the State is
12 asking for a ten to 15 year sentence. Of course, anything
13 above ten years we would be asking for at least one of the
14 charges to be run consecutive to the first charge. I have
15 handed up a restitution order, it's a lot of money. The
16 victim, Mr. Bundrick, is out of roughly \$29,000 and some
17 change.

18 THE COURT: This is Mr. Bundrick over here to my left?

19 MR. MAXWELL: Yes, sir.

20 THE COURT: How much is he out of?

21 MR. MAXWELL: He is out of 29,000 and some change,
22 there's also some banks that are out of some money because
23 of these transactions. Of course, the State's position is
24 if he gets a ton of time we realize that probation and
25 paying the money back may not be -- may be just kind of a

1 moot point at that point in time. But we've handed it up
2 and however you wish to order that will be fine.

3 THE COURT: Thank you, sir. Mr. Lifsey, you represent
4 Robert Miller?

5 MR. LIFSEY: Yes, sir, I do.

6 THE COURT: Have you explained to Mr. Miller the
7 charges contained in these three indictments, the possible
8 punishments and his rights including his constitutional
9 right to a jury trial?

10 MR. LIFSEY: Yes, sir.

11 THE COURT: And in your opinion does Mr. Miller
12 understand the charges, the punishments and his rights?

13 MR. LIFSEY: I do.

14 THE COURT: How does he indicate to you he wishes to
15 plead, guilty or not guilty?

16 MR. LIFSEY: Guilty, Your Honor.

17 THE COURT: Do you agree with his decision to plead
18 guilty?

19 MR. LIFSEY: Yes, sir, I do.

20 THE COURT: From your investigation of the facts and
21 circumstances surrounding these cases, do you feel that the
22 State could produce sufficient evidence to convince a jury
23 here in Fairfield County of Mr. Miller's guilt and if he
24 were to stand trial on these charges his convictions would
25 be probable?

1 MR. LIFSEY: Yes, sir.

2 THE COURT: And has Mr. Miller been ordered to submit
3 to a mental examination to determine his competency to stand
4 trial?

5 MR. LIFSEY: He has not.

6 THE COURT: Any question in your mind, Mr. Lifsey, that
7 Mr. Miller is, in fact, competent to enter these pleas?

8 MR. LIFSEY: No, sir. I will tell you he is taking
9 some psychiatric medications but they are mainly for anxiety
10 and depression. He has always communicated with me very
11 clearly, at least in the last few months communicated with
12 me very clearly and I believe he fully understands what he
13 is doing here.

14 THE COURT: All right. You are Robert Miller; is that
15 correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Miller, before I can accept your plea
18 of guilty it is necessary for me to make sure that you are
19 making this plea freely and voluntarily. To do that, sir, I
20 need to ask you a series of questions. At any point during
21 my questioning of you if you do not understand anything I
22 say or any words that I use please stop me and I will be
23 more than happy to repeat or explain anything that I've
24 said, Mr. Miller. Additionally I will be more than happy to
25 stop this plea and allow you more time if you need to

1 consult with your attorney, Mr. Lifsey, do you understand,
2 sir?

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: How old are you, Mr. Miller?

5 THE DEFENDANT: I'm 40 years old.

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

7 THE DEFENDANT: I got a GED in the 11th grade.

8 THE COURT: What kind of work have you done?

9 THE DEFENDANT: I have worked for Amazon.com as a
10 problem solver and a shipping clerk, I've done a lot of
11 warehouse work.

12 THE COURT: Well Mr. Miller, have you ever been treated
13 for the abuse of alcohol or drugs or for mental illness?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: What have you been treated for and when?

16 THE DEFENDANT: Sir, I'm recently being treated for
17 alcohol dependency, I've been being treated for that since
18 December 6th of last year.

19 THE COURT: Are you still in that program?

20 THE DEFENDANT: Yes, sir, I am.

21 THE COURT: Now, have you taken any medications, drugs
22 or alcohol in the past 24 hours?

23 THE DEFENDANT: I have taken my medication, sir.

24 THE COURT: What sort of medication are you on, sir?

25 THE DEFENDANT: I have taken antidepressants and an

1 antianxiety medication, Your Honor.

2 THE COURT: Do these medications prevent you from
3 knowing or understanding and appreciating what you're doing
4 here this morning?

5 THE DEFENDANT: No, sir.

6 THE COURT: You know what you're doing; is that
7 correct?

8 THE DEFENDANT: Yes, sir, I do.

9 THE COURT: Do you agree, Mr. Lifsey, that Mr. Miller
10 knows and understands and appreciates what he is doing here
11 this morning?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now Mr. Miller, you heard your attorney,
14 Mr. Lifsey, say that he has explained to you these charges
15 contained in the three indictments, the possible punishments
16 and your rights including your constitutional right to a
17 jury trial and that you understand these things; is that
18 correct?

19 THE DEFENDANT: That is correct, Your Honor.

20 THE COURT: Mr. Miller, you are first before me on
21 indictment number 2011-37, the State versus Robert Miller,
22 this is an indictment for financial identity fraud, do you
23 understand this charge?

24 THE DEFENDANT: Yes, sir, I do.

25 THE COURT: This indictment alleges that you did here

1 in Fairfield County on or about August 28th of 2010 without
2 the authorization or the permission of the victim, William
3 Bundrick, and with the intent to unlawfully appropriate the
4 financial sources of the victim to your own use or the use
5 of a third party, did access the financial resources of the
6 victim through the use of identifying information. Do you
7 understand this allegation, Mr. Miller?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And this is what you want to plead guilty
10 to, financial identity fraud; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You realize that by doing so, sir, you
13 could go to jail for ten years?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Knowing then, sir, that you can go to
16 prison for ten years while pleading guilty to this charge do
17 you still wish to plead guilty to it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Next, Mr. Miller, I have before me
20 indictment number 2011-36, State versus Robert Miller once
21 again and this is an indictment for financial identity
22 fraud. And once again, sir, I would assume you understand
23 the charge; is that correct?

24 THE DEFENDANT: That's correct.

25 THE COURT: This particular indictment, sir, alleges

1 that you did here in Fairfield County on or about
2 September 2nd of 2010 without the authorization of the
3 victim, William Bundrick, once again and with the intent to
4 unlawfully appropriate the financial resource of the victim
5 for your own use or the use of a third party did access the
6 financial resources of the victim through the use of
7 identifying information, the exact same allegation of the
8 previous indictment. So once again I would assume you
9 understand this allegation, is that correct, Mr. Miller?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And once again you want to plead guilty to
12 financial identity fraud; is that correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And once again you realize by pleading
15 guilty to this charge you can go to jail for ten years?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You need to speak up, Mr. Miller.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Knowing that you still want to plead
20 guilty; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Next, Mr. Miller, I have before me
23 indictment number 2011-35, State versus Robert Miller, and
24 once again this is an indictment for financial identity
25 fraud, and once again I would assume you understand the

1 charge, is that fair enough?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: This particular indictment, sir, alleges
4 that you did here in Fairfield County on or about
5 September 7th of 2010 without the authorization or
6 permission of the victim, William Bundrick and with the
7 intent to unlawfully appropriate the finances of the victim
8 for your own use or use of a third party did access
9 financial resources of the victim through the use of
10 identifying information. And once again, Mr. Miller, I
11 would assume you understand this allegation, and once again
12 I also would assume that you want to plead guilty to this
13 charge; is that correct?

14 THE DEFENDANT: That's correct.

15 THE COURT: And you understand once again that by doing
16 so, sir, you could go to prison for ten years. Knowing that
17 once again you still want to plead guilty; is that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Miller, are you currently on probation
20 or parole for any prior offenses?

21 THE DEFENDANT: No, sir.

22 THE COURT: Mr. Miller, I can run these sentences on
23 these three charges or indictments consecutively, that is
24 put one after the other and add one to the other and if I
25 did so you're looking at 30 years in the penitentiary, do

1 you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Understanding then, sir, that you could go
4 to prison for 30 years by pleading guilty to these three
5 charges do you still wish to plead guilty to them?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Miller, when you plead guilty you have
8 to give up certain basic rights. First of all you have to
9 give up your right to remain silent, this is your right
10 against self-incrimination, Mr. Miller, your right to say
11 nothing at all. No one can compel you to come into court to
12 provide evidence or testify against yourself, do you
13 understand this, sir?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Secondly, Mr. Miller, when you plead guilty
16 you have to give up your right to a jury trial. That is
17 your right for a jury here in Fairfield County to decide
18 whether or not you are guilty of these three charges beyond
19 a reasonable doubt. A jury would base this decision on
20 whatever evidence the State would introduce at trial against
21 you and also on whatever evidence you and your lawyer,
22 Mr. Lifsey, may wish to introduce. Now sir, I emphasize may
23 wish to introduce, Mr. Miller, because in a trial you would
24 be presumed innocent and would not have to prove anything
25 and you could not be convicted unless the State could

1 convince all 12 jurors of your guilt beyond a reasonable
2 doubt. The jury's decision would have to be unanimous
3 meaning all 12 would have to agree that you committed all
4 three of these offenses, do you understand that, sir?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Thirdly, Mr. Miller, when you plead guilty
7 you give up your right to confront and to be confronted by
8 the witnesses against you, that is your right to see, hear
9 and cross examine any witnesses the State may call to
10 testify against you during a trial. And additionally,
11 Mr. Miller, by pleading guilty you give up your right to
12 subpoena and call witnesses on your own behalf, that is
13 someone that may testify for you. Do you understand that,
14 sir?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, do you understand these rights that I
17 just mentioned to you, Mr. Miller?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand, sir, that when you plead
20 guilty you have to give up these constitutional rights?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is that what you want to do?

23 THE DEFENDANT: Yes, sir, it is.

24 THE COURT: You want to give up your constitutional
25 rights?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, you realize you will not receive a
3 jury trial on any of these three indictments by pleading
4 guilty, you understand that, don't you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Once again, Mr. Miller, you are pleading
7 guilty to financial identity fraud three counts, each carry
8 ten years, I have explained to you that you are facing 30
9 years in the penitentiary by pleading guilty to these three
10 charges. Now sir, considering what I've just said to you I
11 will ask you once again, how do you wish to plead to these
12 charges, guilty or not guilty?

13 THE DEFENDANT: Sir, I wish to plead guilty.

14 THE COURT: You realize, Mr. Miller, that when you
15 plead guilty you admit the allegations contained in these
16 indictments against you, do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I tell you that because you may have some
19 defenses to these three charges, of course, I have no way of
20 knowing that, but you you need to realize by pleading guilty
21 here today you give up any defenses you might have, do you
22 understand that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Additionally I tell you that, Mr. Miller,
25 because when you were arrested by the Fairfield County

1 Sheriff's Department you may have given some type of
2 incriminating statements, that is made some admissions or
3 confessions about your guilt, you need to realize by
4 pleading guilty here today you waive your right to contest
5 if you gave any statements whether or not they were taken or
6 obtained from you freely and voluntarily in accordance with
7 your constitutional rights. Do you understand that, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: So Mr. Miller, I'll ask you once again, did
10 you commit these offenses?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: So once again, Mr. Miller, you're telling
13 me you're pleading guilty to indictments 2011-35, 2011-36
14 and 2011-37 because you did, in fact, in Fairfield County
15 back on September 7th of 2010, September 2nd of 2010 and
16 August 28th of 2010 you accessed the financial information
17 of Mr. William Bundrick and you used it for purposes of
18 getting money through the bank or something like that, you
19 understand all of that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You're pleading guilty because you are, in
22 fact, guilty, is that correct, sir?

23 THE DEFENDANT: That's correct, sir.

24 THE COURT: Very well. Solicitor, have there been any
25 plea negotiations?

1 MR. MAXWELL: Your Honor, me and Mr. Lifsey have
2 discussed this case at length. We at different points in
3 time had talked about -- there was an offer on the table of
4 seven years at some point with really no set agreement to
5 the restitution. I don't think Mr. Lifsey disagrees with
6 the amount I've put forward but in the manner of how -- of
7 structuring Mr. Miller making the payments we haven't really
8 talked much about how -- or haven't really agreed to how
9 that's going to happen. It's the State's position that he's
10 pleading straight-up today and we think he deserves a lot of
11 time.

12 THE COURT: And you will drop additional charges I
13 think you mentioned earlier. What are those charges?

14 MR. MAXWELL: Those charges relate to the use of
15 financial cards that were used to access these accounts
16 after they were set up and the money was moved to the
17 fraudulent accounts. There was two counts of financial card
18 fraud, there were three more counts of criminally receiving
19 goods. Basically when I was working with the sheriff's
20 department and we were figuring out what to charge
21 Mr. Miller with prior to his arrest we wanted to make sure
22 we covered all of our bases, everything is related to the
23 financial identity fraud essentially. I think the card
24 fraud of actually using the cards after the fraud was
25 perpetrated, the moving of money to these accounts we

1 thought that fit the bill of criminally receiving goods and.
2 we did a catch-all of just grand larceny just in case we had
3 any issues down the line.

4 THE COURT: So eight charges are being dismissed and he
5 is pleading to these three counts, is that correct, Mr.
6 Lifsey?

7 MR. LIFSEY: Yes, sir, Your Honor.

8 THE COURT: Anything additionally that needs to be
9 added to the record in connection with the plea
10 negotiations, Mr. Lifsey?

11 MR. LIFSEY: No, sir, Your Honor.

12 THE COURT: You still wish to continue to plead guilty,
13 Mr. Miller?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Has anyone promised you anything or has
16 anyone held out any of hope of reward to get you to plead
17 guilty?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Has anyone threatened you or used force
20 against you to plead guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone used any pressure or
23 intimidation to get you to plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you had enough time to make up your

1 mind as to whether or not you want to plead guilty?

2 THE DEFENDANT: Yes, sir, I have.

3 THE COURT: Are you pleading guilty of your own free
4 will and accord?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now Mr. Miller, are you satisfied with the
7 manner in which your lawyer here, Mr. Lifsey, the way he has
8 advised and represented you on these charges?

9 THE DEFENDANT: Yes, sir, I am very satisfied.

10 THE COURT: Have you talked to him for as often and as
11 long as you feel it necessary for him to properly represent
12 you?

13 THE DEFENDANT: Yes, sir, I have, Your Honor.

14 THE COURT: Do you need more time to talk to him?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you understood your talks with him?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Miller, has Mr. Lifsey done everything
19 for you you feel he should do or could do on your behalf in
20 advising and representing you on these charges?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Has he done anything you feel he shouldn't
23 have done?

24 THE DEFENDANT: No, sir.

25 THE COURT: Are you completely satisfied with his

1 services?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any complaints, Mr. Miller,
4 against anyone at the Fairfield County Sheriff's Office?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you have any complaints of anyone here
7 in the 6th Circuit Solicitor's Office?

8 THE DEFENDANT: No, sir.

9 THE COURT: Is there anything you want to discuss with
10 me about anything I've discussed with you or anything at
11 all?

12 THE DEFENDANT: No, sir.

13 THE COURT: You realize, Mr. Miller, you have a right
14 to appeal this guilty plea and whatever sentence I impose
15 but if you intend to appeal you need to file a notice of
16 intent to appeal within ten days of today's date, do you
17 understand that, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Additionally, Mr. Miller, once you are in
20 the department of corrections if you think or feel you have
21 some complaints against your lawyer or against the
22 solicitor's office or against the sheriff's department or
23 against anybody else involved in this case you need to make
24 those complaints known by filing a post conviction relief
25 petition by one year of today's date, do you understand

1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Solicitor?

4 MR. MAXWELL: Your Honor, I'll first give you his prior
5 record. In 1992 he was convicted of uttering false
6 documents two counts, also convicted in Maryland for writing
7 bad checks. In 2005 he was convicted of burglary in the
8 second degree. In 2006 he served an 18 month prison
9 sentence for grand larceny. And in 2010 he was convicted of
10 criminal domestic violence. Everything on about the --

11 THE COURT: Is that his prior record, Mr. Lifsey?

12 MR. LIFSEY: Yes, sir.

13 THE COURT: Mr. Miller, do you agree that is your prior
14 record?

15 THE DEFENDANT: Yes, sir, Your Honor.

16 THE COURT: Continue, Solicitor.

17 MR. MAXWELL: Your Honor, everything I'm about to tell
18 you took place basically between August of 2010 and October
19 of 2010. At that time Mr. Miller -- he has a codefendant in
20 this case, her name is Kayla Hudson Miller, I believe at
21 some point they may have gotten married, they were in a
22 relationship of some sort and I think they have a child in
23 common. They were best of my knowledge homeless at this
24 time and were taken in by Mr. Bundrick's brother. The
25 Bundricks all live in the same neighborhood on Bundrick Road

1 so they were living in basically a house not far away from
2 Mr. Bundrick. During the summer of 2010 Mr. Bundrick leaves
3 Fairfield County and I believe goes to Alaska for a vacation
4 and his house is basically unattended during that point in
5 time. At some point Mr. Miller, and I'm not sure exactly
6 how he did it, but when Mr. Bundrick gets gone Mr. Miller
7 gets his hands on Mr. Bundrick's birthdate, social security
8 number and basically the account number and routing number
9 of Mr. Bundrick's checking account. Mr. Bundrick was
10 banking at that time with Provident Bank, a local bank here
11 in Fairfield, and on June 6th of 2010 he had \$101,718.49 in
12 that checking account. I will go ahead and tell you by
13 about mid-October it was less than I think \$15 in that
14 checking account. Essentially what Mr. Miller did was use
15 Mr. Bundrick's birthdate, social security number and go
16 online and set up accounts in Mr. Bundrick's name at Bank
17 of America, Charles Schwab, HSBC and E-trade. Once he set
18 up these accounts in Bundrick's name with Mr. Bundrick's
19 home address he then transferred the money in the banking
20 account at Provident on different occasions, on several
21 different occasions to these other accounts. E-trade, Bank
22 of America, HSBC and Charles Schwab sent basically debit
23 cards, ATM cards to Mr. Bundrick's residence, because
24 Mr. Bundrick wasn't at home Mr. Miller was able to get
25 access and gain possession of those cards which he then was

1 able to deplete those fraudulent accounts basically starting
2 in early August and lasting until mid-October. Mr. Bundrick
3 returned I believe in October, made the report to the
4 sheriff's department that basically his checking account had
5 been depleted. It didn't take -- I think initially the
6 sheriff's department, what made them suspect Mr. Miller or
7 his girlfriend or wife, Kayla Miller, that they had some
8 involvement was they were able to find these other accounts
9 and were able to look at or get some ATM photos throughout
10 South Carolina where Kayla was photographed using the ATM
11 cards that belonged to Mr. Bundrick. In early November
12 Kayla Hudson Miller was arrested, she was actually arrested
13 at the courthouse, she had in her possession at that time
14 several financial cards with Mr. Bundrick's name on them.
15 She did give the investigators the location of where
16 Mr. Miller was and he was caught within an hour or so at a
17 storage unit here in Fairfield County. When he was caught
18 there he had \$9,000 in cash in the storage unit, he also had
19 several cards with Mr. Bundrick's name on it that belonged
20 to these fraudulent accounts. E-trade did a fairly thorough
21 investigation as to what all had occurred. E-trade actually
22 had a phone call of where Mr. Miller called into E-trade and
23 we have the recording purporting to be Mr. Bundrick
24 basically complaining about he tried to use the ATM card
25 somewhere and it was insufficient funds because one of the

1 transactions hadn't gone through yet from moving it from the
2 Provident account to the E-trade account. Fairly clearly
3 you can tell, at least in my opinion, that it was
4 Mr. Miller's voice on that phone and that's certainly
5 something we would put forth at trial that his voice matched
6 the person who made that phone call. An additional thing
7 Mr. Miller did that he's not actually pleading guilty to
8 because I think it's a jurisdictional issue but it's part of
9 the restitution and I think it's something important for you
10 to know about, is Mr. Bundrick owned some stock in I believe
11 it is some type of oil or energy company out of New York, I
12 believe the holding or the financial company managing the
13 stocks was in New York. Mr. Miller was somehow able to
14 liquidate \$58,000 and some change worth of Mr. Bundrick's
15 stock, have a check sent to E-trade that was then put into
16 the E-trade account. The only thing I guess that was
17 positive out of this is a lot of this money when Mr. Miller
18 and Kayla Miller was caught a lot of money was still in the
19 accounts. A lot of money was gone but a good bulk of it was
20 still in these accounts and Mr. Bundrick was made whole on
21 the Provident account, he was not made whole on the stock
22 sale. After the Provident account was I guess made whole
23 back --

24 THE COURT: So Mr. Bundrick got \$139, or was it
25 \$139,000?

1 MR. MAXWELL: That's for the Provident account,
2 Provident is out of that money.

3 THE COURT: \$139.

4 MR. MAXWELL: \$139 just for fees. Mr. Bundrick,
5 initially he was out -- he got his whole checking account
6 money back, the 101,000 and some change but did not -- was
7 still out of the \$58,000 and change from the stock sale.
8 There was still \$19,000 in the E-trade account in Mr.
9 Bundrick's name, at some point over the past year or so we
10 were able to go on the record before Judge Goldsmith I
11 believe that signed an order that E-trade -- basically told
12 E-trade to give that money to Mr. Bundrick so Mr. Bundrick
13 did get \$19,000 back of the \$58,000. We also were able to I
14 think maybe at the same time able to give -- Judge Goldsmith
15 ordered the sheriff's department to give the \$9,000 they got
16 from Mr. Bundrick's (sic) possession when he was arrested
17 back to Mr. Bundrick.

18 THE COURT: So he got -- we're talking about 27 or
19 \$28,000 back from that 58,000, he's out of the rest of it.
20 Is that the \$29,000?

21 MR. MAXWELL: Yes, sir.

22 THE COURT: He is actually out a loss of \$29,000.

23 MR. MAXWELL: By my math, yes, sir. I believe HSBC
24 encountered a big loss, I think that was the account that
25 was most depleted from the use of the ATM card and debit

1 transactions over the period of time that Mr. Miller had
2 them in his possession and Mr. Bundrick was away in Alaska.
3 The sheriff's department was able to determine not where
4 every transaction occurred but transactions occurred
5 throughout the eastern seaboard, parts of Myrtle Beach,
6 Columbia, between Columbia and Myrtle Beach up into
7 Pennsylvania and up the eastern seaboard. These are places
8 that we knew Mr. Miller -- Mr. Miller I think is originally
9 from Pennsylvania, at one point in time we had some
10 information that he was living in Myrtle Beach so basically
11 we were able to match up the use of these cards with where
12 Mr. Miller or Kayla Miller were -- where they were located
13 at that period of time back in September and October of
14 2010. I don't know if Mr. Miller ever gave an exact
15 statement admitting to everything to the investigators but I
16 think he has made statements admitting to some type of
17 responsibility before. Of course, he is pleading guilty
18 today but I don't think there was ever any full confession,
19 full statement taken by the investigators. I do believe his
20 girlfriend did give information to investigators admitting
21 to the knowledge --

22 THE COURT: She has charges pending?

23 MR. MAXWELL: She has charges pending.

24 THE COURT: Same charges or --

25 MR. MAXWELL: I think she's charged with a bulk of what

1 he's charged with. It was our view that she was mainly
2 guilty of using the cards to deplete the accounts at several
3 different locations of the ATM's. There was a car seized by
4 the sheriff's department that we believe that was bought
5 with the stolen funds that was basically seized when Kayla,
6 the girlfriend, was arrested. That car is still in
7 possession of the sheriff's department, it's a 2002 Saturn,
8 I believe. Mr. Bundrick has also agreed to take --
9 basically take that as partial payment of the restitution.
10 I think we first may have to work that out with Kayla
11 Miller's case first, that's only going to be worth about
12 \$3,000, I believe, I Kelly Blue Booked it last week and
13 roughly about that amount. If that did occur I would just
14 write a letter to the probation department noting that this
15 amount was set off from the initial amount. I think that's
16 all I have. I think Mr. Bundrick would like to speak at the
17 appropriate time.

18 THE COURT: All right. Now, Mr. Lifsey and Mr. Miller,
19 you heard the presentation by the solicitor's office, is all
20 of that substantially accurate and correct?

21 MR. LIFSEY: Yes, sir.

22 THE COURT: Is that fair enough, Mr. Miller?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Very well, sir. I find there's a
25 substantial factual basis for your plea, I further find the

1 decision to plead guilty to be freely, voluntarily,
2 knowingly and intelligently made, that you've had the advice
3 of competent counsel with whom you indicated to me you are
4 completely satisfied with and therefore I accept the plea.
5 And I will be happy at this time to hear from Mr. Bundrick.
6 Anything you would like to tell me, sir.

7 SPEAKER: Yes, Your Honor. Under the circumstances of
8 this particular case and how it has impacted my life
9 financially and also how it continues to impact my life, and
10 I will explain briefly in just a moment. But one of the
11 first things is that I am out of the \$29,000 and there's not
12 any chance of my ever getting that money back, so that part
13 I have lost for good I assume. Another thing, I recently
14 went out and purchased an automobile within the last month
15 and during the different credit applications that I tried to
16 get I was turned down on numerous ones because my credit is
17 so bad because of this case and what Robert James and Kayla
18 did that my credit scores with all three major credit
19 bureaus in the United States were totally ruined. I
20 happened to by luck find one finance company that would
21 finance that car, it was at a higher --

22 THE COURT: You didn't get it from Freddy Wilson then,
23 did you?

24 SPEAKER: No. I got it from Toyota by the way in
25 Lugoff. But any way, to make a long story short, not only

1 is my credit ruined as far as going out and borrowing money
2 is concerned, my insurance on cars and homes and various
3 things also are up because of the bad credit reviews. And
4 in view of the circumstances of this case and how it has
5 impacted my life I recommend to the Court, this is my
6 personal opinion, that you impose the maximum sentence on
7 this individual.

8 THE COURT: All right.

9 SPEAKER: And so that's all.

10 THE COURT: All right. Thank you, Mr. Bundrick.
11 Anything further from the State?

12 MR. MAXWELL: Nothing else further, Your Honor.

13 THE COURT: Mr. Lifsey, I will be happy to hear from
14 you.

15 MR. LIFSEY: Thank you, Your Honor. I represent
16 Mr. Miller and I guess I began representing him probably in
17 the fall of 2010. He was initially represented by another
18 lawyer in my office but I got involved at that point, and
19 I'm going to tell you a little bit more in a minute but it's
20 hard for me to overemphasize what a dramatic change in him
21 and his personality that I have observed from when I first
22 became involved from where I am today. Let me first say a
23 word or two if I could about the facts of this case. First
24 of all, he is guilty of these charges, there is no question
25 about that and I don't want anything that I'm about to say

1 to seem like I'm questioning his guilt.

2 THE COURT: You have a job to do and I'm going to let
3 you do it.

4 MR. LIFSEY: But I want to explain to you that he is
5 guilty of stealing money, he's guilty of accessing these
6 accounts. I do not believe he enriched himself to the tune
7 of over \$100,000, that doesn't mean he's not responsible for
8 all of that loss. I think what happened here is basically
9 what the solicitor said, he gained access to these accounts
10 and he personally took I think he would freely admit
11 probably in excess of \$20,000. I think after he did that I
12 think Kayla went wild with the cards and withdrew money from
13 all over. Now, that doesn't make him not responsible for
14 that because she could not have done that but for his
15 actions so I don't mean in any way to downgrade his ultimate
16 responsibility, but I don't think -- there's no bucket of
17 money out there hiding somewhere, there is no large part of
18 money. I think he took about a little over 20 grand
19 personally, I think they recovered about ten of that or
20 9,000 and some change from the storage facility, he
21 acknowledges that he is responsible for the entire amount
22 because of his actions. Certainly we want to pay whatever
23 restitution is appropriate and there's no question the
24 victim is out \$29,000. I will tell you that we have never
25 contested, in fact we would affirmatively consent to any

1 forfeitures of money that has already been taken. The car,
2 the car I believe was in his name, he would gladly sign
3 over. I know that's a drop in the bucket as far as the
4 money that this victim is owed but he would gladly sign over
5 that in an effort to make this victim whole. Your Honor, he
6 is 40 years old, he is originally from Maryland. This is
7 his father and stepmother here, Robert, Senior, this is Lynn
8 Miller, I think one or both of them may want to talk to you
9 about their son. He's got three children altogether, he's
10 got two twin boys that I guess are 17 now, they live up in
11 the D.C. area. He's got a child with Kayla who I guess
12 would be approaching about two or 20 months old now. He's
13 got a number of both mental and physical problems, now they
14 are not excuses for his conduct but I think there's sort of
15 explanations for where he is today. He is taking a number
16 of medications. I want to hand up to the Court if I
17 could -- and by the way, I'm going to hand the solicitor
18 copies of everything that I'm going to give you. A couple
19 of things -- these are just printouts from the drug store,
20 but to give you some idea of the medications he is taking,
21 the bulk of them are antidepressants and antianxiety
22 medications. He is also HIV positive, he is taking Altrippo
23 (phonetically) which is a fairly high powered and very
24 expensive --

25 THE COURT: Solicitor, have you had a chance to look at

1 this?

2 MR. MAXWELL: Your Honor, I think I'm aware of what it
3 contains.

4 MR. LIFSEY: It is my belief that we have forwarded a
5 lot of his medical information to the solicitor a couple of
6 months ago. It's a very expensive medication. I will tell
7 you it costs about \$2,400 that you may notice from the
8 printout. Because of Pennsylvania's version for assistance
9 of folks with medical problems they were able to cover most
10 of that, it's my understanding when he was in South Carolina
11 that we did not cover that medication for him. When I
12 first -- and first of all you let me add this, I think he is
13 definitely an alcoholic. He insists to me -- and at this
14 point I have learned more about Mr. Miller than he probably
15 felt comfortable sharing with me to begin with but I think
16 he is -- I think his substance abuse really probably is
17 limited to alcohol but I think he is just somebody that
18 can't drink. When you combine the inability to drink at all
19 with somebody who drinks to near unconsciousness, when you
20 combine that with somebody who is already depressed and
21 already has some mental health issues you get someone whose
22 judgment is just terrible. Now once again, none of that
23 excuses his conduct. But when I first met Mr. Miller he was
24 a different person to deal with than he is now. Since in
25 the -- of course, he was in jail for I guess almost four

1 months originally after he was arrested in November, he was
2 arrested November 3rd, didn't bond out until February 28th
3 which was a few days shy of four months, he later on ended
4 up in the last spring had a little problem with his bondsman
5 who locked him back up, so he has done four or five months
6 in jail already on these charges. I really doubted at one
7 point that we would even make it to this point today. When
8 he bonded out initially, and I guess this would have been
9 toward the end of February and the spring of 2011 he was
10 hard to track down. When I would call him he would -- or he
11 would call me periodically just sort of crying
12 uncontrollably, sob, threatening suicide. I would
13 immediately tell him to go to the doctor, go to the
14 hospital, but he was in a state way out of where he is
15 today. He also didn't frankly show a lot of remorse for
16 what he had done in this case. Now, the good news, if there
17 is good news, is that at some point I guess when you reach
18 these kinds of -- and I know you have been a judge a long
19 time and you have certainly seen plenty of addicts, but at
20 some point before you can turn around you have to bottom
21 out. And I think probably some point last year or earlier
22 this year we bottomed out and he went home and moved back
23 with his folks in Pennsylvania, they live in McConnellsburg,
24 Pennsylvania which I think is not too far from Maryland in
25 that area. And they've got him involved in a number of

1 things. They've got him involved in treatment for his
2 alcoholism, they've gotten him counseling, they've gotten
3 him in church-based counseling. I would hand up for the
4 Court a couple or three letters that I would like the Court
5 to look at.

6 THE COURT: Have you seen these, Solicitor?

7 MR. LIFSEY: They're in that packet of information.

8 MR. MAXWELL: I think I know what they all contained
9 again, Your Honor.

10 MR. LIFSEY: And if you would I will give you a few
11 moments to read those.

12 THE COURT: No, go ahead, I can read them while you
13 talk.

14 MR. LIFSEY: Basically he is getting counseling both as
15 to his substance abuse problem and as to his mental health
16 problems and frankly some spiritual guidance that he greatly
17 needs. The folks who he has worked with -- and of course,
18 one of those letters is from his stepmother, I don't know if
19 she's going to be able to speak today, I know she's
20 emotional about things, but he's got people up there who are
21 willing to work with him. He cannot make up for the wrong
22 that he did in this case really in any way but he wants to
23 try. He is willing to cooperate with the State in the
24 prosecution of his codefendant, he's willing to sign over
25 the documents as necessary, he's willing to make an effort

1 to pay on restitution. I think it's -- like the solicitor,
2 I try to be realistic, this is a lot of money but
3 Mr. Bundrick is out of it so even if only a portion gets
4 paid back anything he gets is money paid back and I think
5 there's some value in him doing that. Of course, he is
6 pleading guilty. I know it has taken us a little while to
7 get to this point, but I will say he has not made
8 Mr. Bundrick sit through a trial, he has not forced the
9 State to drag in banks and banking officials from wherever
10 they would need to to do this. Your Honor, I know he has
11 got a record and I know I am asking a lot but I am asking
12 you and I would ask you to consider imposing a ten year
13 sentence but suspending it and put him on probation in light
14 of the five months that he has already served, in light of
15 the cooperation he is willing to do with the State and in
16 light of his current health situation and his willingness to
17 attempt to pay restitution in this matter. If the Court
18 feels that is not appropriate I would ask the Court to take
19 into account all of the facts and circumstances and listen
20 to this case, I know you will, and impose a sentence that
21 you think is appropriate keeping in mind that he is coming
22 forward and pleading guilty. If you would, I know his
23 father wants to speak and I know he wants to speak at some
24 point.

25 THE COURT: I would be happy to hear from everybody

1 else. Yes, sir?

2 SPEAKER: Yes, sir. My name is Robert James Miller,
3 Sr. What I've got to say is my son, he got in trouble up in
4 Maryland and everything and then he packed his bags and
5 moved down here to South Carolina. He's got a brother that
6 lives down here, he went to work with his brother, the
7 company his brother worked for. He was doing real good for
8 a year and he got laid off, and instead of coming back home
9 he just hung around down here and got in all kind of trouble
10 and got to drinking and got in the mess he got in. I was
11 just assumed -- I kept telling my wife he's got to get to
12 the bottom to straighten himself out, she kept wanting go to
13 bring him home, I said, "That ain't going to do any good, he
14 needs to stay down there and get things straightened out."
15 Then I was home one day, she sent money down and he came up
16 on the bus a few months ago, so what am I supposed to do? I
17 tried to do what I could do to get him straightened out,
18 which I have done. I got him to church a couple times a
19 week, got him counseling, got him stuff for his addiction
20 and medicine for his HIV. He has been seeing a half dozen
21 counselors up there, he's always busy going some place
22 seeing somebody. We have got a guy up there from the
23 Alcoholics Anonymous Center checking on him all the time, he
24 gets a lot of services up there which he never got down here
25 so I can see a change in him, he really turned around a

1 little bit. Other than what, what he's done he's done, you
2 know, and he's going to have to pay his own penalty for
3 that.

4 THE COURT: I understand, Mr. Miller, I have a son,
5 too. Thank you, sir. Yes, ma'am, I will be happy to hear
6 from you.

7 MR. LIFSEY: Her name is Lynn Miller.

8 SPEAKER: My name is Lynn Miller, I'm his stepmother.
9 I just want to say that really since he was up here in the
10 beginning of December I really got to know him better as a
11 person and we've gotten closer as a mother and son
12 relationship. And being around his family I know that
13 addictions have ruled with his sister as well as with him
14 and there's been a change, both of them seem to be
15 confronting their addiction issue as did he years ago and I
16 just hope that he is able to continue that or will continue
17 that.

18 THE COURT: Thank you, Mr. Miller. Yes, sir,
19 Mr. Lifsey?

20 MR. LIFSEY: If you would allow it I believe Mr. Miller
21 would like to speak.

22 THE COURT: Sure, I will be happy to hear from you.

23 THE DEFENDANT: Your Honor, do I speak to you directly
24 or do I need to --

25 THE COURT: Beg your pardon?

1 THE DEFENDANT: Do I have permission to speak to the
2 victim directly.

3 THE COURT: That's up to the victim and the solicitor,
4 I don't care.

5 MR. MAXWELL: I don't necessarily -- if he wants to
6 address Mr. Bundrick.

7 THE COURT: Go ahead and say what you want to say,
8 Mr. Miller.

9 THE DEFENDANT: Mr. Bundrick, I really wanted to tell
10 you that I'm very sorry. I did not realize how much trouble
11 this would cause for you and that it would continue to cause
12 trouble for you. I thought that it was a victimless crime
13 and that no one would get hurt, I do apologize. I realize
14 that you trusted me. You took me to church and you helped
15 me and you believed in me and you wanted to see me get help
16 and I realize how much this has hurt you and I just wanted
17 to say that I hope that some day you can find it in your
18 heart to forgive me for my mistakes. I hope that I can make
19 the restitution quickly and make up for what I have done.
20 And also I would like to apologize to my parents for
21 everything I have put you through. And I wanted to
22 apologize to you, Your Honor, for being here and the
23 mistakes that I have made.

24 THE COURT: All right. Thank you, sir. Anything
25 further, Mr. Lifsey?

1 MR. LIFSEY: No, sir.

2 THE COURT: Solicitor, one question. Now, Mr. Bundrick
3 is actually out of the \$29,025.75?

4 MR. MAXWELL: That's correct, Your Honor.

5 THE COURT: He has been made whole by insurance and
6 banks or whatever. Help me out a little bit.

7 MR. MAXWELL: The money that was in the checking
8 account the initial fraud was coming from, 101,000 the banks
9 made him whole. Where he is out of the money is after
10 Mr. Bundrick (sic) had liquidated that account he liquidates
11 the stocks in this company up in New York for \$58,000 and
12 that is the bulk of what Mr. Bundrick is out of because
13 those stocks were sold. Of course, when the fraud was
14 caught they just don't give him the stocks back, and luckily
15 there was still \$19,000 of that money still in one of the
16 accounts that he was able to get back. And then he got cash
17 back --

18 THE COURT: So once again he was out of about \$30,000
19 basically.

20 MR. MAXWELL: Yes, sir, that he is out.

21 THE COURT: Anything further?

22 MR. LIFSEY: No, sir.

23 THE COURT: Mr. Miller, on indictment number 2011-35,
24 State versus Robert J. Miller, it's an indictment for
25 financial identity fraud, I sentence you to ten years. On

1 indictment number 2011-37, identity fraud, I sentence you to
2 ten years. Those sentences are concurrent one with the
3 other. On indictment number 2011-36, State versus Robert
4 Miller, financial identity fraud, sentence to ten years
5 suspended to three years probation, that's consecutive to
6 the ten years I have imposed upon on you already. Special
7 conditions of probation when you finish your first ten year
8 sentence is what you make restitution to Mr. Bundrick in the
9 amount of \$30,000. I'll leave open whether or not --
10 because I don't think the Court should be a collection
11 agency for banks or other institutions, I will leave that
12 matter open for somebody to deal with at the appropriate
13 time. Thank you all so very much, we will take a short
14 break.

15 (End of the hearing.)
16
17
18
19
20
21
22
23
24
25

1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Court of General Sessions
7 for Fairfield County, South Carolina, on the 3rd day of
8 April, 2012.

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

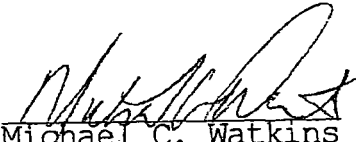
11

12

July 11, 2013

13

14


Michael C. Watkins
Court Reporter

15

16

17

18

19

20

21

22

23

24

25

**THIS PAGE INTENTIONALLY
LEFT BLANK**

41
WJD

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of FAIRFIELD)

2012 AUG 30 P 2:29

ROBERT JAMES MELLER, JR #316047)

Full name and prison number (if any) of Applicant)

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

2012. C.P. 20. 352

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 BROAD RIVER CORRECTIONAL INSTITUTION
4460 BROAD RIVER ROAD, COLUMBIA, SC 29210
2. Name and location of Court which imposed sentence FAIRFIELD COUNTY GENERAL
SESSIONS COURT, S. CONGRESS ST., WINNSBORO, SC 29180
3. Name(s) of co-defendant(s) (if any)
KAYLA L. (HUDSON) MILLER
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-20-035 FINANCIAL IDENTITY FRAUD
 - (b) 2011-GS-20-036 FINANCIAL IDENTITY FRAUD

(c) 2011-65-20-037 FINANCIAL IDENTITY FRAUD

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

- (a) APRIL 3, 2012 - 10 YEARS @ DEPARTMENT OF CORRECTIONS
- (b) 4/3/12 - 10 YEARS SUSPENDED, 3 YEARS PROBATION (CONSECUTIVE)
- (c) 4/3/12 - 10 YEARS @ DEPARTMENT OF CORRECTIONS (CONCURRENT)

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?

YES

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

- (a) the name of each Court to which you appealed:
 - i. SOUTH CAROLINA COURT OF APPEALS
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. NO RESPONSE
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. AUGUST 28, 2012
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

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

- (a) N/A

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: *PLEASE SEE ATTACHMENT # 1*

(a) _____

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): *PLEASE SEE ATTACHMENT # 1*

(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. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

- i. N/A
- 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?

N/A

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

(a) which grounds have been presented:

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

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

- i. N/A
- 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) NOT RELEVANT

(b) _____

(c) _____

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

(a) your arraignment and plea? YES

(b) your trial, if any? N/A

(c) your sentencing? YES

(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. MICHAEL H. LIFSEY, 6TH CIRCUIT PUBLIC DEFENDER'S OFFICE
P.O. BOX 1809, LANCASTER, SC 29721

ii. _____

iii. _____

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

i. PLEA & SENTENCING

ii. _____

iii. _____

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

RELEASE FROM CUSTODY, WITHDRAWAL OF GUILTY PLEA, RETURN OF SEIZED PROPERTY (\$11,000.00 CASH AND DEFENDANTS VEHICLE) AND SUCH OTHER RELIEF AS THE COURT MAY DEEM APPROPRIATE.

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 RICHLAND)

VERIFICATION

I, ROBERT JAMES MILLER, 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.

Robert James Miller Jr.

SWORN to and subscribed before me this 28 day of Aug, 2012.

Eugene Keeth Jr. (L.S.)
Notary Public

My Commission Expires: APRIL 4, 2016

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

I, ROBERT JAMES MILLER, 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.

Robert James Miller Jr.
Applicant

SWORN or affirmed to and subscribed before me this
28 day of Aug, 2012.

Eugene Keith J.
Notary Public

My Commission Expires: April 4, 2016

ATTACHMENT #1

10 STATE CONCISELY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOU ARE BEING HELD IN CUSTODY UNLAWFULLY:

- (A) LACK OF JURISDICTION OVER SUBJECT MATTER OR DEFENDANT
- (B) INEFFECTIVE ASSISTANCE OF COUNSEL
- (C) CONSTITUTIONALLY DEFECTIVE GUILTY PLEA

11 STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (10):

- (A) OFFENSES OCCURRED OUTSIDE THE TERRITORIAL JURISDICTION OF THE STATE OF SOUTH CAROLINA. SOLICITOR LACKED AUTHORITY TO INITIATE PROSECUTION AND THE CONVICTING COURT LACKED AUTHORITY TO TRY THE OFFENSES.
- (B) DEFENDANT WAS DENIED A FAIR TRIAL BY THE GROSS INCOMPETENCE OF HIS ATTORNEY AND THERE IS "REASONABLE PROBABILITY" THAT, BUT FOR COUNSEL'S ERRORS, HE WOULD NOT HAVE PLEADED GUILTY AND WOULD HAVE INSISTED ON GOING TO TRIAL AND THE OUTCOME WOULD HAVE BEEN DIFFERENT. COUNSEL MISLED THE DEFENDANT INTO MAKING A DISADVANTAGEOUS CHOICE BY INDICATING THAT ANY RISK OF SUFFERING THE MAXIMUM PENALTY COULD BE AVOIDED BY PLEADING GUILTY. DEFENDANT REASONABLY BELIEVED THAT THE JUDGE WOULD GRANT A MORE LENIENT SENTENCE IF HE FOLLOWED HIS ATTORNEYS ADVICE TO AVOID A TRIAL, PLEAD GUILTY AND SHOW REMORSE BY MAKING A STATEMENT TO THAT EFFECT AND APOLOGIZING TO THE COURT AND JUDGE. DEFENDANT WAS COERCED INTO PLEADING GUILTY WITH THE EXPECTATION HE WOULD RECEIVE A SENTENCE

RANGING FROM PROBATION TO A TERM OF "NO MORE THAN FOUR YEARS" IN PRISON. PER HIS ATTORNEYS "EDUCATED GUESS" AND STATEMENT THAT "HE IS NOT A HANGING JUDGE". (IN FACT, THE SOLICITOR'S INITIAL PLEA OFFER WAS FOR A MAXIMUM SENTENCE OF (7) SEVEN YEARS IN EXCHANGE FOR A GUILTY PLEA TO FOUR (4) COUNTS OF FRAUD).

IN ADDITION TO FAILING TO HIRE A FORENSIC ACCOUNTANT AS PROMISED (AND APPROVED BY THE HONORABLE JUDGE GOLDSMITH), COUNSEL DID NOT HONOR THE DEFENDANTS REQUEST FOR A RESTITUTION HEARING TO CHALLENGE THE \$29,000 THE STATE CLAIMED WAS MISSING. AS A RESULT, THE JUDGE ERRONEOUSLY ORDERED THE DEFENDANT TO PAY \$30,000 IN RESTITUTION AND FAILED TO GIVE ADEQUATE CONSIDERATION TO THE FACT THAT THE DEFENDANTS CAR AND APPROX. \$11,000 CASH WAS SEIZED.

- (c) DEFENDANT UNINTELLIGENTLY SURRENDERED HIS CHANCE OF ACQUITTAL AT TRIAL IN EXCHANGE FOR CONCESSIONS THAT THE SOLICITOR HAD AGREED TO BUT THE DEFENDANT DID NOT RECEIVE. DEFENDANT PLED GUILTY WITH THE EXPECTATION THAT THE SOLICITOR WOULD REFRAIN FROM MAKING A RECOMMENDATION TO THE JUDGE AND THAT HE WOULD NOT OPPOSE ANY REQUEST FOR LENIENCY BY THE DEFENDANT. THIS WAS CONSTRUED AS MEANING THAT THE PROSECUTION WOULD BE BARRED FROM VOLUNTEERING ANY INFORMATION DETRIMENTAL TO THE DEFENDANT INCLUDING ANY ORAL OR WRITTEN STATEMENTS FROM ANY VICTIMS.

GUILTY PLEA WAS INVOLUNTARY, COERCED AND BROKEN.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2012-CP-20-0352
COUNTY OF FAIRFIELD)	
)	
Robert James Miller, Jr.,)	
S.C.D.C. No. 316047,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed August 30, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Fairfield County Clerk of Court's orders of commitment. The Applicant was indicted at the February 2011 term of the Fairfield County Grand Jury for three counts of financial identity fraud (2011-GS-20-035, 036, 037). Mike Lifsey, Esquire represented the Applicant.

On April 3, 2012, the Applicant pled guilty before the Honorable Casey Manning.¹ Applicant was sentenced to two concurrent terms of ten (10) years each. On the third charge, Applicant was sentenced to a consecutive term of ten (10) years, provided that upon the service of three (3) years, the balance would be suspended with probation. Restitution of \$30,000.00 was also ordered. The Applicant did not appeal.

¹ As a result of his plea, approximately eight other charges were dismissed. (Tr. p. 3, lines 6-9.)

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

II.

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

1. Ineffective assistance of counsel.
 - a. Counsel misled the Applicant by telling him he would receive a lesser sentence than he did.
 - b. Counsel failed to hire a forensic accountant and did not present defendant's request for a restitution hearing.
2. Lack of subject matter jurisdiction.
 - a. The solicitor and the court lacked authority because the offense happened outside the state of South Carolina.
3. Involuntary guilty plea.
 - a. "Defendant pled guilty with the expectation that the solicitor would refrain from making a recommendation to the judge and that he would not oppose any request for leniency by the defendant."

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 criminal 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.

An Applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

V.

The Applicant’s assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel’s errors, the Applicant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel’s advice was not “within the range of competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "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." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the

record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue.

See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

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

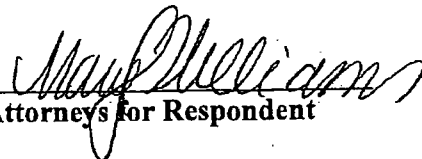
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

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

By:


Attorneys for Respondent

Oct 31, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Robert James Miller,)

2012-CP-20-0352

Applicant,)

v.)


CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,)

Respondent.)

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

Vanessa Cason, Esquire
P.O. Box 2842
Greenville, South Carolina 29602


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 31th day of October, 2013.

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF FAIRFIELD) IN THE COMMON PLEAS COURT
 3 Robert James Miller,)
 4 Applicant,) TRANSCRIPT OF RECORD
 5 -vs-) 2012-CP-20-352
 6 The State.) July 28, 2014
 7) Lancaster, South Carolina

8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

B E F O R E :

HONORABLE W. JEFFREY YOUNG, JUDGE

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

W. MICHAEL HEMLEPP, JR., ESQUIRE
Attorney for the Applicant

CROOM HUNTER, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

	<u>INDEX</u>	
	<u>WITNESSES</u>	<u>PAGE</u>
1		
2		
3	ROBERT JAMES MILLER (AW)	
4	Direct examination by Mr. Hempell	3
5	Cross-examination by Mr. Hunter	16
6	MICHAEL H. LIFSEY (SW)	
7	Direct examination by Mr. Hunter	23
8	Cross-examination by Mr. Hempell	34
9	Redirect examination by Mr. Hunter	39
10		
11		
12		
13		
14		
15		
16		
17		
18	No exhibits entered into evidence.	
19		
20		
21		
22		
23		
24		
25		

Robert James Miller
Direct examination by Mr. Hemlepp

1 THE COURT: All right. This is the case of Robert
2 James Miller, Jr. vs. State of South Carolina.

3 Present at the hearing is the plaintiff with his
4 attorney, Mr. Michael Hemlepp. The state is present and
5 represented by Mr. Croon Hunter.

6 Mr. Hemlepp, are you ready to proceed?

7 MR. HEMLEPP: I am, Your Honor. Thank you.

8 THE COURT: Call your first witness.

9 MR. HEMLEPP: Thank you. I would call the applicant
10 in this case, Mr. Robert James Miller.

11 ROBERT JAMES MILLER, having
12 been first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. HEMLEPP

14 MR. HEMLEPP: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. HEMLEPP: Thank you, Your Honor.

17 Q Mr. Miller, if you could, please, tell us your full
18 name, and then spell your last name for the court reporter
19 to take down.

20 A My name is Robert James Miller, Jr. My last name is
21 spelled M-I-L-L-E-R.

22 Q Okay. In this hearing there's no jury, and all of the
23 decisions will be made by Judge Young who is seated at the
24 judge's bench, which means that he'll have to be able to
25 hear everything you say. I'm going to ask you to speak up

Robert James Miller
Direct examination by Mr. Hemlepp

1 about as loudly as I am right now, because it's a big room
2 and it's hard to hear. Can you do that for me?

3 A Yes, I can.

4 Q Great.

5 Now, before we begin about your post-conviction-relief
6 application I want to talk to you about some other actions
7 that you have pending.

8 You have filed a lawsuit, have you not, from this
9 case?

10 A Yes, I have.

11 Q Who is that against?

12 A That is against solicitor Riley Maxwell and four of
13 the investigators from the Fairfield County Sheriff's
14 office.

15 Q Okay. And you've also filed an action in federal
16 court, is that true?

17 A That is correct, yes.

18 Q And what is the nature of that action?

19 A That is a petition for habeas corpus.

20 Q Okay. You and I have discussed post conviction relief
21 and what Judge Young has the authority to do and not to do.
22 And you understand that the only things that Judge Young is
23 going to be listening to are allegations about your
24 lawyer's performance. We can't really hear about the
25 solicitor's office's performance, or law enforcement.

Robert James Miller
Direct examination by Mr. Hemlepp

1 Those allegations are brought up in other causes of action,
2 these other things that you filed. You understand that, do
3 you not?

4 A Yes.

5 Q Okay. And that's not a question of desire. Judge
6 Young doesn't have the authority to rule on those issues.
7 So we're going to be talking today about Mr. Lifsey and his
8 representation of you.

9 And I'm jumping ahead of myself. In this case did
10 Mr. Lifsey represent you?

11 A Yes, he did.

12 Q Okay. Tell us how that came about.

13 A When I was at the county jail I was initially
14 appointed another public defender from that office, and
15 then Mr. Lifsey was given my case, and I spoke to him about
16 this case.

17 Q Okay. And when you were initially charged, do you
18 remember the charges that you were charged with?

19 A No, I do not.

20 Q Okay. How many charges did you have?

21 A There were initially ten.

22 Q Okay. And what was the nature of those charges? Were
23 they all financial charges?

24 A Yes, they were all dealing with a financial traction
25 card.

Robert James Miller
Direct examination by Mr. Hemlepp

1 Q Okay. And this post-conviction-relief action
2 involving the representation of Mr. Lifsey of you, it
3 involves those financial -- those ten financial charges,
4 correct? There aren't any other charges.

5 A Correct. There was one other charge that was added
6 later, and then it was dismissed.

7 Q Okay. But you never pled guilty to that or got
8 convicted of that.

9 A That is correct.

10 Q Okay. You had an opportunity to be represented by
11 Mr. Lifsey.

12 How many times did you have the chance to talk to him
13 about your charge?

14 A We spoke on several occasions, mostly by telephone and
15 e-mail.

16 Q Okay. Were you able to post a bond and get out of
17 jail on your charges?

18 A Yes, I was.

19 Q Did that make it easier for you to meet with him?

20 A Yes, it did.

21 Q Okay. And did you have the ability to meet him at his
22 office? Did you go to his office to meet with him?

23 A Not until the week before court.

24 Q Okay. Did you meet with him in Fairfield County at
25 all?

Robert James Miller
Direct examination by Mr. Hemlepp

1 A No, I did not.

2 Q Okay. Were you able to discuss your case with him on
3 the phone, by e-mail sufficiently? Do you feel like you
4 had a good communication with Mr. Lifsey?

5 A We had some communication. I don't know if it was
6 good communication.

7 Q Okay. Did you and Mr. Lifsey talk about any defenses
8 that you may have to this charge?

9 A We talked about my medication that I was taking -- and
10 we talked about my medication.

11 Q Okay. Did you also talk about any possible defenses
12 that you may have? These were all financial allegations
13 against you. Did you talk about the ability to be -- if
14 you went to trial what would be your defense to these
15 charges? Did you talk to him about any of those?

16 A No. I don't believe we did, no.

17 Q Okay. Did you and Mr. Lifsey ever talk about the need
18 for a forensic accountant?

19 A Yes. We talked about that while I was still at the
20 county jail.

21 Q Okay. That was before you were bonded out.

22 A Yes.

23 Q What do -- what was your understanding of the -- the
24 necessity of a forensic accountant?

25 A Mr. Lifsey said that the state was asking for me to

Robert James Miller
Direct examination by Mr. Hemlepp

1 pay restitution, and I was disputing the restitution. I
2 felt as though I did not owe any restitution.

3 And I was given financial records, and I was looking
4 at them. And there were a number of things in there where
5 I -- that had happened while I was incarcerated that I
6 could not have done. And Mr. Lifsey had said that he was
7 going to approach the judge and ask him about hiring a
8 forensic accountant. And we had talked about that a couple
9 of times, but he never -- he never hired one.

10 Q Why did he not hire one?

11 A I'm not sure why he didn't hire a forensic accountant.

12 Q Okay. Do you believe that that would have helped you
13 prepare for trial?

14 A I believe that any expert testimony on my behalf would
15 have helped, yes.

16 Q Okay. In the end you pled guilty to these charges.

17 A Yes.

18 Q And was restitution ordered by the judge on these
19 charges?

20 A Yes. I had requested a restitution hearing, and I was
21 told not to ask for a restitution hearing because it
22 wouldn't do any good to get less restitution and get more
23 time, that I risked getting a 10-year sentence.

24 As it turned out, I got the 10-year sentence and I got
25 restitution. It's for a charge that was -- I was never

Robert James Miller
Direct examination by Mr. Hemlepp

1 charged with the crime that the restitution is ordered for.

2 Q Okay. When you say you were never charged for the

3 crime that the restitution was ordered for, which crime?

4 which allegation was that that the restitution was ordered

5 for?

6 A This is an -- the allegation that there was stocks in

7 an account in New York that had been traded on line. And I

8 was ordered to pay restitution for that, but I was never

9 charged with that.

10 Q Okay. Did you plead guilty to that?

11 A No.

12 Q Okay. And do you believe a forensic accountant would

13 have helped you in getting through these records to be able

14 to prepare a defense?

15 A Yes. I most certainly do, yes.

16 Q Okay. To your knowledge did Mr. Lifsey ever obtain

17 permission to get a forensic accountant?

18 A Yes. When he came to the county jail he told me that

19 Judge Goldsmith, I believe, had approved for the budget, or

20 he had given him permission to hire a forensic accountant.

21 And he had discussed two possible candidates.

22 Q Okay. Okay. How long was that prior to you entering

23 into a guilty plea in this case? And I'm not asking you

24 to -- I want you to be as specific as your memory allows.

25 I want you to be as accurate as you can remember.

Robert James Miller
Direct examination by Mr. Hemlepp

- 1 A I believe that would have been 15 months --
- 2 Q Okay.
- 3 A -- before I pled guilty.
- 4 Q Okay. Now, in the guilty plea -- I want to talk to
- 5 you about the issue of the jurisdiction of the Court to
- 6 take a plea. Some of these charges that were -- that you
- 7 were charged with you allege never happened in Fairfield
- 8 County, is that correct?
- 9 A That is correct, yes.
- 10 Q Did your lawyer ever -- did you discuss that with
- 11 Mr. Lifsey?
- 12 A Yes.
- 13 Q Okay. And to your knowledge did he investigate that?
- 14 A No. He did not.
- 15 Q Okay. During the guilty plea did Mr. Lifsey ever
- 16 raise the issue of the jurisdiction of the Court for these
- 17 charges not occurring in Fairfield County?
- 18 A No. The jurisdictional issue was never raised.
- 19 Q Okay. In fact, did the solicitor talk about it to the
- 20 Court?
- 21 A Yes, the solicitor did.
- 22 Q Okay. And is that one of the issues that you put in
- 23 your habeas motion?
- 24 A It is.
- 25 Q Okay. And you understand that that's an issue that a

Robert James Miller
Direct examination by Mr. Hemlepp

1 federal judge will decide as to whether there was
2 jurisdiction. We're only talking about Mr. Lifsey's role
3 in that. You understand that.

4 A Yes.

5 Q Okay. The -- if -- if your -- if you did not -- let
6 me withdraw this. I'm not making a very good question.
7 I'm probably going to confuse you if I continue. Let me
8 rephrase this question.

9 If that were the case why did you choose to plead
10 guilty?

11 A At that point -- after I got arrested four days before
12 court I would have pled guilty to anything just to get it
13 over with. It wasn't fair that they picked me up four days
14 before court.

15 I came down here and went to the lawyer's office to
16 meet with him, and then I got arrested. I was out on bond.
17 I should have never been picked up. And I told him. I
18 said plead guilty to anything to get it over with.

19 Q Okay. Okay. Prior to the plea -- and, I mean, you
20 were picked up four days before the guilty plea. Four days
21 later there was a plea. Do you remember what your offer
22 was? Was there an offer on the table?

23 A The offer was seven years in exchange for a guilty
24 plea to four counts of financial fraud.

25 Q And is that what happened?

Robert James Miller
Direct examination by Mr. Hemlepp

1 A No. It went -- as soon as I got arrested Mr. Lifsey
2 came to the court to see me and told me that the solicitor
3 was withdrawing the plea bargain.

4 Q Okay. Did he give you a reason why?

5 A No.

6 Q Okay. You understand that Mr. Lifsey can't control
7 what the solicitor's office does.

8 A Right.

9 Q He can only deliver the information to you. He can't
10 control that.

11 A Right. But I was told that I only had to plead guilty
12 to three counts instead of four.

13 Q Okay. Okay. And in entering into your guilty plea
14 did you appeal the issue of the jurisdiction of the Court?

15 A I had asked Mr. Lifsey to file an appeal, which he
16 did, and the appeal was dismissed. And later I learned
17 that there were no issues that -- no one had objected to
18 anything during my trial. Since nothing was objected to,
19 then my -- I didn't have any grounds for my appeal.

20 Q Okay. So, now, when you say your trial, you never
21 went to trial. You mean the hearing in which you plead
22 guilty.

23 A The guilty plea.

24 Q Okay. And your appeal was dismissed because there was
25 no objection or ruling by the Court on the jurisdiction of

Robert James Miller
Direct examination by Mr. Hemlepp

1 the Court. Is that what you're testifying?

2 A Yes.

3 Q Okay. And do you believe that had Mr. Lifsey raised
4 the issue of the jurisdiction of the Court that that would
5 have preserved that for appeal, that the appellate court
6 would have been able to rule on that?

7 A Correct, yes.

8 Q Okay. Mr. Miller, I know that there's a lot in your
9 case, and I know that there are a lot of allegations that
10 are unrelated to Mr. Lifsey and his involvement.

11 On the issue of the jurisdiction or the issue of the
12 forensic accountant, is there anything related to those two
13 issues that you think Judge Young needs to know in order to
14 make a ruling in this case?

15 A I -- I think that on the jurisdiction it's my
16 understanding that it's more than just being territorial
17 jurisdiction, that it would also be subject matter
18 jurisdiction.

19 Not only did the offenses not occur in the territorial
20 jurisdiction, but the indictments are -- are illegal. The
21 date -- the dates of the offense have been changed. They
22 were whited out, and they were changed. And also the
23 offense itself was changed.

24 I have submitted a copy of my rap sheet. That's not
25 even what I was arrested for. The charge that I was

Robert James Miller
Direct examination by Mr. Hemlepp

1 arrested for carries a maximum penalty of five years. The
2 financial identity fraud which the indictments were changed
3 to carries a maximum penalty of ten years. And that's what
4 I pled guilty to. And I -- I think that -- that my
5 sentence is -- is unlawful.

6 My sentencing sheet also -- and the warrant, it
7 states -- it has under description of offense, it has the
8 prefix finan T.C., which means financial transaction card.
9 And then it follows with the statement financial identity
10 fraud. Both of those being two separate things, the
11 financial transaction card is listed under the financial
12 transaction card crime act. And that carries a maximum
13 penalty of five years.

14 Q And that was -- did you discuss that with your lawyer?

15 A No, I -- I did not discuss that with Mr. Lifsey. I
16 hadn't -- I didn't know that the paperwork had been
17 changed. I had no way of knowing that it had been changed.

18 Q Okay. Did -- and Mr. Lifsey never raised this issue
19 with the solicitor's office.

20 A Not that -- no, not that I'm aware of. He -- he never
21 mentioned it to me.

22 I'm not a lawyer. I wouldn't -- I wouldn't have known
23 to even look at these things. Had I had the paperwork in
24 my hand, then I would have -- I wouldn't have known, and I
25 wouldn't have known to -- that I needed -- that I had a

Robert James Miller
Direct examination by Mr. Hemlepp

1 responsibility to object at my guilty plea. I didn't think
2 I could object. I didn't think I could get up and say
3 anything.

4 I know in their response they're saying that I didn't
5 object to my sentence. I didn't know I could object to my
6 sentence. And once the sentence was announced, I was
7 immediately taken out of the courtroom anyway. I couldn't
8 object.

9 Q Right. Right. The -- and of course the -- the change
10 of the charge, the change of the date on the indictment,
11 the change of -- the changes of the statute are actions by
12 law enforcement or the solicitor's office, not actions by
13 your lawyer.

14 what's germane here is that they were not investigated
15 or objected to by your lawyer. That would be -- that would
16 be your testimony to the Court today.

17 A Correct. Other than on the one count, it says that --
18 the offense occurred on September 15th.

19 And that was all fine until I proved to Mr. Lifsey
20 that there was no way I could have committed a crime that
21 day. I was in jail. And then the date changes on the
22 indictment. It no longer says September 15th. It says
23 September 2nd.

24 Q And was that objected to at your plea?

25 A No.

Robert James Miller
Cross-examination by Mr. Hunter

1 Q Okay. Mr. Miller, thank you so much for your
2 testimony.

3 The attorney general here may have some questions for
4 you. You need to answer his questions, and then we'll be
5 able move on. Thank you.

6 MR. HEMLEPP: Thank you, Your Honor.

7 THE COURT: Yes, sir, Mr. Hunter.

8 CROSS-EXAMINATION

9 BY MR. HUNTER

10 Q Mr. Miller, you had eight other charges dismissed as
11 part of your guilty plea, didn't you?

12 A No. That is not correct.

13 Q That's not correct?

14 A That was not part of my guilty plea.

15 Q Okay.

16 A And I've -- I've given my attorney a copy of a -- of
17 the plea agreement that I signed. It says in the agreement
18 there is none. That was not the agreement.

19 Q Okay.

20 MR. HUNTER: So, Your Honor, this is on page three of
21 the transcript.

22 Q Mr. Miller, are you saying that the solicitor was
23 lying to the judge when he told the judge that you had
24 eight other charges that were being dismissed as part of
25 this plea?

Robert James Miller
Cross-examination by Mr. Hunter

1 A No. I'm saying that, yes, there was eight other
2 charges that they were being dismissed but not as part of
3 me pleading guilty.

4 Q Okay.

5 A They were dismissed because of the jurisdiction. He
6 admitted on -- it's on the record. He admits that it was a
7 jurisdictional issue. That's the solicitor.

8 Q Okay. Do you know where in the record that the
9 solicitor says that?

10 A I -- I handed that to you this morning.

11 MR. HUNTER: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. HUNTER: And I'll move on for now, Your Honor.

14 THE COURT: All right.

15 A I believe maybe page 32 possibly.

16 Q Do you remember Judge Manning asking you if you
17 understood the charges and you told him that you did?

18 A Yes. I -- I understand that.

19 Q Okay. And do you remember Judge Manning telling you
20 that you could go to jail for ten years on each charge?

21 A Yes.

22 Q And that he could run those consecutively if he wanted
23 to.

24 A Yes.

25 Q Meaning that it'd be one after the other rather than

Robert James Miller
Cross-examination by Mr. Hunter

1 serving them all at the same time.

2 A Right.

3 Q And after explaining that to you do you remember where
4 Judge Manning asked you if you still wanted to plead guilty
5 and you told him you did?

6 A Yes.

7 Q Okay. Now, do you remember...

8 MR. HUNTER: And, Judge, this is on page 14.

9 Q Do you remember Judge Manning advising you that by
10 pleading guilty you were waiving your right to contest any
11 of the evidence in this case?

12 A Yes.

13 Q Okay. Do you remember where Judge Manning asked you
14 if you were pleading guilty because you were guilty and you
15 said you were?

16 A Yes, I do remember that.

17 Q Okay. Do you remember -- and this is on page 16,
18 going on to page 17 -- where Judge Manning asked you if you
19 had enough time to speak to Mr. Lifsey prior to your plea
20 about your charges that --

21 A Yes.

22 Q -- you intended to plead guilty?

23 A Yes.

24 Q Okay. You told him that you had had enough time.

25 MR. HUNTER: Beg the Court's indulgence.

Robert James Miller
Cross-examination by Mr. Hunter

1 (Pause.)

2 Q Now, when you told Judge Manning that you'd had enough
3 time to speak with Mr. Lifsey prior to your plea were you
4 telling the truth?

5 A No, I wasn't. I -- I could have used more time. I
6 felt like I was being pressured into pleading guilty
7 because I had just gotten arrested four days earlier.

8 Q Okay. Now, do you recall where Judge Manning then
9 asked you, "Has anyone used any pressure or intimidation to
10 get you to plead guilty?" And you said, "No, sir."

11 A That is correct.

12 Q Okay. Do you recall...

13 MR. HUNTER: And, Judge, this is on page 17.

14 Q Do you recall where Judge Manning asked if you were
15 satisfied with Mr. Lifsey and you told Judge Manning, "Yes,
16 sir, I'm very satisfied"?

17 A Yes, I do.

18 Q Okay. And you told Judge Manning that you had talked
19 to Mr. Lifsey enough and that you'd understood everything
20 y'all had gone over.

21 A I -- I did tell him that, yes.

22 Q Okay. But now you're saying that what you told Judge
23 Manning was incorrect.

24 A Incorrect.

25 Q Okay. Then Judge Manning goes on to ask you if you're

Robert James Miller
Cross-examination by Mr. Hunter

1 completely satisfied with Mr. Lifsey. And you said you
2 were. So you're saying now that that is also not the
3 truth, that you weren't, in fact, happy with Mr. Lifsey.

4 A That is correct.

5 Q Okay.

6 MR. HUNTER: Beg the Court's indulgence just a moment,
7 Your Honor.

8 (Pause.)

9 Q Now, Mr. Miller, this wasn't your first time you'd
10 ever been arrested for anything, was it?

11 MR. HEMLEPP: Your Honor, I would object on the ground
12 of relevance.

13 THE COURT: I'm going to overrule you.

14 BY MR. HUNTER

15 Q Have you ever been arrested before prior to this?

16 A Yes, I have.

17 Q Okay. And so it's fair to say that you do have some
18 experience with the court system?

19 A Yes.

20 Q Okay. And so you've been -- did you plead guilty to
21 your prior charges, or did you go to trial on them?

22 A I pled guilty.

23 Q Okay. So this wasn't the first time you've ever pled
24 guilty.

25 A No.

Robert James Miller
Cross-examination by Mr. Hunter

1 Q Okay. So you knew what to expect.

2 A Yeah. I knew that when you plead guilty you don't get
3 the -- the maximum sentence.

4 Q Okay. Did Mr. Lifsey promise you anything like that?

5 A He told me that I wouldn't get more than four years.

6 Q Okay. Now, do you recall when the solicitor went over
7 the facts of the case for the judge, for Judge Manning --
8 Judge Manning asked you if you disagreed with anything the
9 solicitor said?

10 A Yes, sir, I remember.

11 Q Okay. And you didn't say you disagreed with the
12 solicitor's version of the facts, did you?

13 A No, I did not.

14 Q And, finally, do you recall apologizing to the victim
15 in this case?

16 A Yes, I do.

17 MR. HUNTER: Page 36, Your Honor.

18 A That's what I was told to do.

19 Q So is it your testimony then that everything you told
20 the judge and you told the victims and told everyone in the
21 courtroom that day, you said just because -- that's just
22 because that's what your lawyer said for you to say? You
23 were just doing what your lawyer said for you to do?

24 A I followed his instructions, yes.

25 Q Okay.

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

2 THE COURT: Thank you.

3 Any redirect?

4 MR. HEMLEPP: Beg the Court's indulgence. I
5 apologize.

6 THE COURT: Yes.

7 (Pause.)

8 MR. HUNTER: I don't have anything, Your Honor.

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

10 MR. HUNTER: Your Honor, the state would call Mr.
11 Lifsey.

12 THE COURT: Any other witnesses?

13 MR. HEMLEPP: Your Honor, if we could as a
14 housekeeping matter make sure that the court's file is
15 complete.

16 THE COURT: I've got the transcripts; I've got the
17 plea sheets; I've got his -- the sentencing sheets; and
18 I've got this post-conviction-relief application and the
19 state's return.

20 MR. HEMLEPP: Does the court's file contain the
21 indictments on which he pled?

22 THE COURT: It does, and that's part of the plea
23 sheets.

24 MR. HEMLEPP: And that reflects a change in date?

25 THE COURT: It does look like it has a -- yes, it's

Michael H. Lifsey
Direct examination by Mr. Hunter

1 got a change of date.

2 MR. HEMLEPP: Thank you, Your Honor.

3 THE COURT: It says on or about September 2nd of 2002.

4 MR. HEMLEPP: Yes, Your Honor, which is what my client
5 testified to.

6 THE COURT: Right. And that's what he pled to.

7 MR. HEMLEPP: I wanted to make sure the Court's file
8 was complete on that.

9 Thank you, Your Honor.

10 THE COURT: Very well.

11 MR. HEMLEPP: With that, we have nothing further.

12 THE COURT: Thank you.

13 Yes.

14 MR. HUNTER: The state would call Mike Lifsey.

15 MICHAEL H. LIFSEY, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. HUNTER

18 Q Good morning, Mr. Lifsey.

19 A Good morning.

20 Q Afternoon.

21 A Afternoon.

22 Q How long have you been practicing law?

23 A Since 1991.

24 Q Okay. And in what capacity were you retained by
25 Mr. Miller on this case?

Michael H. Lifsey
Direct examination by Mr. Hunter

1 A Our office -- I'm the circuit public defender for the
2 6th Circuit. Our office was appointed to represent
3 Mr. Miller sometime after his arrest.

4 Bob FitzSimons who is a public defender in Fairfield
5 County that works for me was originally assigned this case.
6 My recollection is that Mr. FitzSimons and Mr. Miller had
7 some sort of falling out or disagreement and I took the
8 case as a -- I'm Mr. FitzSimons' supervisor, and I agreed
9 to take it, so I took it.

10 Q Okay. Do you recall how many times you met with
11 Mr. Miller prior to his plea?

12 A I met with him at least a couple of times in the jail
13 in Fairfield.

14 I remember he and I communicated both by phone and by
15 e-mail, as he testified to earlier.

16 Part of the problem was when he was finally released
17 from jail in Fairfield County he went back -- my
18 understanding -- I believe to Pennsylvania -- either
19 Maryland or Pennsylvania. I can't remember where his
20 parents lived. And he was up there.

21 So we had a number of -- and then he also went into
22 some kind of -- some kind of medical or alcohol or drug
23 abuse treatment facility at some point. So he was out of
24 pocket for a little while in whatever facility that was.

25 He did return. He returned to this area shortly

Michael H. Lifsey
Direct examination by Mr. Hunter

1 before the plea. He actually came to Lancaster and met
2 with me here one day at this office. And of course then he
3 was arrested.

4 And I remember -- I think I went to the jail maybe in
5 Fairfield the day before the plea and talked to him again
6 and then -- so a number of times. I can't tell you
7 exactly. But I probably in person, I would say somewhere
8 in the neighborhood of three to five times probably in
9 person, and then exchanged a number of phone calls and
10 e-mails with him.

11 Q Okay. Did you file the Rule 5 and Brady motions in
12 this case?

13 A Yes, sir.

14 Q Did have any trouble getting discovery?

15 A No.

16 Q Did you go over all the discovery with Mr. Miller?

17 A I did.

18 Q Did you discuss Mr. Miller's facts, you know, his side
19 of the story in this case?

20 A Yes. He told me his version of what happened in this
21 case.

22 Q And what -- what was his story?

23 A He admitted to -- he admitted to accessing the
24 financial records of the victim in this case, Mr. Bundrick.
25 I think that was his name -- Bundrick -- but the victim.

Michael H. Lifsey
Direct examination by Mr. Hunter

1 He admitted accessing the accounts. He admitted taking
2 some money. I think he and I did some math to kind of get
3 to what he admitted. And he admitted stealing I believe
4 around or a little over \$20,000 worth of money from the --
5 from the victim.

6 His main contention was that after he had accessed
7 these accounts and -- and stolen some of the money that he
8 got locked up. And I think that's documented. He got
9 incarcerated at Myrtle Beach on some sort of charge. And
10 that his wife and his wife's associates were the ones who
11 kind of ran wild and ran it from a \$20,000 theft to a
12 hundred-and-something-thousand-dollar theft.

13 He contested -- he was -- there were I think 11
14 warrants to begin with, or certainly there were 11 charges
15 by the time he pled.

16 He did -- he -- he contested some of those what I
17 would call the ancillary charges. He pled to what he
18 admitted doing. He pled to three counts of financial
19 identity fraud which involved -- I think they made a count
20 out of each -- out of the Bank of America count, the
21 Charles Schwab and the E*Trade. He pled to those.

22 There were other charges, some forgeries and some
23 credit card frauds. They dismissed all of those. Those
24 were what Mr. Miller had the biggest factual dispute with.

25 So his dispute was as to charges that were ultimately

Michael H. Lifsey
Direct examination by Mr. Hunter

1 dismissed.

2 He also disagreed with the amount of restitution in
3 the matter.

4 Q And so what -- what would you say Mr. Miller's, you
5 know, defense to these charges if he had any -- had you
6 gone to trial, what would you have claimed?

7 A Well, I don't think he had any defense that he told me
8 about to the financial identity fraud charges that he pled
9 to because he admitted those to me.

10 They had recordings. I think it was E*Trade, or at
11 least one of these. There's a recording of -- he has a
12 very distinctive voice, as you heard him testify to. And
13 there was a recording of his voice.

14 I mean -- I mean, I guess I'm not a voice recognition
15 expert, but it certainly sounds like his voice saying to
16 the folks at whatever, whether it's E*Trade or whoever,
17 that he's Mr. Bundrick and opening an account and wanting
18 access to the money. So I don't think he had any real
19 defense as to the money.

20 Now, the amount of restitution -- you know, I
21 understand his argument. But, frankly, I mean -- and I
22 don't think it was a very good argument. I mean, his
23 argument basically as to the rest of the restitution was,
24 you know, I only stole a little bit of it and then my wife
25 ran wild and stole the rest.

Michael H. Lifsey
Direct examination by Mr. Hunter

1 And I just -- I mean, I just don't find that a
2 particularly compelling -- and I don't think a judge would
3 find that a particularly compelling -- defense. It's kind
4 of like saying I robbed a bank and then, you know, on the
5 way home I stopped at a bar and somebody else broke in and
6 stole all the money outta my car.

7 I just don't -- I didn't find that a particularly
8 compelling argument that would have resonated with a judge
9 when you had a victim standing up saying he's out all of
10 this money and everything.

11 So, I mean, he had -- he had no defense that I'm aware
12 of to the charges for which he pled. He had some as to the
13 charges that were dismissed.

14 He did have a dispute as to the restitution, but he
15 and I talked about it at length, and we just reached the
16 conclusion that it was better -- I mean, you're still
17 talking in excess -- even what he admitted was more than
18 \$20,000.

19 We thought -- and he and I discussed it -- that rather
20 than argue about the restitution we would throw ourselves
21 on the mercy of the Court hoping -- stressing his medical
22 and health conditions, hoping that the judge would be
23 lenient in light of us pleading rather than make this
24 argument and restitution which, frankly, I doubted would be
25 particularly compelling and had the danger of irritating

Michael H. Lifsey
Direct examination by Mr. Hunter

1 the trial -- the sentencing judge.

2 Q Did you have any -- I know you said a few minutes ago
3 that he went to some kind of treatment facility. Did you
4 ever have any concerns about his mental competency?

5 A No. I think his mental situation was fine. He was
6 being treated for -- I can't remember. You know, like I
7 say, he has a number of medical problems. I think what he
8 went to was a drug and alcohol addiction place.

9 He was also being treated for other medical problems
10 that are evident in the record that we discussed in front
11 of Judge -- with Judge Manning -- but not mental stuff.

12 He did -- he was taking his antianxiety medication but
13 nothing that -- for psychosis or anything like that is my
14 memory.

15 Q Now, let's talk about the -- I guess the issue that
16 he's raised with the indictments.

17 Did -- did you have any concerns over the validity of
18 the indictments or the Court's jurisdiction to hear this
19 case?

20 A No, sir. I mean, he -- he's charged with financial
21 identity fraud. Okay. So that -- and I don't have the
22 statute in front of me. But the elements of that involve
23 accessing the financial records of a person and using that
24 to some financial advantage of your own.

25 well, clearly, he had to have accessed that

Michael H. Lifsey
Direct examination by Mr. Hunter

1 information in Fairfield County -- because the victim was
2 in Fairfield County -- it seems to me.

3 So it's true that he might have called a bank in New
4 York or somewhere else, but part of the element of the
5 crime occurred in Fairfield County because that's the only
6 place he could have gotten -- at least I think -- the
7 financial information.

8 And there's -- I know there's an old case about breach
9 of trust that talks about if the property is gained in one
10 county but not converted to your own use to another that
11 jurisdiction lies in either county.

12 So it just -- I didn't -- to me at least -- to me it
13 seemed that the financial identity fraud, which is, like I
14 say, the ultimate cases that he pled to, seemed to me that
15 jurisdiction was proper.

16 Now, if I'm wrong, I'm wrong. I'm glad to be wrong if
17 I'm wrong, but I think that -- that was my view of it.

18 Q Prior to the plea did you discuss with Mr. Miller the
19 elements of the charges that he was facing and his possible
20 exposure?

21 A Yes, sir. We discussed all those cases.

22 Q Okay. And did you discuss the constitutional rights
23 he would be waiving by pleading guilty?

24 A Yes, sir.

25 Q And I believe there was some mention of a 7-year offer

Michael H. Lifsey
Direct examination by Mr. Hunter

1 from the solicitor's office. Can you tell us about that?

2 A He did. He did at one point. Mr. Maxwell from the
3 solicitor's office extended a [sic] offer of seven years.
4 My client did not want to take it because he didn't want
5 that much time in jail. And so Mr. Maxwell ultimately
6 withdrew that offer. But he was offered seven years at one
7 point.

8 Q Okay. Did you ever promise Mr. Miller that he would
9 receive a certain sentence by pleading guilty?

10 A No, sir, not at all.

11 I -- I did tell the judge that I would ask for -- I
12 mean, I did tell -- excuse me -- Mr. Miller that I would
13 ask for as lenient a sentence as possible, which I did.

14 I probably told him that considering he had a criminal
15 record -- this was not his first brush with the law -- that
16 a probationary sentence was unlikely considering the amount
17 of money and his record.

18 So, I mean, I don't remember the number four. It may
19 very well -- have told him I'll ask for four. I mean, I
20 don't remember mentioning four.

21 Q So you never told him he would only get four.

22 A Oh, no, not at all. Now, I may have told him he's
23 going to expect -- have to expect at least four. I may
24 have said that because of -- of his record and -- and --
25 and the amount of money involved. I thought it was

Michael H. Lifsey
Direct examination by Mr. Hunter

1 unrealistic with his criminal history to expect him to walk
2 out of this case unscathed.

3 Q Now, whose decision ultimately was it to plead guilty?

4 A Mr. Miller.

5 Q Okay. And I think the last issue I want to cover is
6 the forensic accountant. Could you kind of tell us what
7 was going on with that?

8 A We did. When I first met with him in the jail he
9 basically -- well, let me put it from two perspectives.

10 He always had admitted that he'd accessed the account,
11 accessed the accounts of Mr. Bundrick. Okay. But he
12 contended that the restitution amount was incredibly high
13 and was miscalculated.

14 And at one point -- and I think this was -- see, he
15 and his wife had a falling out. And I don't remember when
16 they fell out. But he and his wife -- his wife or her
17 family is the one -- my memory is -- that posted the bond
18 for him to get out.

19 So at one point he and the wife were on the same page.
20 So he was disputing the general amount of restitution and
21 the amount either one of them would have taken. And at
22 that point we discussed getting a forensic -- trying to
23 hire a forensic accountant to determine that.

24 Now, later on he and his wife had some sort of falling
25 out, and he blamed his wife and her family for taking all

Michael H. Lifsey
Direct examination by Mr. Hunter

1 of that money.

2 He also ultimately sort of concurrent with that -- the
3 solicitor agreed to dismiss all of the charges but for the
4 financial identity fraud, which he had admitted.

5 So I did not see at that point any real need for a
6 forensic accountant except to argue over the restitution.
7 And the problem with the restitution was I don't
8 necessarily buy -- I don't -- my -- I don't under -- I
9 don't think his argument is compelling on the restitution,
10 because even if -- I mean, he admits accessing Bundrick's
11 accounts.

12 So even if he's locked up at the beach and Kayla is
13 the one taking the credit card and getting them out of the
14 machine, I don't see why -- how that limits his guilt or
15 his ultimate responsibility as to that money.

16 And I just -- so I didn't see any -- once the
17 solicitor was willing to concede on the cases that he
18 disputed -- which was everything but the three financial
19 identity fraud -- I don't see what the need for a
20 financial -- excuse me -- a forensic accountant was but to
21 argue about the restitution.

22 And he and I discussed the idea and the approach. The
23 better approach was to admit our guilt, to throw ourselves
24 on the mercy of the Court, to offer to forfeit cars, to
25 offer to give back money, which we did, and take that

Michael H. Lifsey
Cross-examination by Mr. Hemlepp

1 approach. In other words, to go, "Judge, we're sorry for
2 the loss this victim suffered. That was our fault, that it
3 would not have happened but for us."

4 That seemed to be -- and he and I discussed it -- a
5 better approach than, you know, "Judge, I only stole part
6 of it but then she went crazy with the money," which I just
7 didn't find. I don't think most judges would have viewed
8 sympathetically.

9 MR. HUNTER: No further questions. Thank you.

10 THE COURT: Any cross-examination?

11 MR. HEMLEPP: Thank you.

12 CROSS-EXAMINATION

13 BY MR. HEMLEPP

14 Q If I stole money would you pay my restitution for me?

15 A No, not --

16 Q Well, why should he?

17 A Well, the problem is if you and I stole money, you
18 know, that's the different case.

19 Q Well --

20 A Or if I -- if you're with me -- if I stole money and
21 then, you know, you stole it from me, how am I not
22 responsible for what I stole?

23 Q To that, to the third victim -- to the first victim.

24 A Yes.

25 Q If you stole money from someone in the courtroom --

Michael H. Lifsey
Cross-examination by Mr. Hemlepp

1 we'll pick Al -- and then I stole money from Al, why should
2 you pay him back for what I stole?

3 A I agree with you under that scenario, but, see, I
4 don't think that's -- the more -- the more -- the more
5 cogent example would be if I knock him unconscious and take
6 some money out of his wallet and then you go over there and
7 find more money in his wallet, sure, you're responsible for
8 that. But it wouldn't have happened but for me doing it.

9 Q Okay.

10 A That's the way I looked at it. I'm not saying I'm
11 right in that regard. I just -- the idea of standing in
12 front of a judge and saying I accessed this man's accounts
13 and then somebody else came -- my wife. Not just somebody
14 randomly. My wife then came and took it. I just -- I just
15 don't see a judge liking that argument.

16 Q And for the -- for the benefit and clarity for the
17 judge who is hearing all of this for the first time, the
18 applicant's wife is named Kayla, is that right?

19 A Kayla, that's correct.

20 Q And Kayla was also charged with some of this.

21 A That's correct.

22 Q Okay. So at the time I believe she had pending
23 charges.

24 A That is correct.

25 Q Okay. So the possibility existed that she also could

Michael H. Lifsey
Cross-examination by Mr. Hemlepp

1 be ordered to pay restitution.

2 A That's correct. I didn't represent her, but that's
3 correct.

4 Q I understand that. But did you have that knowledge at
5 the time of the plea?

6 A Absolutely.

7 Q Okay. So there was a mechanism for her to be held
8 responsible for the actions that she took in taking money
9 from Mr. Bundrick.

10 A Yes, sir. That's true.

11 Q Okay. And you don't think a forensic accountant would
12 have helped to unravel this multistate, basically
13 electronic, financial case involving multiple defendants
14 and a lot of money.

15 A Well, when you say unravel, I mean, I don't think it's
16 a mystery as to what happened.

17 The only question was really how much money was taken.
18 I guess a forensic accountant could have made some
19 distinction as to the amount of money taken, and perhaps
20 some division of -- perhaps some division of responsibility
21 if his theory as to the -- to what happened is correct.
22 So, but -- but, once again, that goes to the amount of
23 restitution. He admitted -- to me at least -- taking over
24 \$20,000 worth himself.

25 Q Well, that's true. However, the types of charges --

Michael H. Lifsey
Cross-examination by Mr. Hemlepp

- 1 you went to Clemson, did you not?
- 2 A Yes, I did.
- 3 Q What was your degree in?
- 4 A Political science, not accounting.
- 5 Q I also was a political science major, and I know
6 nothing about accounting.
- 7 A Me either.
- 8 Q Do you have any financial background?
- 9 A Oh, no, not at all.
- 10 Q Okay. Do you have any background on how electronic
11 trading works?
- 12 A No.
- 13 Q Okay. So is -- is Mr. Miller correct that you had
14 obtained O.I.D. funds for a forensic accountant?
- 15 A No. We had discussed it, and I discussed the
16 matter in -- see, normally -- once again, I'm a public
17 defender. My clients don't usually steal enough money for
18 there to be the need for accountants. That's not the usual
19 kind of expert I hire.
- 20 I did mention to Judge Goldsmith in general that I had
21 a case where we might be seeking -- because he was our
22 administrative judge at the time -- where we might be
23 seeking the hiring of a forensic accountant. I told him it
24 was a little unusual because there's a lot of money, which
25 we usually don't have. His thing to me was make sure Hugh

Michael H. Lifsey
Cross-examination by Mr. Hemlepp

1 Ryan is okay with it. And I remember talking to Hugh in
2 general --

3 Q And Hugh Ryan, he's general counsel of O.I.D.

4 A That's correct, because it was an unusual sort of
5 expense.

6 I talked to Hugh initially. I remember talking to
7 Hugh, and Hugh generally being okay with the idea. And
8 then at that point, I believe that is when the falling-out
9 between him and his wife occurred, because my recollection
10 of this from the beginning was there -- his original -- and
11 I don't know what he said to Mr. FitzSimons. I don't know
12 what their conversation -- but my original conversation
13 with him was I may have stole a little bit of money but we
14 didn't steal nearly that much money.

15 And when confronted with the accounting stuff that --
16 as I'm certainly not an expert -- as you said in this -- my
17 idea was let's get a forensic accountant.

18 By the time -- at some point after that he and the
19 wife had their falling-out. And at that point his defense
20 generally shifts to a, okay, I got into the accounts but
21 she ran wild with them for lack of a -- I mean, I'm sure
22 it's more complicated than that, but that's the gist of it.

23 Q Okay. Thank you.

24 MR. HEMLEPP: Your Honor, I have no further questions.

25 THE COURT: Any redirect?

Michael H. Lifsey
Redirect examination by Mr. Hunter

1 MR. HUNTER: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. HUNTER

4 Q Mr. Lifsey, would you say that based on your
5 experience you felt that the better strategy was to not
6 fight the restitution but just to throw yourselves on the
7 mercy of the Court?

8 A Yes, sir, and we -- I discussed that with him too. I
9 mean, our -- that was not just a unilateral decision on my
10 part. It was a -- I mean, it was my advice to him. But he
11 agreed with it, and that's why he didn't dispute the amount
12 of restitution at the -- at the plea.

13 Beyond -- I think I said something in the transcript
14 of basically maintain that what I have said today, that he
15 only admitted part of it, but taking part of it, but the
16 wife did more of it. But we acknowledge none of this would
17 have happened but for us. That was the approach that we
18 took, and that was a strategic decision that he and I
19 talked about and he agreed on.

20 Q Okay. So that kind of leads into my last question.

21 Was there ever indication that Mr. Miller's wife and
22 not Mr. Miller was the one who instigated this whole chain
23 of events?

24 A No. Kayla Miller is no mastermind. I'll tell you
25 that. No.

Michael H. Lifsey
Redirect examination by Mr. Hunter

1 I mean, I -- I view them equally culpable. Okay. I
2 mean, not that it's my decision to decide culpability,
3 because it's not. But, I mean, there was certainly -- she
4 was not the mastermind in this equation. I will tell you
5 that. I mean, now, ultimately, she got a better deal than
6 he did, but you'd have to discuss that with the solicitor,
7 why, what happened with her, so.

8 Q That's all I have. Thank you.

9 THE COURT: Any recross?

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

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

12 Thank you, gentlemen. I will give you my ruling when
13 I make it. Thank you.

14 END OF REQUESTED TRANSCRIPT OF RECORD

15

16

17

18

19

20

21

22

23

24

25

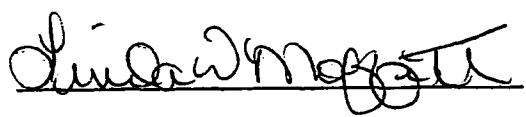
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Fairfield County, South Carolina, on the 28th day of July 2014.

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

October 16, 2014



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Robert J. Miller, Jr., #31604

Case No. 2012-CP-20-0352

SEP 10 PM 2 10
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM
Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 30, 2012. Respondent made its return on October 31, 2013. An evidentiary hearing into the matter was convened on July 28, 2014, at the Lancaster County Courthouse. Applicant was present at the hearing and was represented by W. Michael Hemlepp, Jr., Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Fairfield County Clerk of Court's orders of commitment. The Applicant was indicted at the February 2011 term of the Fairfield County Grand Jury for three counts of financial identity fraud (2011-GS-20-035, 036, 037). Mike Lifsey, Esquire represented the Applicant.

On April 3, 2012, the Applicant pled guilty before the Honorable Casey Manning.¹ Applicant was sentenced to two concurrent terms of ten (10) years each. On the third charge,

¹ As a result of his plea, approximately eight other charges were dismissed. (Tr. p. 3, lines 6-9.)

Applicant was sentenced to a consecutive term of ten (10) years, provided that upon the service of three (3) years, the balance would be suspended with probation. Restitution of \$30,000.00 was also ordered. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel misled the Applicant by telling him he would receive a lesser sentence than he did.
 - b. Counsel failed to hire a forensic accountant and did not present defendant's request for a restitution hearing.
2. Lack of subject matter jurisdiction.
 - a. The solicitor and the court lacked authority because the offense happened outside the state of South Carolina.
3. Involuntary guilty plea.
 - a. "Defendant pled guilty with the expectation that the solicitor would refrain from making a recommendation to the judge and that he would not oppose any request for leniency by the defendant."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Mike Lifsey, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Fairfield County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

During the evidentiary hearing, Applicant testified that he was represented at his plea by Mike Lifsey, Esquire. Applicant testified he has filed a lawsuit against the solicitor and the investigators involved in his case. Applicant testified that he understands PCR is solely for attacking the representation of his plea counsel. Applicant testified he was initially appointed another attorney before Counsel took his case. Applicant testified he did not remember all of the charges he faced prior to his plea. Applicant testified there were initially ten charges filed against

him, all relating to financial transactions. Applicant testified he had some charges dismissed. Applicant testified he spoke with Counsel several times by telephone, but they mostly communicated through email. Applicant testified that once he posted bond, it was easier for him to meet with Counsel. Applicant testified he met at Counsel's office the week before court.

Applicant testified they never met in Fairfield County. Applicant testified he and Counsel discussed his medications, but they never discussed any possible defenses. Applicant testified he wanted Counsel to hire a forensic accountant because he disputes the amount of restitution he was ordered to pay. Applicant testified that expert testimony from a forensic accountant would have helped him. Applicant testified Counsel told him not to ask for a restitution hearing. Applicant testified he was never charged with the crime for which restitution was ordered. Applicant testified that Counsel got approval to hire a forensic accountant, and that Counsel discussed two different candidates to hire. Applicant testified this occurred fifteen months prior to his plea. Applicant testified that some of the crimes for which he was indicted occurred outside Fairfield County, and the court did not have subject matter jurisdiction. Applicant testified Counsel never raised that issue. Applicant testified he pled guilty because he wanted to get it over with. Applicant testified the solicitor offered him a seven year plea offer but revoked it prior to Applicant's plea. Applicant testified Counsel told him he was only pleading to three counts, not four. Applicant testified he asked for an appeal, but it was dismissed because a challenge of subject matter jurisdiction was not preserved. Applicant testified Counsel should have objected to a lack of subject matter jurisdiction. Applicant testified that he believes the indictments are illegal because he claims they contain different charges than those for which he was initially arrested. Applicant testified he did not discuss the indictments with Counsel. Applicant testified that he was in jail during the original date on the indictments. Applicant

testified he pled guilty because Counsel told him to. Applicant testified he was not being truthful with the plea judge during the plea colloquy, and he was just repeating what Counsel told him to say.

Following Applicant's testimony, Mike Lifsey, Esquire (Counsel), testified. Counsel testified he has been practicing law since 1991. Counsel testified he is the Circuit Public Defender for the Sixth Judicial Circuit. Counsel testified he took Applicant's case after Applicant and his prior appointed attorney had a falling out. Counsel testified he met with Applicant a couple of times at the Fairfield County Detention Center, and then after Applicant was released on bond, Applicant moved to Pennsylvania, so they communicated via email most of the time. Counsel testified that Applicant returned to South Carolina prior to the plea, and Counsel met with Applicant three to five times in person. Counsel testified that he obtained discovery and went over it with Applicant. Counsel testified Applicant admitted to accessing the accounts from which the money and funds were stolen. Counsel testified that Applicant claimed he only took around \$20,000.00 and that he was locked up before his wife stole the rest of the funds. Counsel testified that Applicant pled guilty to only those crimes which he admitted doing, which were theft of funds from the victim's Bank of America, Schwab, and E-Trade accounts. Counsel testified the other charges against Applicant were dropped. Counsel testified Applicant had no defenses to the charges to which he pled. Counsel testified the evidence was overwhelming due to recordings of telephone calls made by the Applicant to the trading companies. Counsel testified he understood Applicant's argument concerning the amount of restitution, but Counsel did not think it would be a good strategy to argue that Applicant only stole part of the money, when Applicant was the one who masterminded the operation. Counsel testified that but for Applicant's actions, none of the money would have been stolen. Counsel testified he thought the

better strategy was for the Applicant to throw himself at the mercy of the court. Counsel testified he did not have concerns about Applicant's mental health. Counsel testified he discussed the constitutional rights that Applicant was waiving by pleading guilty. Counsel testified he went over the elements of the charges and possible penalties with Applicant. Counsel testified he had no concerns about the indictments or whether the court had jurisdiction to hear Applicant's plea. Counsel testified the solicitor withdrew the seven year plea offer prior to Applicant's decision to plead guilty. Counsel testified he never promised Applicant he would receive a particular sentence. Counsel testified he never told Applicant he would only get four years. Counsel testified that once the solicitor dismissed all of the charges except for what Applicant admitted to doing, there was no need to hire a forensic accountant. Counsel testified the only potential reason to hire a forensic accountant at that point was to make a restitution argument, but Counsel did not think the argument would resonate well with a judge or jury. Counsel testified Applicant's wife also had pending charges stemming from the incidents. Counsel testified that he did receive the funds to hire an accountant but ultimately deemed it unnecessary.

INEFFECTIVE ASSISTANCE OF COUNSEL

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

This Court finds that Counsel met with Applicant multiple times prior to the guilty plea. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court finds Counsel's belief that Applicant's restitution argument would not resonate with a judge or jury was reasonable. Accordingly this Court holds Counsel's decision not to hire a forensic accountant was reasonable, especially considering the fact that the charges to which Applicant did not admit his guilt were dropped. This Court finds Counsel's belief that

Applicant had no competency issues was reasonable. This Court finds that the evidence against Applicant was overwhelming, and Counsel did everything he could reasonably have done to obtain a favorable outcome for Applicant. This Court further finds that Counsel thoroughly prepared Applicant's case. This Court further finds that because Applicant admitted to lying to the plea court, his testimony to this Court is not credible. This Court further finds there was no reason for Counsel to challenge the legality of the indictments in this case. This Court further finds that Applicant waived any challenges he may have had by pleading guilty. This Court can find no evidence to support Applicant's allegation that Counsel advised him he would receive a specific sentence by pleading guilty. Accordingly, This Court finds Applicant's argument in that regard to be without merit.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

SUBJECT MATTER JURISDICTION

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Subject matter jurisdiction is the power of a court to hear a particular class of cases. *See See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 442 S.E.2d 598 (1994).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, "[c]ircuit courts obviously have

subject matter jurisdiction to try criminal matters.” Gentry, *supra*, 610 S.E.2d at 499; *See also* S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside.

~~This Court finds that Applicant’s arguments regarding the plea court’s lack of jurisdiction~~ are wholly without merit. This Court can find no credible evidence to support a finding the plea court lacked any type of jurisdiction to accept Applicant’s plea. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

INVOLUNTARY GUILTY PLEA

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one’s accusers. Id. Moreover, a criminal defendant entering a guilty plea “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.” Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant’s knowing and voluntary waiver of statutory or constitutional rights in a guilty plea “must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

This Court finds Applicant has failed to demonstrate that his guilty plea was entered involuntarily. Once again, this Court finds Counsel's testimony to be credible and Applicant's testimony to be not credible.

This Court finds Applicant was aware of the nature of the charges he was facing and the possible penalties. This Court finds Applicant was well aware that by pleading guilty he was waiving his ability to challenge the evidence against him. This Court further finds Applicant was well aware of the constitutional rights he was waiving by pleading guilty. This Court further finds that Applicant pled guilty voluntarily and of his own free will. Furthermore, this Court is not convinced by Applicant's claims that he only pled guilty because Counsel forced him to, or the claims that Counsel promised him a certain sentence. Accordingly, those claims are without merit. Finally, this Court finds no reason to believe Applicant was led to believe the State would refrain from opposing Applicant's request for leniency or making a sentencing recommendation. Accordingly, those claims are without merit.

Accordingly, this Court finds Applicant's guilty plea was knowingly and voluntarily entered. This Court finds that the evidence presented at the evidentiary hearing as well as contained within the guilty plea transcript clearly supports a finding that the guilty plea was not coerced or involuntary; rather, it was freely, knowingly, and voluntarily entered. This Court finds Applicant was informed of the nature and elements of the offenses with which he was charged and to which he pled guilty. This Court further finds that Applicant was fully apprised of the

rights he was forfeiting in order to plead guilty and that Applicant decided to go forward with his guilty plea.

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, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

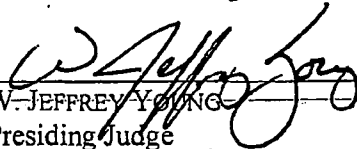
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 28th day of Aug, 2014.



W. JEFFREY YOUNG
Presiding Judge
Sixth Judicial Circuit

Sumter, South Carolina

WITNESSES

Talbert-FCSO

Boyd

DOCKET NO. 2011-GS-20-037

The State of South Carolina

County of Fairfield

2011 FEB - 1 P 4: 45

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

ARREST WARRANT NUMBER/DOA

M400781 (DOA-11-03-10)

ACTION OF GRAND JURY

THE STATE
vs.
Robert J. Miller, Jr.

TRUE BILL

2/11/11

Foreperson of Grand Jury

VERDICT

Indictment for
Financial Identity Fraud

SC Code: § 16-13-510
CDR Code: 2813
Class: Felony, E

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

INDICTMENT

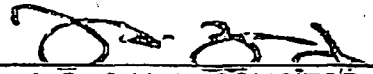
At a Court of General Sessions, convened on February 1, 2011, the Grand Jurors of Fairfield County present upon their oath:

FINANCIAL IDENTITY FRAUD

That Robert J. Miller, Jr. did in Fairfield County on or about August 28, 2010, without the authorization or permission of the victim, William Bundrick and with the intent to unlawfully appropriate the financial resources of the victim to the defendant's own use or the use of a third party did access the financial resources of the victim through the use of identifying information in violation of §16-13-0510, *Code of Laws of South Carolina, (1976), as amended.*

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

BEATA
CLERK OF COURT
FAIRFIELD COUNTY
2011 FEB - 1 10 AM



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Talbert-FCSO

Boyd

DOCKET NO. 2011-GS-20-036

The State of South Carolina

County of Fairfield

2011 FEB -1 P 4:45

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2011

ARREST WARRANT NUMBER/DOA

M400780 (DOA-11-03-10)

ACTION OF GRAND JURY

THE STATE
vs.
Robert J. Miller, Jr.

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

Financial Identity Fraud

Foreperson of Petit Jury
Date: *

SC Code: § 16-13-510
CDR Code: 2813
Class: Felony, E

ff.

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

INDICTMENT

At a Court of General Sessions, convened on February 1, 2011, the Grand Jurors of
Fairfield County present upon their oath:

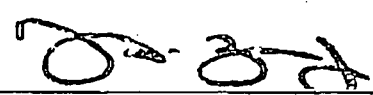
FINANCIAL IDENTITY FRAUD

September 2,

That Robert J. Miller, Jr. did in Fairfield County on or about 2010,
without the authorization or permission of the victim, William Bundrick and with the
intent to unlawfully appropriate the financial resources of the victim to the defendant's
own use or the use of a third party did access the financial resources of the victim
through the use of identifying information in violation of §16-13-0510, *Code of Laws of
South Carolina, (1976), as amended.*

1-8-11
CLERK OF COURT
FAIRFIELD COUNTY
SOUTH CAROLINA

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



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Talbert-FCSO

Boyd

BOOKING NO. 2011-OS-20-035

The State of South Carolina

County of Fairfield

2011 FEB - 1 P 4: 45

COURT OF GENERAL SESSIONS

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

FEBRUARY TERM 2011

ARREST WARRANT NUMBER/DOA

M400779 (DOA-11-03-10)

ACTION OF GRAND JURY

Robert J. Miller, Jr.

THE STATE

VS.

TRUE BILL

2/1 2011

Foreperson of Grand Jury

Date:

2/1/11

VERDICT

Indictment for
Financial Identity Fraud

Foreperson of Petit Jury
Date:

SC Code: § 16-13-510
CDR Code: 2813
Class: Felony, E

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

INDICTMENT

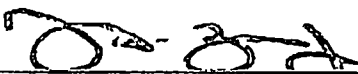
At a Court of General Sessions, convened on February 1, 2011, the Grand Jurors of Fairfield County present upon their oath:

FINANCIAL IDENTITY FRAUD

That Robert J. Miller, Jr. did in Fairfield County on or about September 17, 2010, without the authorization or permission of the victim, William Bundrick and with the intent to unlawfully appropriate the financial resources of the victim to the defendant's own use or the use of a third party did access the financial resources of the victim through the use of identifying information in violation of §16-13-0510, *Code of Laws of South Carolina, (1976), as amended.*

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

RECEIVED
CLERK OF COURT
FAIRFIELD COUNTY
SOUTH CAROLINA
FEB 1 2011



Douglas A. Barfield, Jr., SOLICITOR