

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Clifton Newman, Circuit Court Judge

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S.C. Supreme Court

RONALD JENKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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ORIGINAL

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 09-GS-40-2452; 07-8419,
8426, 8428

State of South Carolina)
)
 vs.) TRANSCRIPT OF RECORD
) (Guilty Pleas)
)
 Ronald L. Jenkins,)
)
 Defendant.)

February 9, 2009
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

JOHN MEADORS, DEPUTY SOLICITOR
ROBERT ELAM, ASSISTANT SOLICITOR
Attorneys for the State

MICAH LEDDY, DEPUTY PUBLIC DEFENDER
Attorney for the Defendant

JENNY H. WILLIAMS
Official Circuit Court Reporter
(803) 576-1743

1 Thursday, February 5, 2009

2 **THE COURT:** Is this your case, Mr. Elam?

3 **MR. ELAM:** Yes, Your Honor. If I may beg the
4 Court's indulgence and just talk to Mr. Leddy for a
5 brief moment.

6 (Pause)

7 (Whereupon, a bench conference is had)

8 **MR. ELAM:** If it please the Court, Your Honor.

9 **THE COURT:** Yes, sir.

10 **MR. ELAM:** At this time the State would call the
11 case of State vs. Ronald Lynn Jenkins.

12 **THE CLERK:** Please raise your right hand.

13 Ronald L. Jenkins, having been first duly sworn,
14 pleads guilty as follows:

15 **MR. ELAM:** And, Your Honor, the indictments
16 involved in this case are 2007-GS-40-8419 which
17 charges that Ronald Lynn Jenkins did commit arson in
18 the second degree; 2007-GS-40-8426 charging that
19 Ronald Lynn Jenkins did commit the crime of burglary
20 in the second degree, and that's violent burglary,
21 nighttime; and indictment 2007-GS-40-8428 charging
22 Ronald Lynn Jenkins with aggravated stalking.

23 The Defendant, Mr. Jenkins, stands before you
24 represented by Assistant Public Defender Micah Leddy,
25 and he is pleading guilty straight up to each of

1 these three charges.

2 **THE COURT:** All right. Mr. Leddy, you represent
3 Ronald Lynn Jenkins?

4 **MR. LEDDY:** Yes, Your Honor.

5 **THE COURT:** Have you advised your client of the
6 charges ...

7 (The Court talking with clerk)

8 **THE COURT:** Have you advised your client of the
9 charges contained in these indictments and his right
10 to trial by jury?

11 **MR. LEDDY:** I have, Your Honor.

12 **THE COURT:** How does your client indicate he
13 wishes to plead?

14 **MR. LEDDY:** Guilty, Your Honor.

15 **THE COURT:** Mr. Jenkins, you're charged in three
16 different indictments, sir. First indictment number
17 2007-GS-40-8428 charges you with the offense of
18 aggravated stalking, a charge which carries a penalty
19 of up to five years in jail. Do you understand that?

20 **MR. JENKINS:** I do, Your Honor.

21 **THE COURT:** The second charge, indictment,
22 2007-GS-40-8426 charges you with burglary in the
23 second degree, a charge which carries a penalty of up
24 to 15 years in jail. Do you understand that?

25 **MR. JENKINS:** Yes, I do, Your Honor.

1 **THE COURT:** The third indictment,
2 2007-GS-40-8419, charges you with arson in the second
3 degree, a charge which also carries a penalty of up
4 to 15 (sic) years in jail. Do you understand that?

5 **MR. JENKINS:** Yes, Your Honor.

6 **THE COURT:** I've just been handed a probation
7 record which indicates that in 2007 you were placed
8 on probation on June 13th, 2007. The allegations of
9 these indictments are that the offenses occurred
10 August 31st, 2007. You were placed on probation for
11 a period of six months, which is a reflection -- it
12 reflected a sentence of five years on the charge of
13 attempted burglary. This would qualify, since that
14 was a six-month probation and the offenses allegedly
15 occurred within six months of the probation sentence,
16 it would also subject you to a potential additional
17 five-year sentence. Do you understand that?

18 **MR. JENKINS:** Yes, Your Honor.

19 **THE COURT:** Okay. Understanding the charges you
20 face and the punishment you could receive, how do you
21 wish to plead? Guilty or not guilty?

22 **MR. JENKINS:** Guilty, Your Honor.

23 **THE COURT:** Do you understand by pleading guilty
24 you're giving up your right to remain silent --

25 **MR. MEADORS:** Your Honor, with all due respect,

1 I apologize. I think the arson second was 25 years.
2 And if Your Honor may have said 15, I apologize. I
3 didn't mean to interrupt you. But before we got too
4 deep in it ...

5 **THE COURT:** Did I say 15?

6 **MR. MEADORS:** Yes, sir.

7 **THE COURT:** I apologize. Arson second is a
8 penalty of up to 25 years. Do you understand that?

9 **MR. JENKINS:** Yes, Your Honor.

10 **THE COURT:** All right. Thank you, Mr. Meadors.

11 **MR. MEADORS:** Yes, sir. I'm sorry to interrupt.

12 **THE COURT:** All right. Mr. Jenkins, do you
13 understand by pleading guilty you're giving up your
14 right to remain silent?

15 **MR. JENKINS:** Yes, Your Honor.

16 **THE COURT:** You understand by pleading guilty
17 you're giving up your right to a trial by a jury?

18 **MR. JENKINS:** Yes, Your Honor.

19 **THE COURT:** If you requested or demanded a trial
20 by a jury, the State would give you a trial. Do you
21 understand that?

22 **MR. JENKINS:** Yes, Your Honor.

23 **THE COURT:** At that trial you would have the
24 right to confront and cross examine all witnesses
25 against you. You would have the right to present any

1 witnesses and/or evidence in your own defense. You
2 would have the right to testify in your own defense
3 if you wished to do so, but no one could testify at
4 your own trial. No one could make you testify at
5 your own trial.

6 If you decided to go to trial and not testify,
7 the judge would tell the jury they could not hold
8 your failure to testify against you. The jury could
9 not even consider your failure to testify in their
10 deliberations on your guilt or innocence. You'd be
11 presumed innocent throughout your trial.

12 The State would have to prove you guilty beyond
13 a reasonable doubt to a jury of 12 people, and all 12
14 people would have to unanimously agree that you were
15 guilty in order for you to be convicted. Even if you
16 were convicted, you'd still have the right to appeal
17 that conviction. Do you understand your rights with
18 regard to a trial by a jury?

19 **MR. JENKINS:** Yes, Your Honor.

20 **THE COURT:** Understanding those rights, do you
21 still want to plead guilty?

22 **MR. JENKINS:** Yes, Your Honor.

23 **THE COURT:** You don't want me to set your case
24 for trial?

25 **MR. JENKINS:** No.

1 **THE COURT:** Are you satisfied with the manner in
2 which your attorney has advised and represented you
3 in this case?

4 **MR. JENKINS:** Yes, your Honor.

5 **THE COURT:** Have you and your attorney fully
6 discussed these charges against you?

7 **MR. JENKINS:** Yes, Your Honor.

8 **THE COURT:** Has he shared with you the evidence
9 that the State has available to present at trial to
10 prove that you're guilty?

11 **MR. JENKINS:** Yes, Your Honor.

12 **THE COURT:** Do you understand that the -- has he
13 shared with you what is known as your Rule 5 or your
14 discovery information?

15 **MR. JENKINS:** Yes, Your Honor.

16 **THE COURT:** Are you satisfied with his advice?

17 **MR. JENKINS:** Yes, Your Honor.

18 **THE COURT:** Has he done everything you asked him
19 to do in preparation for this plea?

20 **MR. JENKINS:** He has, Your Honor.

21 **THE COURT:** Are you under the influence of any
22 alcoholic beverages, drugs or prescription
23 medications at this time?

24 **MR. JENKINS:** No, sir. No, Your Honor.

25 **THE COURT:** Are you aware of any mental,

1 emotional or nervous condition that you have that
2 would interfere with your ability to understand what
3 you're doing here today?

4 **MR. JENKINS:** None, Your Honor.

5 **THE COURT:** You clearly understand what you're
6 doing here today?

7 **MR. JENKINS:** Yes, Your Honor.

8 **THE COURT:** You're pleading guilty of your own
9 free will and accord?

10 **MR. JENKINS:** Yes, Your Honor.

11 **THE COURT:** All right. Solicitor, give me a
12 factual basis for the plea.

13 **MR. ELAM:** Thank you, Your Honor.

14 **THE COURT:** And then we'll get into whatever
15 else you want to do. But I just want the factual
16 basis for the plea at this point.

17 **MR. ELAM:** Yes, sir. In the months preceding
18 and up to July of 2007, a local attorney, Robert
19 Masella or Bob Masella, represented the Defendant's
20 wife in a protracted divorce proceeding against the
21 Defendant. And it seems that as time went by and as
22 Mr. Masella was successful in his representation of
23 Marie, the Defendant seemed to get agitated with Mr.
24 Masella's representation.

25 Preceding July of 2007 the Defendant had called

1 Mr. Masella's law firm, left some messages, and up to
2 that point in time they were annoying; but a
3 significant event happened in July of 2007. Family
4 Court Judge Mobley had ruled in Mr. Masella's favor
5 and that ruling had been appealed to the Court of
6 Appeals.

7 The holding from the Court of Appeals came down
8 in July of 2007, and it was still in Mr. Masella's
9 favor. And that very much upset Mr. Jenkins. There
10 was a motion to revisit that holding. And right
11 around the time that this happened, that motion was
12 denied and the holding from the Court of Appeals
13 became law in the case.

14 In July of 2007 the phone calls from Mr. Jenkins
15 with this stuff going on in the background became
16 less annoying and more threatening in nature.
17 July 6th of 2007 the Defendant called saying he was
18 going to hurt someone and indicating --

19 **THE COURT:** Called who?

20 **MR. ELAM:** I'm sorry?

21 **THE COURT:** Called who?

22 **MR. ELAM:** Called the Masella Law Firm.

23 **THE COURT:** Okay.

24 **MR. ELAM:** A lot of these calls were left on
25 voice mail. Some of them were to individuals, the

1 staff who worked there who answered the phones. But
2 he said that he was going to hurt somebody and he
3 knew what kind of a car Mr. Masella drives, a very
4 pointed threat.

5 July 12th of 2007 at 12:35 p.m. Mr. Masella
6 called the police after receiving a number of these
7 phone calls. And he filled out an incident report
8 with the Columbia Police Department for unlawful use
9 of telephone because the calls involved profanity and
10 threats; and again, I know what car you drive. There
11 are at least 28 calls from the beginning of July to
12 August 31st of 2007.

13 The key date and the terrible date is Friday,
14 August 31st of 2007. It started out in the morning
15 at 9:00. When Mr. Masella drove up to his law firm,
16 he'd gotten his wheelchair out of the car and had
17 gotten himself situated in the wheelchair when he saw
18 the Defendant walking down his street towards him.
19 And Mr. Masella's law firm is not too far from this
20 courthouse, close to the Federal Court building,
21 specifically at 917 Calhoun Street.

22 So after having received these calls and already
23 having called the police about the Defendant, of
24 course Mr. Masella was very apprehensive. He was out
25 there in his wheelchair outside of his office. There

1 is really nowhere he could go.

2 Mr. Jenkins approached him and said that he
3 would kill him before he went to jail. Mr. Masella
4 obviously perceived that as a threat. Mr. Jenkins
5 did not do anything at that time, and Mr. Masella
6 went inside the law office and called the police.
7 They arrived about 9:10 in the morning. Mr. Masella
8 described the Defendant as wearing a gray shirt, a
9 black skull cap and carrying a green duffel bag. And
10 based on the prior harassing phone calls to him and
11 his employees and the police knowledge about it, they
12 responded rather quickly.

13 Later on that morning an acquaintance of Mr.
14 Jenkins by the name of Allison Nicole Kirk, and this
15 is about 10:45 that morning, saw the Defendant
16 walking around Lincoln Street near Elmwood. And
17 that's again close to the law firm. She stopped,
18 allowed the Defendant to climb into the back seat of
19 her car, and he seemed to be bothered. She asked him
20 what the problem was. And it immediately became
21 apparent from what he told her that he was brooding
22 over the divorce and he said he was sick and tired of
23 it.

24 And in a written statement that Ms. Kirk gave
25 the police later, at the time that morning that he

1 was in her car, Mr. Jenkins said that he would kill
2 Maria and set her house on fire. He said he himself
3 was going to jail. He continued saying he would,
4 quote, kill the bitch, unquote. Ms. Kirk thought he
5 might have been a little bit under the influence, and
6 he did drink a beer while he sat in her car while
7 they talked. He eventually got out and walked away
8 with his green duffel bag, and she described that as
9 well.

10 The same day, 11:15 a.m., the Defendant had
11 returned to the Masella Law Office on Calhoun Street
12 and confronted Mr. Masella's partner, Rebecca West,
13 walked in the office, asked for Mr. Masella. When he
14 was told that Mr. Masella wasn't there, he said he
15 knew he was because his car was there. He identified
16 himself as Ronald Jenkins.

17 At that point, when Ms. West heard him identify
18 himself, she went to her office. She got her
19 cellphone, went out the front door, got into her
20 truck and called 911. The Defendant himself came out
21 of the office about two minutes later and Ms. West
22 followed him for a ways as he went by foot up the
23 block away from the law firm.

24 The next incident on that Friday, August the
25 31st of 2007, was Columbia Police Officer Aaron

1 Wireshem; that's W-I-R-E-S-H-E-M, was on patrol near
2 the Masella Law Firm. He heard an alarm. He saw
3 smoke and flames coming from the east side window of
4 the law firm. He immediately notified Columbia Fire
5 Department. He circled the building and saw that the
6 glass in the rear door had been busted out. And in
7 pretty short order, they're not far away, about five
8 different trucks from the fire department eventually
9 pulled up and eventually the fire was put out.

10 An official alarm signal registering a break in
11 was received at Carolina Security at about 7:55 p.m.
12 that evening. Investigator Ricky Seal who is
13 standing here with me in the courtroom who is the
14 cause and origin expert for the Columbia Fire
15 Department responded to the scene after he was called
16 to come in by the battalion chief who saw the damage
17 to the door and who saw obvious signs of arson.

18 Investigator Seal conducted an investigation at
19 the scene, ruled that it was an arson and said that
20 it was quite obvious that gasoline had been used. I
21 believe the fumes were still quite strong at the
22 time. He saw that there were pour patterns on the
23 conference table in the law library and there was a
24 plastic melted container with a wick sticking out of
25 it.

1 And he surmised that somebody had taken this
2 container with gasoline in it with a wick, lit it
3 after pouring some gasoline on the table and then
4 thrown the container with the wick onto the table,
5 just like a Molotov cocktail. And he also said that
6 entry was obviously made through the plate glass
7 window in the rear door.

8 Sergeant O'Connell from the Columbia Police
9 Department was also present at the scene, as was
10 Investigator William Pegram who is present in the
11 courtroom. He is in the red tie, Your Honor, and
12 he's waving.

13 And Sergeant O'Connell showed Investigator
14 Pegram a photo of the Defendant. He was based on the
15 prior activities an immediate suspect in the crime.
16 And Investigator Pegram on his own initiative thought
17 very quickly, went to a nearby S-Mart. It's located
18 directly behind Mr. Masella's law office. He sought
19 out the clerk, Latasha Washington, and asked if
20 anybody had bought a small amount of gasoline
21 recently. The clerk said to him, "I know who you're
22 talking about." She described a black male in a gray
23 shirt, jeans and a black hat had come in and bought
24 \$2 worth of gas from pump 3 filling a plastic milk
25 jug, and she thought it was strange because he had no

1 car.

2 She showed to Investigator Pegram ultimately a
3 video surveillance tape. And ultimately when they
4 were able to get a copy of that tape they made some
5 stills. One of the stills was blown up and it does
6 show the Defendant, Mr. Jenkins, in the S-Mart.
7 Investigator Pegram showed the clerk the photograph
8 that he had received of the suspect, the Defendant,
9 and she looked at it and she said it was he.

10 In the video the Defendant puts gas in a milk
11 jug and he walks away from the pump in the direction
12 of Mr. Masella's office. According to the time on
13 the video, the Defendant entered the S-Mart at
14 7:43 p.m. and left the pump at 7:47 p.m. And that's
15 just minutes before the alarms went out for the fire.
16 Mr. Masella's law firm it's estimated is probably
17 about 100 yards away from the S-Mart.

18 Investigator Pegram did get a written statement
19 from the clerk regarding everything that I've just
20 related to you about the Defendant's visit to the
21 S-Mart. Warrants were -- there was already a warrant
22 being worked up for stalking based on the earlier
23 incident before the fire even happened through
24 Investigator Bob Benson. Warrants were quickly drawn
25 up for arson in the second degree and for burglary

1 second degree. And I'm not sure if Your Honor -- I
2 apologize to the Court. I'm not sure if you covered
3 it or not, but both of those crimes would be a strike
4 and both of those crimes are crimes of -- excuse
5 me -- are violent crimes.

6 The warrants were served on Mr. Jenkins two days
7 later, September 2nd, 2007 at 1:05 p.m. when the
8 Defendant and a female companion came to the Columbia
9 Police Department and he turned himself in. All
10 three warrants were served on him. Beg your
11 indulgence, Your Honor.

12 **THE COURT:** All right. Let me do this. Mr.
13 Jenkins, you've heard a recitation of the facts from
14 the state Solicitor's Office. Now, with regard to
15 the actions that they say you did; that is, that on
16 or about August 31st, 2007 you attempted to cause an
17 explosion or set a fire at the law office of Robert
18 Masella at 917 Calhoun Street, is that what happened?

19 **MR. JENKINS:** Yes, Your Honor.

20 **THE COURT:** You did that?

21 **MR. JENKINS:** Yes, Your Honor.

22 **THE COURT:** And on or about the same date you're
23 charged with breaking into the -- I know I asked you
24 earlier what your plea was, but I want to just be
25 specific about it. Burglary. That is, you entered

1 the law office of Robert Masella with the intent of
2 committing a crime therein during the hours of
3 darkness. Is that correct?

4 **MR. JENKINS:** Yes, Your Honor.

5 **THE COURT:** And sometime between July 1st and
6 August 31st; that is, the date of the incident, that
7 you did by words or actions cause Robert Masella to
8 be put in fear of death or kidnapping or damage to
9 himself or some of his family members. Is that
10 correct?

11 **MR. JENKINS:** No, Your Honor.

12 **THE COURT:** You did not do that?

13 **MR. JENKINS:** You said that's the day of August
14 31st?

15 **THE COURT:** No, no. I said between July 1st in
16 2007, did you confront Mr. Masella and make some sort
17 of threat to him?

18 **MR. JENKINS:** By phone call. Yes, sir.

19 **THE COURT:** All right. Well, that's fine.

20 **MR. JENKINS:** Through phone calls. Yes.

21 **THE COURT:** All right. I find the decision of
22 the defendant, Ronald Lynn Jenkins, to plead guilty
23 to be freely, voluntarily, intelligently made. He's
24 had the representation of a competent attorney in the
25 person of Mr. Leddy with whom he's said he's

1 satisfied, and I'll accept his plea.

2 Mr. Jenkins, if you disagree with the sentence I
3 give you or the procedure we just completed, you have
4 ten days from today's date within which to file
5 notice of intent to appeal. Do you understand that?

6 **MR. JENKINS:** Yes, Your Honor.

7 **THE COURT:** All right, Solicitor. Does he have
8 a record? And you may want to go into any additional
9 facts that you think would be appropriate for
10 sentencing.

11 **MR. ELAM:** Thank you, Your Honor. The prior
12 record for the Defendant is November 22nd of 2002.
13 He pled guilty to resisting arrest. And the sentence
14 was either six months or a fine. May 13th, 2003,
15 criminal domestic violence first offense. He was
16 found guilty for failure to comply at a bench trial
17 on June 4th, 2003, the sentence being 30 days
18 suspended on \$1,060 fine.

19 On July 19th, 2005 he was convicted of malicious
20 injury to personal property, and the sentence was 30
21 days or a fine. On March 28th of 2006 he pled no
22 contest to trespassing in Judge Peay's office and
23 paid a fine. And most recently, June 13th of 2007,
24 that's about two months before this incident, pled
25 guilty on a direct presentment to burglary third

1 degree, received five years intended on six months
2 sentence. And I believe that would be the subject of
3 the probation revocation for today?

4 **PROBATION OFFICER:** Yes.

5 **THE COURT:** All right.

6 **MR. MEADORS:** Your Honor, would it be the
7 appropriate time now to --

8 **THE COURT:** Yes, sir.

9 **MR. MEADORS:** Your Honor, in addition, Ken
10 Willis is here, Your Honor, from the fire department.
11 I just want to recognize him and thank him for being
12 here sitting back on the front, Your Honor.

13 Judge, Rebecca West is Bob Masella's law
14 partner. She is I think under the rules -- Rebecca
15 West is the law partner and was familiar with the
16 Defendant, would like to briefly address Your Honor.

17 **THE COURT:** Yes, ma'am.

18 **MS. WEST:** Thank you, Your Honor. Your Honor, I
19 was there the morning that Mr. Jenkins came in the
20 second time and was aware enough of his previous
21 history and threats to have the mind to leave the
22 office and call 911.

23 Mr. Jenkins had harassed my partner for months
24 before this, and I was very aware of his anger
25 building over the way the domestic case had been

1 handled or had gone forward.

2 Your Honor, I have absolutely no doubt in my
3 mind that if and when this man ever gets out of jail
4 he's coming back after my partner. I have absolutely
5 no doubt. I practice family law and have for years
6 now and know that people's emotions run high during
7 that process. Mr. Jenkins got completely out of
8 control and directed his anger inappropriately at the
9 lawyer representing his wife.

10 He's got an extensive history obviously that
11 you've already heard. And his behavior during this
12 entire process led us all to believe that Bob was in
13 danger and that the people working at our firm were
14 in danger.

15 I simply ask that you consider all that when you
16 sentence him today and recognize that this not only
17 hits at the heart of our practice and our profession
18 but at our families. You know, my husband and my
19 children were incredibly fearful that weekend while
20 he was still out. We knew good and well that it was
21 him who had done it. And, you know, we were
22 incredibly fearful that he would attack us
23 personally. If he couldn't get us at the office, he
24 was going to get us somewhere else. And thank you,
25 Your Honor.

1 **MR. MEADORS:** Ms. West was so -- that morning of
2 August 31st or at 12:00 when he came by, she went out
3 to her truck. Bob Masella actually was in his office
4 with the door closed. She went to her truck, called
5 911 and actually had a gun there, obviously didn't
6 flash it, but followed the Defendant for about 15
7 minutes until he went into the park.

8 Your Honor, next is Eva Gardner. Eva Glenn. I
9 was thinking about somebody else. Eva Glenn who
10 would be the paralegal to Ms. West and Mr. Masella.

11 **MS. GLENN:** Hey, Your Honor. I would just like
12 to say a couple of things. I've been working for
13 Masella Law Firm for a little over four years now. I
14 have had a chance to talk to Mr. Jenkins several
15 occasions when he's called the office. Even though
16 threats were not directly at me, they were at the law
17 firm. And Mr. Masella is not only my boss; he is my
18 friend. And I believe that, you know, if he ever got
19 a chance to get out of jail, prison, he would come
20 after Mr. Masella, his family and/or any employee of
21 the office. Thank you.

22 **THE COURT:** Thank you, ma'am.

23 **MR. MEADORS:** Your Honor, next is Miah Masella,
24 Mr. Masella's wife.

25 **MRS. MASELLA:** Hi, Your Honor.

1 **THE COURT:** Good morning... Good afternoon.

2 **MRS. MASELLA:** I'm nervous. But I'd like to
3 take it back to the night that he set fire to Bob's
4 office. We were sitting as a family watching a movie
5 and we get a phone call. And Bob picks up the phone
6 and we hear crackling on the phone. And Bob is like,
7 hello, hello. He hangs up. And I think it rang
8 again. I may be wrong on that. And Bob said, man,
9 that sounds really strange. It sounds sort of like
10 fire.

11 And then we get a phone call from the alarm
12 company saying you need to come down to your office,
13 there has been a fire. We drove down there. We had
14 our kids in the car. And we were probably a half a
15 mile or a mile away. I don't know how far away we
16 were, but it was about a half a mile away. We saw
17 police cars, fire trucks. And then as we got closer,
18 the cops stopped us and we said we're with the
19 Masella law firm. As we drove up, there is the smoke
20 coming out of the office. And it's like, oh, my
21 gosh, he really set your office on fire.

22 And our girls were petrified. It was the most
23 disturbing thing to see this. We knew it was him.
24 We knew he had been threatening Bob. And, oh; we
25 were just dumbfounded, just shocked that this could

1 actually happen. This man tried to destroy my
2 husband's livelihood, everything that he has built
3 from the ground up. Because he did his job, this man
4 tried to destroy it.

5 And I told Bob -- and Bob had -- when he started
6 making those phone calls, we would be out in public
7 and Bob would be like turning. He wouldn't sit with
8 his back against the door because he was fearful of
9 something is going to happen. And I was like, you
10 know, anyway.

11 So when that happened and he was arrested that
12 weekend, going back to like Rebecca West said, our
13 family was scared to death. They did have a cop that
14 stayed with us that night on watch and then they left
15 a cop car there for the entire weekend until he
16 turned himself in.

17 And I've told Bob ever since then, we talk about
18 this all the time, he is full of anger. And sitting
19 in jail is only going to make him more angry over
20 time. And if he gets out, he will finish what he
21 didn't do the first time. He took away his
22 livelihood and he will want to take away his life.

23 He's got a significant history from 2002 that we
24 know of that he's tried to hurt people and hurt their
25 property. And I without a doubt think that he will

1 try to hurt Bob. I just -- I know he will. That's
2 all I have to say.

3 **THE COURT:** Thank you, ma'am.

4 **MR. MEADORS:** Your Honor, Mr. Bob Masella has
5 some remarks for the Court.

6 **MR. MASELLA:** May it please the Court, Your
7 Honor?

8 **THE COURT:** Yes, sir.

9 **MR. MASELLA:** Your Honor, I made lists of
10 everything I want to tell the Court to convey how
11 serious you think this is and all of the things that
12 Mr. Jenkins has done to me, done to other people,
13 done to my client; and it comes down to this and what
14 am I going to tell you.

15 Judge, I don't want to tell you too much and I
16 certainly don't want to tell you too little to once
17 again convey how serious I think this matter is, how
18 I think this man is going to try to finish what he
19 started.

20 But he told me that he was going to fight me and
21 that when his legal options ran out he was going to
22 take it into his own hands. He's been -- when I came
23 in, he was beating his wife and I stopped him from
24 doing that. I got her out of that situation. He
25 continued to do things to people.

1 And he has no regard for our legal system. He
2 has no regard for what the rules our society lives
3 by. He's just, it's his way. And I am afraid of
4 him. I'm afraid that when he gets out that I am
5 going to have to be looking all the time. It's
6 changed my life. I now have to have a weapon in my
7 house which I didn't have to have before.

8 I have to have -- my children have to be aware
9 that there's somebody out there that's after their
10 father. And all I was doing was my job, Your Honor,
11 just representing my client. And like I said, I
12 don't want to say too much. But all I can say, Your
13 Honor, is that he went after our profession, the
14 legal profession. And I thank you for listening.
15 That's all I have.

16 **MR. MEADORS:** Judge, I've got a few brief -- I
17 guess to kind of put it in context why Mr. Masella
18 feels the way he does and his family, after the case
19 of Jenkins vs. Jenkins came down from our Court of
20 Appeals is when these, as Mr. Elam so eloquently
21 stated, these calls intensified.

22 And just to give Your Honor the content of it,
23 just to give Your Honor an idea of what we're talking
24 about, and I think it explains the genuine feelings
25 Mr. Masella has and his family, on July 6th, and

1 these are phone calls to the law firm of Bob Masella.
2 And for the record, that is in Richland County, the
3 address of 917 Calhoun Street. On July 6th of 2007:
4 "I hate your sorry punk wheelchair ass." And then
5 later on that day he talks about his black Charger
6 parked outside. "I like that maroon mother-fucker",
7 obviously showing that he's staked it out and he's
8 seen the place. I think we'd argue that if we went
9 to trial.

10 I got -- let's see. "I come after you and that
11 bitch Maria." Maria was his wife. "Think I ain't
12 serious? Fuck it. Think I ain't serious about
13 hurting a mother-fucker? You know what I'm saying?
14 Keep fucking with me. Throw me in a jail. Give a
15 life, mother-fucker."

16 And, Your Honor, on July 7th I think kind of
17 directly may be why Bob feels like he does. On July
18 7th at 1:53 again to the Bob Masella law firm, "Hey,
19 Bob. I bet you didn't realize you would be in battle
20 for so long. It may take me a couple of years in
21 jail to do it, but you'll realize it." I think
22 that's the threat he's worried about when he comes
23 back, when he does get out, Your Honor. "You'll come
24 to that realization I guess maybe three to four years
25 from now."

1 There are a bunch of them. I'm just reading a
2 few, Judge. On July 22nd, he was talking about
3 paying, he's ordered to pay attorneys fees and this
4 sort of thing. He said, "There was a pot of gold
5 somewhere. It's mind boggling. You're going down,
6 no doubt. At some point you're going to stop. And
7 why? What am I gaining from it? When I see you in
8 court, I'm going to have to ask you myself. Rest of
9 life in jail." There's several implications that
10 could take, Your Honor.

11 Later on that afternoon of July 22nd: "I'm
12 going to fight you. I'm going to fight you, and when
13 my legal remedies run out I'm going to fight you any
14 way I can. I'm going to fight you legally for now,
15 but when these options run out I'm still going to be
16 in your face, man, and I know you can walk. I've
17 seen you get out of your wheelchair and put it in the
18 trunk of your car. I know you can walk. Now we're
19 going to fight sooner or later. I'm going to fight
20 you with every breath I can. I can't explain. I'm
21 going to fight you with every matter of my being.
22 I'm going to fight you. You put me in jail the rest
23 of my life, but it's going to cost you. It ain't
24 gone to be cheap. It's already expensive for your
25 ass. We're going to fight. Batter up. Come on,

1 dog, I am ready."

2 And he can't walk. He puts his chair into the
3 side and gets in first and pulls it over.

4 July 27th: "Get prepared for that. I don't
5 know what Maria told you, but she should have told
6 you that I'm an ass. Get ready for it."

7 And then on July 29th, just a few days before
8 this incident: "Bob, I want you to understand why I
9 call you. It ain't because I'm harassing or crazy.
10 I want you to understand the thought of going to work
11 to pay you and that bitch actually sends me into a
12 rage."

13 It then goes to August 31st, which again
14 Mr. Elam has said, and that's the direct threat, "I'm
15 going to kill you", coming back later at 12 and then
16 later on that day with the gas and he burns his
17 place, Your Honor.

18 Ricky Seal, I want to thank him and Pegram and
19 all for their fine work. And Willis is going to
20 briefly tell you about the damage to the building.

21 **MR. WILLIS:** Your Honor, the damage to the
22 building was approximately 250, \$350,000. He carried
23 forth with an incident that it put fire fighters'
24 lives in danger. This was a major fire. It did
25 major damage to this building. I had approximately

1 four to five fire companies that had to enter this
2 structure in order to stop this fire. So the
3 firefighters of the City of Columbia were placed in
4 very grave danger due to this man's actions, because
5 gasoline, it is very volatile; it makes a very hot
6 fire and it moves very fast. So I would ask that you
7 consider that. The lives of the firefighters of the
8 City of Columbia were put in grave danger because of
9 this. These were threats. He actually put our
10 people in danger. Thank you, Your Honor.

11 **MR. MEADORS:** Your Honor, we have pictures. I
12 know the defense has them. But they do show a point
13 of origin and the other damage to the building. Your
14 Honor, thank you for your patience. We just ask Your
15 Honor's sentence reflect the seriousness of this
16 matter and how it has impacted the victims. Thank
17 you.

18 **THE COURT:** All right. Mr. Leddy.

19 **MR. LEDDY:** Thank you, Your Honor. May it
20 please the Court. Mr. Jenkins has been my client for
21 some time now. He was one of the cases I got when I
22 first came to the Public Defender's Office just a few
23 months after I got here. And it was the first case I
24 had that in the file there were pictures from the
25 media and the case had been in the news. I thought

1 that they were going to be here today, quite frankly.
2 But it was very daunting for me. And Mr. Jenkins has
3 been one of the most significant clients that I've
4 had since I've been in this job.

5 And this is the type of plea, the type of
6 situation, this is exactly why I do this job.
7 Because Mr. Jenkins, as horrible as the crimes are
8 and as serious as they are and the time that they
9 carry, he deserves to have somebody speak on his
10 behalf and he deserves to be heard.

11 This case, when I got it, we were told it was
12 definitely going to be a trial. And it wasn't
13 because Mr. Jenkins had a defense and it wasn't
14 because Mr. Jenkins tried to get away from this. Mr.
15 Jenkins bought gasoline in a milk jug two blocks from
16 where he set it on fire. It wasn't even something
17 that he tried to get away with. This was quite
18 clearly the act of somebody who felt that they had
19 nothing to lose.

20 And that's exactly what I garnered from Mr.
21 Jenkins when I first met him. That was what he felt
22 at the time. During this divorce he had been placed
23 in jail several times for contempt for failure to pay
24 arrearages and attorneys fees and such. And he was
25 ordered to pay in order to lift his contempt such

1 exorbitant sums compared to his income he felt he was
2 going to be in jail. And if you read some of those
3 transcripts from the calls that he made that are a
4 basis for his stalking charge, he felt that he was
5 going to be enslaved to this case for the rest of his
6 life; if he worked every day, that every dollar he
7 made was going to go to this and that he was going to
8 be in jail because he couldn't do it. And I think
9 that that's important for Your Honor to consider. He
10 felt that he had nothing to lose.

11 I can tell you that in the last two years, year
12 and a half since he's been my client, that he has
13 learned quite the opposite, that even if you're
14 getting divorced and it's bitter and you're going
15 through in and out of jail, you're not going to be
16 able to -- you don't have a good job now because
17 you've made other stupid decisions and committed
18 other crimes and now you have a record, where before
19 you were a 12-year veteran in the military and had
20 the means and the record to make a good living, he
21 has learned the loss of his freedom, Your Honor, and
22 he's learned what it is to be facing 25 years or more
23 on a plea.

24 And I can tell you that his demeanor in the time
25 that I have been his attorney, at first he was still

1 unable to look past the divorce and the proceedings
2 and everything that happened. And he is going to
3 talk about it today because he wants Your Honor to
4 understand what he felt. Whether he was right or
5 wrong, he felt that he had been wronged in this
6 divorce.

7 That's what the case that went up to the Court
8 of Appeals was about, was whether or not the Order,
9 the divorce decree that had ordered him to do things
10 was in -- whether or not it was what had been agreed
11 to on the record. And he felt that it was changed to
12 his prejudice. And sometime later the Court of
13 Appeals ruled that he was wrong.

14 But when this happened, that is exactly what he
15 felt. He felt that he had not only lost -- you can
16 lose or win a divorce, but he felt that he had been
17 wronged. And I think that is important because it
18 goes to show you that he's not crazy, he's not
19 irrational. And these are things that can be
20 understood and these are things that cause anger that
21 is going to fade, Your Honor. And the last year
22 especially, we don't even discuss that aspect of the
23 case. We were talking about, you know, plea
24 negotiations or what would we be able to do at trial.

25 The only reason he wanted a trial ever was to be

1 able to air his grievances. What he felt was
2 important in the case was what led up to the arson,
3 Your Honor.

4 And I would ask Your Honor to punish him for
5 what he's done but not to punish him for what
6 everybody is so certain that he will do. Because he
7 never intended to hurt anybody in this fire. I know
8 that any time you light a fire you commit arson, you
9 do put people's lives in danger. There's no doubt.
10 That's obvious. That's why it's considered a violent
11 offense.

12 Somebody has got to put that fire out, and every
13 time somebody lights a fire, firefighters' lives are
14 placed in danger. But the Legislature gives Your
15 Honor the discretion between 5 and 25 years, and
16 there is a reason for that, Your Honor

17 All right. I'm not going to talk any more, Your
18 Honor. I'm going to let Mr. Jenkins speak, and then
19 he has some family present that would like to address
20 the Court also. And they can speak to the issue of
21 who he was and who he will be as time passes, Your
22 Honor, much better than I can.

23 **THE COURT:** Mr. Jenkins, I'll be glad to hear
24 from you.

25 **MR. JENKINS:** Good afternoon, Your Honor. I've

1 written a partial statement that I'm going to read to
2 you. Then the rest I'm going to have to fly off the
3 cuff. So I'm going to go through some of the
4 documents from the divorce. I'm not going to go
5 through everything but just some of the things I felt
6 Mr. Masella changed and things that put me in such a
7 rage that caused me to do what I did.

8 First of all, Your Honor, I want to apologize to
9 everyone who felt that their lives were in danger.
10 Even though I spent 12 years in the Army, I have
11 never been in combat and I have never fired my weapon
12 at nonqualified ranges. I have never owned a handgun
13 in my life. I am especially sorry for the fire that
14 I started on August 31st, 2007, and I wish there was
15 some way that I could undo the damage.

16 My grievances with Mr. Masella should have been
17 handled in a better way and I was totally wrong in my
18 actions. However, Your Honor, I wish to explain what
19 led me to do what I did and how I believe Mr.
20 Masella's actions led me to believe that I had no
21 other choice or nothing to lose.

22 At that time, Your Honor, Mr. Masella was
23 willing to put me in jail to enforce a divorce decree
24 that he had altered after representing my wife in a
25 divorce settlement. He took it upon himself to make

1 changes to the agreement after he himself had read
2 the terms of the divorce into the court record. And,
3 Your Honor, I have do have the transcripts and of
4 course I could share them with you.

5 **THE COURT:** Let me say this, Mr. Jenkins. You
6 know, there's nothing I can do about the divorce
7 case.

8 **MR. JENKINS:** I understand, Your Honor.

9 **THE COURT:** That was two years ago, and we can't
10 retry that case up here.

11 **MR. JENKINS:** Right. I'm just trying to let you
12 understand why I felt I was wronged and why I got to
13 where I did.

14 **THE COURT:** You can tell me. I understand that.
15 But I can't go back and read the divorce decree.

16 **MR. JENKINS:** Well, I just want you to see that
17 I'm not making stuff up or I'm not lying about saying
18 Mr. Masella did something he didn't do. Well, okay.
19 Okay. Well, --

20 **THE COURT:** You understand that I can't get back
21 into that.

22 **MR. JENKINS:** I know that.

23 **THE COURT:** And I can't blame Mr. Masella for
24 what you did. I mean, I can't --

25 **MR. JENKINS:** I'm not blaming Mr. Masella, Your

1 Honor. I'm just trying to just explain why I was so
2 angry.

3 **THE COURT:** All right. Well, I accept that. Go
4 ahead.

5 **MR. JENKINS:** Okay.

6 **THE COURT:** Listen; you're not the only person
7 who has been through a divorce.

8 **MR. JENKINS:** Right. I understand that.

9 **THE COURT:** I understand that it is a time of
10 high emotion. But people get through it.

11 **MR. JENKINS:** Right. But even in his statement,
12 Your Honor, he said that he was only doing his job.
13 Mr. Masella. And I am saying that -- I don't know
14 how to make a statement and go forward with this plea
15 without going into what was done in the divorce. You
16 know what I'm saying? I mean, that was the sole
17 reason for me doing what I did.

18 **THE COURT:** To do what? Pay him back?

19 **MR. JENKINS:** To set fire -- to -- I was angry.
20 I was out of control.

21 **THE COURT:** I can understand that.

22 **MR. JENKINS:** I did something that I wouldn't
23 have done otherwise. You know, I was drinking
24 heavily. And I just -- I mean, I don't know how to
25 address it otherwise.

1 **THE COURT:** Well, believe me, I understand what
2 you're saying. But I can't go into the background of
3 why you're saying it. That's my point. But I
4 believe you when you say it.

5 **MR. JENKINS:** But I'm just trying to say more.
6 That's all I'm trying to get to, what my motive was
7 or what motivated me or why I did what I did.

8 **THE COURT:** You had a motive. I understand
9 that. But I don't need to know the motive.

10 (Pause - Mr. Jenkins and Mr. Leddy confer)

11 **MR. JENKINS:** I understand, Your Honor. This is
12 very difficult for me.

13 **THE COURT:** I understand.

14 **MR. JENKINS:** Okay. Well, I'll just finish
15 reading my statement.

16 **THE COURT:** Go ahead.

17 **MR. JENKINS:** And I guess I'll have to deal with
18 that. As I stated earlier, he took it upon himself
19 to make changes to the agreement after he himself had
20 read the agreement into the court record. He chose
21 to change the way that I would have transferred my
22 interest in my home from my ex wife refinancing the
23 property to me simply just signing a Quit Claim deed,
24 signing over my interest in the property to my wife.

25 Your Honor, that meant that my name was taken

1 off the deed but I remained responsible for the
2 mortgage and all on the home. And I did not agree to
3 do that. Your Honor, what that meant to me is that I
4 would have no ownership interest in the property, but
5 yet still that mortgage loan would still be in my
6 name and if she defaulted on that loan --

7 **THE COURT:** Who was your lawyer?

8 **MR. JENKINS:** My lawyer was Kenneth Davis at
9 that time.

10 **THE COURT:** Who?

11 **MR. JENKINS:** Kenneth Davis. The result of the
12 court's Order is that if she lost her home, it would
13 end up on my record. And that's not what I intended
14 in the divorce proceeding.

15 As a result of this many changes, I refused to
16 pay the alimony due my ex wife or the attorneys fees
17 that I agreed to pay since I felt that Mr. Masella
18 had altered the agreement.

19 Your Honor, we have been in and out of the
20 Family Court and the Court of Appeals for four years
21 over this matter, and right now this matter is before
22 the Probate Court. Just real briefly with the
23 Probate Court, whatever has happened there is that
24 since I pay alimony and the spousal support and
25 certain -- I can't explain it all to you -- that that

1 would represent a lien against my mother's estate.
2 My mother passed away three months after the Order
3 was finalized.

4 And up to the point where we were finished with
5 the Court of Appeals some two years, three years
6 later, over 20 some thousand dollars in spousal
7 support had occurred, and over -- this is just an
8 estimate -- over \$20,000 in attorneys fees she was
9 not awarded but had accrued upon the divorce;
10 actually the divorce, the way it turned out was, the
11 judge said he had declared a mistrial due to the
12 changes that he made in it, and him seeing the
13 transcripts and the divorce decree in comparison, he
14 threw out the divorce decree written by my former
15 attorney, Mr. Kenneth Davis.

16 He told the judge, he said, well, this isn't the
17 agreement per my notice. And the judge all of a
18 sudden, after throwing out the decree, reinstated it
19 and said there were more court appearances and higher
20 fees.

21 But after losing at the Court of Appeals, like I
22 said, over \$20,000 in attorneys fees and alimony for
23 this, so now Mr. Masella has taken out liens against
24 my mother's estate. I was aware that he was going to
25 do this. I had gotten calls from my -- I had gotten

1 calls from my stepson, my son-in-law, my stepson,
2 that since you're not paying the alimony or attorneys
3 fees, we are going to take your inheritance money.
4 And that's exactly what their intent to do was.

5 And now I have done lost my house after that.
6 Now that I've lost my house and it caused him to
7 change the divorce decree, it's now going out of what
8 I was supposed to inherit from my mama, what she had
9 left me and my sisters and my brothers.

10 And there's a lot of things, Your Honor. It's
11 crazy. They had took my name off of my house. Now I
12 don't even have the use of the house. The house was
13 in my name. He even paid off liens for two cars that
14 were repossessed. One car which was only in my name,
15 a Ford Mustang, that was my Ford Mustang. The other
16 one was a Kia Sportage in my ex wife's name. So when
17 he took my name off the house, he didn't pay off
18 these liens. But when he went back to the Family
19 Court, he included the amounts for those cars against
20 the liens for my mother's estate.

21 So now he's got \$7,000 attorneys fees, \$20,000
22 in spousal support; plus, them two cars come out of
23 that \$65,000 in liens on my mother's estate. And as
24 I stated earlier, that Mustang was in my name only.
25 Why would he go and pay it off? It's not going

1 against her. He's not going to pay it off. He's
2 going to keep that money.

3 Those are some of the things that drove me to
4 anger that he did, with all this stuff, just knowing
5 what he's done. Yeah, I called him and made some
6 threats to the attorney here, general things that I'd
7 never carry out. They were just out of anger. I
8 said I would fight him to my last breath. I meant it
9 of course, but it was only due to my divorce
10 proceedings and alimony and legal fees. Like, as he
11 stated, I was fighting mad at the attorney.

12 But the thing that he did that just really
13 gnawed at me is the fact that he is the one that
14 drove me to that over and over again. When that
15 Court of Appeals decision came down, that meant that
16 he was going to put me in jail for something I didn't
17 do. I didn't think I would ever get out again. I
18 wasn't going to do those things. That's not what I
19 do. So that's what I saw from this, Your Honor.

20 And all I wanted, Your Honor, was a simple
21 break, a simple break. I was making \$25,000 a year
22 working on cars and stuff. There is no way I can pay
23 this, no 700 or \$800 a month for the rest of my life.
24 There was no way. There was no way I could afford to
25 do that, plus live myself.

1 So, just to wrap it up, because I could go on
2 and on with stuff he did. But I feel Mr. Masella
3 used his influence to throw me in jail through the
4 Family Court and the Court of Appeals. I know he was
5 a former clerk with the courts. And the transcripts
6 I had didn't match his as to other parts of this
7 Order.

8 As to my actions whenever I get out of jail, I
9 can honestly say, Your Honor, I hope I never see him
10 again. Because I didn't want to hurt nobody; I
11 didn't want to kill nobody. I just wanted to do what
12 I'd wanted to do all along and get a divorce and get
13 on with my life. That's it, Your Honor.

14 And once again I just want to apologize to
15 anybody because I have never killed anybody in my
16 life. I have never shot anybody. I don't have any
17 intentions to shoot anybody. A portion of the things
18 that came out from the divorce, things got really bad
19 with me and Mr. Masella. We were actually in the
20 hallway outside the Family Court at one time and
21 yelling at each other. He was yelling at me,
22 threatening to put me in jail. I'm yelling back at
23 him. So it wasn't just me. And I can't prove it
24 now, but one of the times, one of the times that I
25 called him, he called back and left a message on my

1 phone. My messages were full.

2 **COURT REPORTER:** Excuse me, Your Honor. I'm
3 sorry to interrupt, but I need to change my disk.
4 It's no longer recording.

5 **THE COURT:** Just let her change her tape. What
6 was the date of arrest?

7 **MR. ELAM:** September 7th.

8 **MR. LEDDY:** September 7th of 2007.

9 **COURT REPORTER:** Wait a minute. I need to reset
10 it. I just need a second, Judge. It's not
11 resetting. Okay, Judge. Let's try to go. It may
12 not work, but ...

13 **THE COURT:** You may continue.

14 **MR. JENKINS:** I really wish I could --

15 **MR. MEADORS:** Judge, --

16 **COURT REPORTER:** I can't hear you. Could you
17 repeat?

18 **THE COURT:** She's got to hear everything you
19 say.

20 **MR. JENKINS:** Okay. Your Honor, just to wrap it
21 up, I just want to apologize to everybody involved,
22 to Mr. Masella, to his family, to his wife, to his
23 co-workers, to everybody involved. I have never
24 killed anybody. I have no intention of killing
25 anybody. Yes, I was angry. Yes, I made a mistake.

1 I just hope, Your Honor, that you find it in your
2 heart to show me some leniency.

3 I deserve to do some time. I'm not sitting here
4 telling you that I've never claimed innocence in this
5 matter. I just want an opportunity to get out and
6 just go on with my life at some future point in time.

7 And, Your Honor, hopefully even though this is
8 still -- it's going on in the court right now, it's
9 going to be in Probate. It's going to go in the civil
10 court where he's going to try to force me to pay off
11 these things, I hope I don't have to see him. I hope
12 I don't have to see him. I never want to see him
13 again.

14 **THE COURT:** All right.

15 **MR. JENKINS:** And that's it, Your Honor.

16 **THE COURT:** Anything further, Mr. Leddy?

17 **MR. LEDDY:** This is his sister, Loretta Jenkins,
18 Your Honor.

19 **MS. LORETTA JENKINS:** Thank you, Your Honor.

20 **THE COURT:** Yes, ma'am.

21 **MS. LORETTA JENKINS:** My name is Loretta
22 Jenkins. And this is a difficult time for all of us.
23 And Ronald has never been a person to have been in
24 trouble with the law or anything like that. All this
25 started since the divorce in 2002/2003. Prior to

1 that he had not been in any trouble, Your Honor,
2 period. Ronald, it is true he was under a lot of
3 stress, stress from the divorce proceeding itself,
4 stress again from losing a job and not being able to
5 pay the alimony, stress; again, my mother was ill
6 during that time as well. In '05 my mother passed.
7 That was stressful. A year later, '06, my oldest
8 sister passed. That was stressful for him as well.

9 Along with going through all them things that he
10 been going through, the day of question, August 31st,
11 was actually my oldest sister's birthday, the one
12 that passed. And he saw what felt kind of
13 responsible for or not being there for her when she
14 did pass. So he had that sort of like on his
15 conscience as well.

16 We love Ronald. And the person that's being
17 described here as far as wanting to hurt Mr. Masella,
18 we don't recognize that person. That's not his
19 character at all. Ronald is a loving person. Yes,
20 Ronald does have a temper. He does have a temper.
21 And, yes, Ronald knows he did drink so much when he
22 was stressed. And I do believe that stress and with
23 all that was going on with my mother, my sister and
24 the divorce proceedings, having to deal with that,
25 led to something that he should not have done.

1 We are here for Ronald, you know. And we
2 apologize, too, to Mr. Masella for the things that
3 our brother has done. And we know that's not his
4 character, Your Honor, period. And I'm not just
5 saying that, you know, for leniency. I'm saying that
6 because that is his character. That's not Ronald at
7 all, period.

8 Again, we're going to support him because we
9 love him. And that day in question, August 31st, he
10 was -- during that period of time, he was truly
11 stressful during that period of time. There was so
12 much going on, as I said, with his sister, with the
13 divorce. He had lost his last appeal, thought he had
14 no other option and just really stressed out during
15 that whole period of time. So again, we're just here
16 for him to support him

17 **THE COURT:** Thank you, ma'am.

18 **MS. HATTIE JENKINS:** Hello. I am also a sister.
19 My name is Hattie Jenkins and I, too, can testify
20 that Ronald is not a violent person. As a matter of
21 fact, there has never been in a gun in our family.
22 Once there was -- I take that back. There was a gun
23 once in the family. My mother asked my father to
24 take it away because it could hurt one of us. She
25 did. He did that.

1 We all are I guess can say to support him and
2 what Robert did. But yet at the same time we
3 understand his frustration and all that he's gone
4 through with his divorce. It was horrible. It was a
5 horrible pain, a horrible divorce.

6 I wish people would get along better but they
7 don't. You know, we think the court system is there
8 to help us, and it doesn't always. Ronald's first
9 lawyer was called incompetent. His frustration kept
10 growing and growing. And when you take everything
11 you have from a person, you keep pulling him down and
12 down and down, at some point he will come back and
13 bite. And it's not always right.

14 And I feel that Ronald would have never done
15 this if it was just a simple divorce. I have
16 never -- Ronald has five sisters, three brothers, two
17 brothers. And he's never hit us. We've never fought
18 or anything.

19 And it hurts my heart that I'm here today under
20 this circumstance. And it hurts my heart to think
21 that these people believe my brother could actually
22 hurt them. I know he won't. But I know that we have
23 to resolve this matter and I hope the Court would
24 just realize that under pressure we all break at some
25 point and take that into consideration. I know it

1 does not change what he's done, but please have
2 compassion on him.

3 **THE COURT:** Yes, ma'am.

4 **DEFENDANT'S AUNT:** Good afternoon. I am
5 Ronald's aunt. And Ronald is a loving, blessed,
6 praying fellow. We all pray. We're a praying
7 people. We are a loving people. We are all peaceful
8 people.

9 But Ronald had gone through so much, I wish the
10 judge would just have mercy on him this afternoon.
11 Ronald is not that person that did this crime. I
12 don't know what happened. I can't say, but I talked
13 to him many times. We go to church all the time. We
14 pray. We are loving people. And God has really got
15 us. I knew God would just really step in and help us
16 this afternoon, that it's time for help, it's time
17 for love. It's not time for that kind of stuff.
18 It's time for love. Because we all should love one
19 another, protect one another and be friends with one
20 another.

21 Ronald is one of the most beautiful young men I
22 ever witnessed. And I'm his aunt. And I've been
23 fair with him. I help him. I talk with him. I pray
24 with him. And Ronald is not that type of guy. Thank
25 you, Your Honor.

1 **MR. LEDDY:** Nothing more from us, Your Honor.

2 **THE COURT:** Anything further from the State?

3 **MR. ELAM:** Yes, Your Honor. And just briefly,
4 this is in response to the mitigation that I heard
5 from the Defendant. I tried to stand here and keep
6 something of an open mind. But I've just got to
7 speak out now.

8 Listening to his mitigation, he has a chance to
9 tell you, Your Honor, how he is a good person or he's
10 turned himself around. He spends 90 percent of his
11 time talking about Kia Sportages and Mustangs and
12 attorney fees. He's still living this divorce.

13 It's clear that he is always going to blame Mr.
14 Masella for where he is standing right now. He's
15 always going to hold this grudge. I also fear for
16 Mr. Masella's safety and frankly for his estranged
17 wife's safety as well. And we would ask the Court to
18 give the maximum that the law allows. That's 45
19 years.

20 **MR. MEADORS:** Your Honor, the final sentence of
21 the Jenkins vs. Jenkins, and since it was brought up,
22 I just --

23 **THE COURT:** I'm really not interested in it.

24 **MR. MEADORS:** Thank you.

25 **THE COURT:** I wouldn't let him bring it up and I

1 don't think the State ought to bring it up either.

2 **MR. LEDDY:** Your Honor, I think I forgot about
3 the probation violation matter. My client admits
4 that he willfully violated the terms of probation.

5 **THE COURT:** Well, that's the probation violation
6 finding, a willful violation, and revoke his sentence
7 in full --

8 **PROBATION OFFICER:** Thank you, Your Honor.

9 **THE COURT:** -- on his probation violation. As
10 to the stalking charge, Mr. Jenkins, the sentence of
11 the Court is you be committed to the State Department
12 of Corrections for a period of five years.

13 On your burglary second charge, the sentence of
14 the Court is you be committed to the State Department
15 of Corrections for a period of 15 years.

16 As to your arson second degree charge, the
17 sentence of the Court is you be committed to the
18 State Department of Corrections for a period of 20
19 years.

20 All these sentences are to run concurrent, and
21 I'll give you credit for time served from
22 September 20th of 2007. Good luck to you, sir.

23 **MR. MEADORS:** Thank you, Your Honor.

24 **MR. ELAM:** Thank you, Your Honor.

25 (Whereupon, the proceedings are concluded)

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the Guilty Pleas of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 5th day of February, 2009.

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

May 26, 2009

Jenny H. Williams
Jenny H. Williams, Court Reporter

2009CP400 2452 SYK

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

Bonald L. Jenkins #333126
Full name and prison number (if any) of Applicant,

vs.

The State of South Carolina
Name of Respondent.

APPLICATION FOR
POST-CONVICTION REVIEW

FILED
RICHLAND COUNTY
2009 APR -3 AM 8:51
C.C.P. & G.S.
J. BRIDE

INSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention McGORMICK CORRECTIONAL INSTITUTION
McGORMICK, SOUTH CAROLINA
2. Name and location of Court which imposed sentence RICHLAND COUNTY COURT OF GENERAL SESSIONS
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 16-3-1730 (A) AGGRAVATED STALKING
 - (b) 16-11-110 (B) ARSON Second degree
 - (c) BURGLARY (OFFER 1/20/85) 2d degree
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) FEB. 5, 2009 STALKING 5 YEARS
 - (b) FEB. 5, 2009 ARSON 20 YEARS
 - (c) FEB. 5, 2009 BURGLARY 15 YEARS

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jamette W. McRae
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

23 APR 2009

5. 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 _____

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

No: Counsel Failed To advise OR File notice of intent To appeal

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

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

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

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

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

(c) the date of each such result:

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

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

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

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

- (a) N/A
 (b) _____
 (c) _____

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

- (a) Ineffective assistance of counsel
 (b) Subject Matter Jurisdiction
 (c) Involuntary Guilty Plea

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

- (a) Conflict of interest / Counsel failed to conduct a pretrial investigation.
 (b) Insufficient indictment for burglary 2d / Denial of Discovery
 (c) Plea was not knowing and voluntary / Plea was coerced / Adversely by a conflict of interest.
See attached memorandum of law in support

See attached memorandum of law in support

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? no
- (d) any other petitions, motions or applications in this or any other Court?
no

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

no

(a) which grounds have been presented:

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

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

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

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

- (a) ineffective assistance of counsel / Subject matter Jurisdiction
- (b) Involuntary Guilty plea / Conflict of interest
- (c) Was not presented because counsel was ineffective and failed to file a appeal or Review by writ of CERTIORARI.

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

- (a) your arraignment and plea? Micah T. Leddy
- (b) your trial, if any? Same
- (c) your sentencing? same
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? None

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

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

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

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

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

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

a new Trial That is conflict free / OR a plea That is properly presented That includes a lesser included plea and a lesser sentence.

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

No

STATE OF SOUTH CAROLINA

County of

Richland

VERIFICATION

I, Ronald L. Jenkins, 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.

Ronald L. Jenkins 3/31/09

FILED
RICHLAND COUNTY
CLARENCE M. McBRIDE
C.C.P. & G.S.
APR - 3 AM 8:51

SWORN to and subscribed before me this 31
day of March, 192009

Joyce L. Young (L.S.)
Notary Public

My Commission Expires: 8-28-2011

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

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

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

Ronald L. Jenkins 3/31/09
Applicant

SWORN or affirmed to and subscribed before me this

31 day of March, 192009

Joyce L. Young
Notary Public

My Commission Expires 8-28-2011

State of South Carolina County of Richland

Ronald L. Jenkins, #333126
Petitioner/Applicant,

In The Court of Common Pleas
Case No.

VS.

Certificate of Service

The State,

Respondent.

I The above petitioner/Applicant, hereby do certify That on this date I do certify That I have served on The Respondent a memorandum of Law In Support of his post conviction application by placing a copy in The United States mail postage pre paid.

Date: March 31, 2009

Ronald L. Jenkins

South Carolina Attorney General

Post Office Box 11549

Columbia, S.C. 29211

Ronald L. Jenkins, #333126.

386 Redemption Way

McGinnick, S.C. 29899

RICHLAND COUNTY
FILED
2009 APR -3 AM 8:51
JANETTE W. MCBRIDE
C.C.P. & G.S.

1.

State of South Carolina County of Richland

Ronald L. Jenkins #333126

Petitioner/

Applicant,

VS.

The State,

Respondent.

In The Court of Common Pleas
Case No.Memorandum of Law In Support of
Motion For Relief Pursuant To The
Uniform Post-Conviction Procedure
Act S.C. Code ANN. 17-27-10, et Seq.

AS a matter of introduction, The Petitioner/Applicant Respectfully Submits That The events which transpired in the instant case constitute ~~a~~ a denial of The petitioner's Rights To due process of Law as guaranteed by The Fifth Amendment To The United States Constitution and To The effective assistance of Counsel Guaranteed by Sixth Amendment To The United States Constitution. These errors was not merely procedural, but substantially infringed upon The petitioner's Right To due process of Law.

Statement of The issues

- (1) Did petitioner Receive ineffective assistance of Counsel when Trial Counsel failed To conduct a proper pre-Trial Investigation?
- (2) Was petitioner denied due process and equal protection of The Law when The petitioner was forced To proceed To Trial in violation of a fair Trial due To his plea and conviction being unlawful due To a conflict of interest?

2.

- (3) Did The TRIAL COURT Lacked Subject MATTER JURISDICTION due To The INSUFFICIENCY OF The indictment FOR BURGLARY 2d ?
- (4) Was PETITIONER'S plea knowingly and Voluntary due To Counsel's UNPREPAREDNESS and Failure To PRESENT Client With discovery ?



Statement of Jurisdiction

South Carolina Law provides an avenue FOR Those whose convictions have been obtained in violation of The Constitution of The United States. The uniform post-conviction procedure ACT; S.C. Code ANN. 17-27-10, ET Seq., provides an avenue FOR Redress of federal Constitutional violations by a South Carolina COURT. A PRISONER in custody under sentence by a South Carolina COURT May challenge his conviction and sentence IF such were obtained in violation of The Constitution of The United States OR The Constitution OR Laws of South Carolina". S.C. Code ANN. 17-27-20 (a)(1). The petitioner feels That his best opportunity To obtain fair and Substantial Justice Regarding his conviction is Through This petition, as The procedural Remedy Utilized herein has historically Served as a safety net FOR Those who have had Their Constitutional Rights Violated.

ARGUMENT

In order To ~~proceed~~ succeed in a post-conviction proceeding, The petitioner must show That The adjudication of a Claim in a South

3.

CAROLINA COURT RESULTED IN A CONVICTION OR SENTENCE THAT WAS IMPOSED IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES. S.C. Code ANN. 17-27-20(6)(1). THE CONSTITUTION, AS THE FRAMEWORK FROM WHICH ALL SOUTH CAROLINA LAW SPRINGS, MUST NOT BE VIOLATED AS APPLIED TO THE PETITIONER.

(1) DID THE PETITIONER RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL WHEN TRIAL COUNSEL FAILED TO CONDUCT A PROPER PRE-TRIAL INVESTIGATION?

THE PETITIONER SUBMITS THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL PRIOR TO AND DURING HIS TRIAL. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES THAT EVERY CRIMINAL DEFENDANT IS ENTITLED TO THE EFFECTIVE ASSISTANCE OF COUNSEL IN PRESENTING THEIR DEFENSE. SEE ALSO, S.C. CONST. ART. I, SECTION 14. THE SUPREME COURT HAS STATED, "THE RIGHT TO COUNSEL IS A FUNDAMENTAL RIGHT OF CRIMINAL DEFENDANTS; IT ASSURES THE FAIRNESS, AND THUS THE LEGITIMACY, OF OUR ADVERSARY PROCESS." KIMMELMAN V. MORRISON, 477 U.S. 365 (1986). FURTHERMORE, THE SUPREME COURT HAS RECOGNIZED THAT "THE RIGHT TO COUNSEL IS THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL." McMANN V. RICHARDSON, 397 U.S. 759 (1970). TO SEE WHETHER COUNSEL HAS FALLEN BELOW THE MINIMUM STANDARD NEEDED FOR EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT TO THE CONSTITUTION, A TWO PRONG TEST MUST BE MET. IN STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984). THE SUPREME COURT HELD THAT A DETERMINATION OF INEFFECTIVE ASSISTANCE OF COUNSEL WOULD BE CONDITIONED ON TWO FACTORS:

(1, COUNSEL'S PERFORMANCE MUST HAVE FALLEN BELOW AN OBJECTIVE STANDARD OF REASONABLENESS; AND

4.

(2, There must be a Reasonable probability That, but for counsel's errors, The Results of The proceedings would probably have been different.

South Carolina has adopted The Strickland Standard, see, e.g., *Cherry v. State*, 386 S.E.2d 624 (1989). The Right To effective assistance of Counsel may be violated by even an isolated error of Counsel if The error is sufficiently egregious and prejudicial. See also, *Murray v. Carrier*, 477 U.S. 478 (1986). "It is The Client's Right To expect That his Lawyer will use every skill, expend every energy, and use every legitimate Resource in The exercise of independent professional Judgment on behalf of The client and in undertaking Representation of The Client's interest." *Frazer v. United States*, 18 F.3d 778 (9th Cir. 1994). "Defense counsel must do his utmost To bring his legal acumen To bear on behalf of The defendant; keep The defendant fully informed of developments in The case and consult with The defendant on all major decisions To be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for trial; conduct The trial in The best of his ability; and, at The bottom, serve as a vigorous and devoted advocate of The defendant's cause". See, *United States ex. Rel. Barte v. Lane*, 926 F.2d 694 (7th Cir. 1991).

As The Supreme Court recognized in *Strickland*, "counsel bears a duty To make a reasonable investigation of The law and facts in his Client's case". *Strickland*, 466 U.S. at 691.

5.

Additionally, The ABA Standards Relating To The Administration Of Criminal Justice provide:

IT is The duty Of The Lawyer To Conduct a prompt Investigation Of The Circumstances Of The case and To explore all avenues Leading To Facts Relevant To The merits Of The case and The penalty in The event Of Conviction. The investigation shall always include Efforts To secure information in The possession Of The prosecution and Law enforcement authorities. The duty To investigate exists Regardless Of The accused's admissions Or statements To The Lawyer Of Facts Constituting Guilt Or The accused's stated desire To plead guilty.

A defendant's Right To effective assistance Of Counsel Confers a duty on Counsel To Conduct an adequate pre-Trial investigation. When a Lawyer fails To Conduct a Substantial investigation into any Of his clients plausible Lines of defense, The Lawyer has failed To Render effective assistance Of Counsel. Cobbs V. State, 408 S.E.2d 223 (1991). pre-Trial preparation, ~~principle~~ principally because it provides a basis upon which most Of The defense Case must Rest, is perhaps, The most critical Stage Of a Lawyers preparation. Id. Failure To investigate evidence That would be helpful To The defense is also an indication Of ineffective ~~of~~ assistance Of Counsel. Id.

6.

(2. Was petitioner denied due process and equal protection of The Law when The petitioner was forced To proceed To Trial in Violation of a Fair Trial due To his plea and conviction being UNLAWFUL due To a CONFLICT OF INTEREST?

In The instant case, The petitioner was denied due process, equal protection and due process of Law when Trial Counsel negligently allowed petitioner To proceed To Trial By and Through a CONFLICT OF INTEREST. The Victim Robert Masella is a FORMER Richland County Magistrate, and is also an officer of The Court (ATTORNEY), The Trial Judge is also a Richland County Judge:

Not only was defense Counsel ineffective FOR failing To conduct a proper PRETRIAL Investigation; Trial Counsel's performance fell below an objective standard of Reasonableness; Thus, The errors did prejudice The petitioner, whereas, had Counsel objected To The conflict, Motion FOR Recusal OR motion FOR Change of Venue; Thus, but FOR Counsel's errors, The results of The proceedings would probably have been different. Strickland, 466 U.S. at 691; see, Cherry v. State, 386 S.E.2d 624 (1989); and Murray v. GARRIE, 477 U.S. 478 (1986).

Ineffective assistance of Counsel may result from an attorney's conflict of interest. Strickland v. Washington, 466 U.S. 668, 692 (1984); (Right to effective assistance of Counsel impaired when defense Counsel operates under conflict of interest, because "Counsel breaches The duty of Loyalty, perhaps The most basic of Counsel's ~~duty~~ duties").

In The instant case, Trial Counsel was grossly neglect in his duties because Counsel knowingly knew That Victim was a Former Richland County magistrate, The prosecutor a Richland County prosecutor and The Trial Judge a Richland County Circuit Court Judge.

In Cuyler v. Sullivan, 446 U.S. 335 (1980), The Supreme Ruled That a defendant Can demonstrate a Sixth Amendment Violation by Showing: (1), That defense Counsel was actively Representing Conflicting Interests, and (2), That The Conflict had an adverse effect on Specific instances of Counsel's performance. Id. at 350. Compare Lopez v. Scully, 58 F.3d 38, 41 (2d Cir. 1995). When a defendant alleges That his or her guilty plea Resulted From defense Counsel's Conflict of Interest, The defendant must show a Reasonable probability That he or she would have insisted on a Trial but for The effect of The Conflict of Interest on his or her Counsel's advice. See, Thomas v. Foltz, 818 F.2d 476 (6th Cir. 1987). A Trial Court has a limited duty to avoid potential Conflicts of Interest. Cuyler, 446 U.S. at 346-47. The Court must initiate an inquiry if it knows or Reasonably should know That a potential Conflict exists. Id. at 347. When The Trial Court ~~had~~ has notice of a potential Conflict but fails to make such an inquiry, The Reviewing Court will presume a Violation of The Sixth Amendment Right to Counsel. Compare, Holloway, 435 U.S. at 484; U.S. v. Beig, 967 F.2d 1018 (5th Cir. 1992).

In The instant case, The Trial Court had notice That a potential Conflict of Interest existed when The honorable Judge Childs Recused herself From The Trial, but yet The sentencing and

8.

TRIAL Judge failed to make an inquiry. See, Jackson v State, 495 S.E.2d 768 (1998); Duncan v State, 315 S.E.2d 809 (1984)

(3, Did The TRIAL COURT Lacked Subject matter Jurisdiction due To The insufficiency of The indictment for burglary 2d ?

In The instant case, The TRIAL COURT Lacked Subject matter Jurisdiction To accept petitioners guilty plea, whereas his plea is not a lesser included plea, and petitioner did not waive presentment. (See Sentencing Sheet, There is no written waiver that he waived presentment To The Grand Jury); Hooks v State, 577 S.E.2d 211 (2003); State v. Small, 581 S.E.2d 850 (S.C.App. 2003).

Thus, The CIRCUIT COURT Lacked Subject matter Jurisdiction because his indictments failed to allege The essential elements of burglary second.

(4, Was petitioners Guilty plea knowingly and voluntarily due To Counsel's unpreparedness and failure To present Client with discovery?

In The instant case, petitioner was denied due process and equal protection, and fundamental fairness by Counsel's failure To provide petitioner with discovery prior To Trial. Thus, because of Counsel's errors, The errors rendered The Trial fundamentally unfair, thus, petitioners guilty plea was not knowingly and intelligently made because Trial Counsel was unprepared for Trial and due To The conflict of interest and denial of discovery The ~~petitioner~~ petitioner was

9.

FORCED To PROCEED To TRIAL and COERCED To plead guilty. See DAVIS V STATE, 486 S.E.2d 747 (1977); BRADY V. MARYLAND, 83 S.Ct. 1194 (1963); GIBSON V STATE, 514 S.E.2d 320 (1999).

In Conclusion

Based on The Foregoing arguments The Applicant/PETITIONER IS entitled To a new TRIAL.

Date: March 31, 2009

Louise L. Jenkins

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2009CP4002452
Jenkins, Ronald Lynn, # 00333126,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 3, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Micah Leddy, Deputy Public Defender. On February 9, 2009, the Applicant pled guilty and was sentenced by The Honorable G. Thomas Cooper, Jr. to the following:

12-07	2007GS408419	2551 16-11-0110(B) * 25 * Arson / Arson - Second degree	20	No
12-07	2007GS408426	0086 16-11-0312(B) * 15 * Burglary / Burglary (Violent) (After 06/20/85) - Second degree	15	No
12-07	2007GS408428	2406 16-03-1730(A) * 5 * Aggravated Stalking	5	No

The Applicant did not appeal his guilty plea or sentence.

II.

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

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

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

- (a) ineffective assistance of counsel
- (b) SUBJECT MATTER JURISDICTION
- (c) INVOLUNTARY GUILTY PLEA

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

- (a) CONFLICT OF INTEREST / counsel failed to conduct a PRETRIAL investigation.
- (b) INSUFFICIENT INDICTMENT FOR burglary 2d / DENIAL OF DISCOVERY
- (c) Plea was not knowing and VOLUNTARY / Plea was Coerced / Adversal by a CONFLICT of INTEREST.
See attached memorandum of law in support

See attached memorandum of law in support

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

- (a) ineffective assistance of counsel / SUBJECT MATTER JURISDICTION
- (b) INVOLUNTARY GUILTY PLEA / CONFLICT OF INTEREST
- (c) was not presented because counsel was ineffective and failed to file a appeal or review by writ of habeas corpus

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

a new TRIAL That is conflict free / OR a plea That is properly presented That includes a lesser included plea and a lesser sentence.

1.

STATE OF SOUTH CAROLINA County of Richland

Ronald L. Jenkins, #333126.

PETITIONER

Applicant,

In The COURT of Common Pleas
Case No.

VS.

The State,

Respondent.

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR RELIEF PURSUANT TO THE
UNIFORM POST-CONVICTION PROCEDURE
ACT S.C. Code ANN. 17-27-10, ET SEQ.

AS a MATTER OF INTRODUCTION, THE PETITIONER/APPLICANT RESPECTFULLY SUBMITS THAT THE EVENTS WHICH TRANSPIRED IN THE INSTANT CASE CONSTITUTE a denial of the petitioner's RIGHTS TO due PROCESS OF LAW as guaranteed by THE FIFTH Amendment TO THE UNITED STATES CONSTITUTION and TO THE EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY SIXTH Amendment TO THE UNITED STATES CONSTITUTION. THESE ERRORS WAS NOT MERELY PROCEDURAL, BUT SUBSTANTIALLY INFRINGED UPON THE PETITIONER'S RIGHT TO due PROCESS OF LAW.

STATEMENT OF THE ISSUES

- (1) Did petitioner Receive ineffective assistance of Counsel when Trial Counsel Failed To Conduct a proper PRE-TRIAL Investigation?
- (2) Was petitioner denied due process and equal protection of The Law when The petitioner was forced To proceed To TRIAL in violation of a fair TRIAL due To his plea and conviction being unlawful due To a CONFLICT OF INTEREST?

2.

- (3) Did The Trial Court Lacked Subject Matter Jurisdiction due To The Insufficiency of The indictment for Burglary 2d?
- (4) Was petitioner's plea knowingly and voluntary due To Counsel's Unpreparedness and Failure To present Client with discovery?

Statement of Jurisdiction

South Carolina law provides an avenue for those whose convictions have been obtained in violation of The Constitution of The United States. The uniform post-conviction procedure act; S.C. Code Ann. 17-27-10, et seq., provides an avenue for redress of federal constitutional violations by a South Carolina court. A prisoner in custody under sentence by a South Carolina court may challenge his conviction and sentence if such were obtained in violation of The Constitution of The United States or The Constitution or Laws of South Carolina." S.C. Code Ann. 17-27-20 (a)(1). The petitioner feels that his best opportunity to obtain fair and substantial justice regarding his conviction is through this petition, as the procedural remedy utilized herein has historically served as a safety net for those who have had their constitutional rights violated.

ARGUMENT

In order to ~~proceed~~ succeed in a post-conviction proceeding, The petitioner must show that the adjudication of a claim in a South

3.

CAROLINA COURT RESULTED IN A CONVICTION OR SENTENCE THAT WAS IMPOSED IN VIOLATION OF THE CONSTITUTION OR LAWS OF THE UNITED STATES. S.C. Code ANN. 17-27-20(6)(1). THE CONSTITUTION, AS THE FRAMEWORK FROM WHICH ALL SOUTH CAROLINA LAW SPRINGS, MUST NOT BE VIOLATED AS APPLIED TO THE PETITIONER.

(1) Did The petitioner Receive ineffective assistance of Counsel When Trial Counsel Failed To Conduct a proper pre-Trial investigation?

The petitioner SUBMITS THAT he Received ineffective assistance of Counsel PRIOR TO and DURING his TRIAL. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES THAT EVERY CRIMINAL DEFENDANT IS ENTITLED TO THE EFFECTIVE ASSISTANCE OF COUNSEL IN PRESENTING THEIR DEFENSE. SEE ALSO, S.C. CONST. ART. I, SECTION 14. THE SUPREME COURT HAS STATED, "THE RIGHT TO COUNSEL IS A FUNDAMENTAL RIGHT OF CRIMINAL DEFENDANTS; IT ASSURES THE FAIRNESS, AND THUS THE LEGITIMACY, OF OUR ADVERSARY PROCESS." KIMMELMAN V. MORRISON, 477 U.S. 365 (1986). FURTHERMORE, THE SUPREME COURT HAS RECOGNIZED THAT "THE RIGHT TO COUNSEL IS THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL." McMANN V. RICHARDSON, 397 U.S. 759 (1970). TO SEE WHETHER COUNSEL HAS FALLEN BELOW THE MINIMUM STANDARD NEEDED FOR EFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT TO THE CONSTITUTION, A TWO PRONG TEST MUST BE MET. IN STRICKLAND V. WASHINGTON, 476 U.S. 668 (1984). THE SUPREME COURT HELD THAT A DETERMINATION OF INEFFECTIVE ASSISTANCE OF COUNSEL WOULD BE CONDITIONED ON TWO FACTORS:

(1, COUNSEL'S PERFORMANCE MUST HAVE FALLEN BELOW AN OBJECTIVE STANDARD OF REASONABLENESS; AND

4.

(2, There must be a reasonable probability that, but for counsel's errors, the results of the proceedings would probably have been different.

South Carolina has adopted the Strickland Standard, see, e.g., *Cherry v. State*, 386 S.E.2d 624 (1989). The right to effective assistance of counsel may be violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. See also, *Murray v. Carrier*, 477 U.S. 478 (1986). "It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interest." *Frazier v. United States*, 18 F.3d 778 (9th Cir. 1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for trial; conduct the trial in the best of his ability; and, at the bottom, serve as a vigorous and devoted advocate of the defendant's cause." See, *United States ex. Rel. Batee v. Lane*, 926 F.2d 694 (7th Cir. 1991).

As the Supreme Court recognized in *Strickland*, "counsel bears a duty to make a reasonable investigation of the law and facts in his client's case." *Strickland*, 466 U.S. at 691.

8.

Additionally, The ABA Standards Relating To The Administration Of Criminal Justice provide:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation shall always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty.

A defendant's right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. When a lawyer fails to conduct a substantial investigation into any of his client's plausible lines of defense, the lawyer has failed to render effective assistance of counsel. Gibbs v. State, 408 S.E.2d 223 (1991). Pre-trial preparation, principle principally because it provides a basis upon which most of the defense case must rest, is perhaps, the most critical stage of a lawyer's preparation. Id. Failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. Id.

6. (2. Was petitioner denied due process and equal protection of The Law when The petitioner was forced to proceed to Trial in violation of a fair trial due to his plea and conviction being unlawful due to a conflict of interest?

In The instant case, The petitioner was denied due process, equal protection and due process of Law when Trial Counsel negligently allowed petitioner to proceed to Trial By and Through a conflict of interest. The victim Robert Masella is a former Richland County Magistrate, and is also an officer of The Court (Attorney), The Trial Judge is also a Richland County Judge:

Not only was defense Counsel ineffective for failing to conduct a proper pretrial investigation; Trial Counsel's performance fell below an objective standard of reasonableness; Thus, The errors did prejudice The petitioner, Whereas, had Counsel objected to The conflict, Motion for Recusal or motion for change of Venue; Thus, but for Counsel's errors, The results of The proceedings would probably have been different. Strickland, 466 U.S. at 691; see, Cherry v. State, 386 S.E.2d 624 (1989); and Murray v. Carrier, 477 U.S. 478 (1986).

Ineffective assistance of Counsel may result from an attorney's conflict of interest. Strickland v. Washington, 466 U.S. 668, 692 (1984); (Right to effective assistance of Counsel impaired when defense Counsel operates under conflict of interest, because "Counsel breaches the duty of loyalty, perhaps the most basic of Counsel's duty duties").

7.

In the instant case, Trial Counsel was grossly neglect in his duties because Counsel knowingly knew that Victim was a former Richland County magistrate, the prosecutor a Richland County prosecutor and the Trial Judge a Richland County Circuit Court Judge.

In Cuyler v. Sullivan, 446 U.S. 335 (1980), the Supreme Court ruled that a defendant can demonstrate a Sixth Amendment violation by showing: (1) that defense counsel was actively representing conflicting interests, and (2) that the conflict had an adverse effect on specific instances of counsel's performance. *Id.* at 350. Compare Lopez v. Scully, 58 F.3d 38, 41 (2d Cir. 1995). When a defendant alleges that his or her guilty plea resulted from defense counsel's conflict of interest, the defendant must show a reasonable probability that he or she would have insisted on a trial but for the effect of the conflict of interest on his or her counsel's advice. See, Thomas v. Foltz, 818 F.2d 476 (6th Cir. 1987). A trial court has a limited duty to avoid potential conflicts of interest. Cuyler, 446 U.S. at 346-47. The court must initiate an inquiry if it knows or reasonably should know that a potential conflict exists. *Id.* at 347. When the trial court has notice of a potential conflict but fails to make such an inquiry, the reviewing court will presume a violation of the Sixth Amendment right to counsel. Compare, Holloway, 435 U.S. at 484; U.S. v. Beig, 967 F.2d 1018 (5th Cir. 1992).

In the instant case, the trial court had notice that a potential conflict of interest existed when the honorable Judge Childs recused herself from the trial, but yet the sentencing and

8.

Trial Judge failed to make an inquiry. See, Jackson v. State, 495 S.E.2d 768 (1998); Duncan v. State, 315 S.E.2d 809 (1984).

- (3) Did The Trial Court Lacked Subject Matter Jurisdiction due To The Insufficiency Of The Indictment For burglary 2d?

In The instant case, The Trial Court Lacked Subject matter Jurisdiction To accept petitioners guilty plea, whereas his plea is not a lesser included plea, and petitioner did not waive presentment. (See Sentencing Sheet, There is no written waiver that he waived presentment To The Grand Jury); Hicks v. State, 571 S.E.2d 211 (2003); State v. Small, 581 S.E.2d 850 (S.C. App. 2003). Thus, The Circuit Court Lacked Subject matter Jurisdiction because his indictments failed to allege The essential elements of burglary second.

- (4) Was petitioners Guilty plea knowingly and voluntarily due To Counsel's unpreparedness and failure To present client with discovery?

In The instant case, petitioner was denied due process and equal protection, and fundamental fairness by counsel's failure To provide petitioner with discovery prior To trial. Thus, because of counsel's errors, The errors rendered The trial fundamentally unfair; Thus, petitioners guilty plea was not knowingly and intelligently made because Trial Counsel was unprepared for trial and due To The conflict of interest and denial of discovery The ~~petitioner~~ petitioner was

9.

FORCED To PROCEED To TRIAL and COERCED To plead guilty. See DAVIS V. STATE, 486 S.E. 2d 747 (1977); BRADY V. MARYLAND, 83 S. CT. 1194 (1963); GIBSON V. STATE, 514 S.E. 2d 320 (1999).

In Conclusion

Based on The foregoing ARGUMENTS The Applicant/PETITIONER IS entitled To a new TRIAL.

Date: March 31, 2009

Ronald L. Jenkins

III.

The Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

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

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

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

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

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

IV.

Involuntary Guilty Plea

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant 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 defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). An Applicant alleging that the guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant

presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that 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 which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

Subject Matter Jurisdiction – Defect in the Indictment(s)

Applicant claims defects in the indictments. The Respondent concedes a defendant in a criminal case is entitled to be tried only upon the charges in the indictment against him. State v. Tabory, 262 S.C. 136, 202 S.E.2d 852 (1974). A defendant must be convicted, if at all, of the particular offense charged in the bill of indictment. State v. Watts, 321 S.C. 158, 467 S.E.2d 272 (1996).

The well settled test for judging the sufficiency of criminal indictments is whether "the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he has called upon to answer, and acquittal or conviction may be pleaded in bar to any subsequent prosecution." State v. Wade, 306 S.C. 79, 409 S.E.2d 780 (1991). Quoting, State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981). The State is not required to plead its evidence in the indictment. State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (S.C. App. 1991).

When reviewing the sufficiency of indictments, the above cited test "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether

a defendant was or was not prejudiced can be reached. [citations omitted]." State v. Adams, 283 S.E.2d at 588.

While the failure to allege certain circumstances of the crime may be grounds to quash an indictment for insufficient notice, such a defect does not necessarily implicate the court's subject matter jurisdiction which is satisfied so long as the elements of the offense are sufficiently stated.

The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveiveness. See S.C. Code §§ 17-27-45 and -90 (2003).

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, 610 S.E.2d 494. However, "[c]ircuit courts obviously have

subject matter jurisdiction to try criminal matters.” Gentry, 610 S.E.2d 494; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

Due Process

The Applicant alleges a denial of due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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By: 
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July 2, 2009

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2009-CP-400-2452

Ronald L. Jenkins, 333126

Applicant,

vs

State of South Carolina,

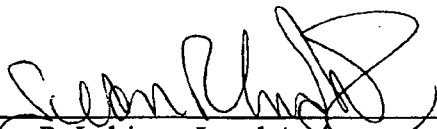
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)
)

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

Bryan S. Jeffries, Esquire
Post Office Box 646
1250 Amelia Street
Orangeburg, South Carolina 29115

DATED this 2nd day of July, 2009.



Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIRST JUDICIAL CIRCUIT

RONALD JENKINS,)
))
PLAINTIFF,)
) 09-CP-40-02452
VS.)
))
STATE OF SOUTH CAROLINA,)
))
DEFENDANT.)
_____)

APRIL 15, 2010
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE

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

BRIAN PETRANO, ESQUIRE
ATTORNEY FOR THE STATE

BRYAN JEFFRIES, ESQUIRE
ATTORNEY FOR THE DEFENDANT

HILDA M. JORDAN, CVR
CIRCUIT COURT REPORTER

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Ronald Jenkins v. State of South Carolina

THERE WERE NO EXHIBITS MARKED TO THIS PROCEEDING

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3

1 THE COURT: You may be seated.

2 MR. PETRANO: Your Honor, this will be Ronald
3 Jenkins.

4 Could I just have one moment?

5 THE COURT: Yes, sir.

6 MR. PETRANO: Your Honor, may it please the Court.

7 This is 2009-CP-40-002452, Mr. Ronald Jenkins. This is
8 a PCR application filed April 3, 2009. It's a Richland
9 County case.

10 The applicant pled guilty in front of Judge Cooper on
11 February 9, 2009. He was represented by the public
12 defender's, Mr. Micah Leddy.

13 The applicant had been indicted on three counts on the
14 December 2007 term of the Richland County Grand Jury.
15 That's 2007-GS-40-8419. That's the second degree arson.
16 8426 is a second degree burglary. That's a violent second
17 degree burglary, and 8428 is an aggravated stalking. It was
18 a straight up plea. The sentences are concurrent. He got
19 20 for the second degree arson, 15 for the second degree
20 burglary and five for the stalking. A total of 20 years.
21 There was no direct appeal.

22 I'll turn it over to Mr. Bryan S. Jeffries, the
23 applicant's current counsel of record.

24 Thank you, Judge.

25 THE COURT: Okay, Mr. Jeffries.

1 MR. JEFFRIES: Thank you, Judge. May it please
2 the Court.

3 THE COURT: Yes, sir.

4 MR. JEFFRIES: On behalf of the applicant, I will
5 call Mr. Ronald Jenkins to the stand.

6 (WHEREUPON, Ronald Jenkins was
7 sworn to tell the truth.)

8 THE COURT: All right. Have a seat there.

9 MR. JEFFRIES: May it please the Court?

10 THE COURT: Yes, sir.

11 RONALD JENKINS - DIRECT EXAMINATION

12 BY MR. JEFFRIES:

13 Q All right, Mr. Jenkins, I'm going to ask you to speak
14 loudly. I'm going to stand way back here, and I want you to
15 speak loud so the Judge and everybody else in the courtroom
16 can hear you.

17 A Okay.

18 Q Now, do you recall back in 2007 the grand jury here in
19 Richland County indicted you for arson and burglary second,
20 as well as, stalking; do you recall that?

21 A Yes, sir, I do.

22 Q And at some point were you appointed an attorney by the
23 Court to represent you on those charges?

24 A Yes, I was.

25 Q And who was attorney?

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5

1 A T. Micah Leddy.

2 Q And at some point did you enter a guilty plea or
3 request a jury trial?

4 A I entered a plea.

5 Q A guilty plea?

6 A Yes, I did.

7 Q And did Mr. Leddy represent you during that guilty
8 plea?

9 A Yes, he did.

10 Q And what was your sentence after that guilty plea?

11 A My sentence was 20 years for the second degree arson,
12 15 years for the second degree burglary and five years for
13 the stalking.

14 Q And is it correct that all three of those sentences
15 were to run concurrent?

16 A Yes.

17 Q So you're serving a 20 year sentence?

18 A Yes, I am.

19 Q And you understand that you could have received up to
20 25 years on the arson charge; you understand that?

21 A I understand that.

22 Q And you also understand you could have potentially
23 received up to 45 years total if all three of those
24 sentences were to run consecutive?

25 A Yes, I understand.

1 Q And understanding that, you understand that by going
2 forward with this PCR application here today at this
3 hearing, if the Judge deemed it appropriate, he could
4 reverse your case and send it back to general sessions and,
5 you could again face up to 45 years on those three charges?

6 A Yes, I understand.

7 Q Okay, and you understand if there were any other
8 charges dismissed as a result of your guilty plea, those
9 would also be -- you would be charged with those again?

10 A Yes.

11 Q Okay. Understanding that is it still your wish to go
12 forward with this PCR application hearing here today?

13 A Yes, it is.

14 Q And we've discussed this, is that correct?

15 A Yes, sir.

16 Q Now, is it your decision entirely or have I or someone
17 else persuaded you or coerced you to go forward with this
18 PCR application?

19 A My decision.

20 Q Now, let me ask you what, if any defenses did you have
21 to the charge of arson, burglary second, and aggravated
22 stalking back in 2005?

23 A I'm trying to clarify your question. You're asking me
24 what defenses were presented at my plea or --

25 Q What defenses did you have that you could have asked

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7

1 your attorney to present at a trial if you had had one?

2 A Well, my defense, I felt like co-defendant could have
3 presented was -- first of all, my victim, Mr. Marsella, is a
4 former Richland County Magistrate judge, he's a former
5 Richland County Solicitor. Also I have a -- Mr. Marsella, I
6 was also confronted him -- throwing me out of my home. I
7 felt that was the reason of my anger, my state of mind at
8 the time of the offense. I felt he should have investigated
9 my thing prior with Mr. Marsella. I did have a civil case
10 pending with Mr. Marsella. When you have a civil case
11 pending and Mr. Marsella just recently filed a motion to
12 recuse himself as my ex-wife's divorce attorney, citing the
13 attorney code of ethics and -- He didn't put why or what
14 ethics he violated, but I think that's the basis for him
15 recusing himself as my ex-wife's divorce attorney.

16 Q Let me follow up on something you just said. You were
17 talking about your state of mind. Did you and your
18 attorney, Mr. Leddy, speak at any point --

19 A Yeah.

20 Q -- about your state of mind; were you evaluated?

21 A Well, that's another thing. I feel he was ineffective
22 in the mental evaluation. I did have one scheduled, and I
23 was actually taken to see a counselor. In the first five
24 minutes of that meeting -- received a phone call and a fax
25 and the evaluation had to be cancelled. So it wasn't

1 investigated to see what my state of mind was. Also if he
2 had spoke to my drug and alcohol counselor. I was on
3 probation at the time, and I was in drug and alcohol
4 counseling for another different charge, and if he had
5 spoken to my divorce attorney, Ms. Wendy Pauling Levine, she
6 could have spoken to that as well of my state of mind.

7 Basically, what I'm trying to say is it was some type
8 of mental defense regarding my --

9 Q Okay. Did you speak to your attorney at all about the
10 possibility of a mental defense?

11 A Yes.

12 Q Mental heath defense, and you said you were scheduled
13 for an evaluation?

14 A And it was cancelled. I'm not sure what the reason was
15 given.

16 Q Okay. Let me understand. You had an appointment to be
17 evaluated?

18 A I actually did. The appointment was stopped, the
19 counselor got a phone call and a fax. They had to cancel
20 it.

21 Q Okay.

22 A The other thing I'd like to mention is the fact that
23 Judge Childs herself was scheduled to hear my plea back on
24 February 5, 2008. My understanding was -- I wasn't -- I was
25 down in the holding cell, but Mr. Marsella -- she was going

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9

1 to be she was going to be the presiding judge, he took the
2 witnesses and left the plea on February 5, 2008.

3 I spoke to Mr. Marsella -- not Mr. Marsella, but Mr.
4 Liddy afterwards, and he told me that the reason he was able
5 to leave was because victims have a right to have
6 notification of any court proceedings, and that plea was
7 only five days or like a week after my second appearance
8 when the plea.

9 So March 5th came around, the original scheduled date
10 of my plea, and I was supposed to come back for the plea,
11 Mr. Marsella -- pursuant to the solicitor's office canceled
12 my plea on March 5th, stating that Mr. Marsella had business
13 out of town in another court. Out of town. But I find that
14 hard to believe because we also had a probate matter
15 scheduled for that same day in front of Judge McCullough, so
16 we both had my plea March 5, 2008, plus a probate matter for
17 March 5, but Mr. Marsella was trying to collect \$65,000 --
18 on the property. So I can't see how anything more important
19 for him on that day than that criminal matter to have and
20 that probate matter to handle.

21 So I believe the Richland County Solicitor's Office --
22 I can't see any other -- had two pleas canceled for -- one
23 he decided to leave and the second one he didn't show up at
24 all.

25 So I think it was bias and it goes back to my conflict

1 of interest on account he didn't inform the solicitor.

2 Q And let me ask you approximately how long was this case
3 pending -- how long was it from you were arrested until you
4 were adjudicated --

5 A I was -- I turned myself in on September 2, 2007, and I
6 pled on February 5, 2009.

7 Q Okay.

8 A So a year and five months.

9 Q And how many attorneys did you have that were appointed
10 by the public defenders office?

11 A I had two. I don't remember the first young lady's
12 name. I had two, and Mr. Leddy took over in January 2008.
13 I met him when he first came to the first plea offer. It
14 would have been an open plea, and he came to me and he told
15 me -- he introduced himself to me. He told me that the
16 solicitor was offering me an open plea, that I would appear
17 before Judge Childs and the solicitor at that time was Mr.
18 Elam, he thought I had set a crack house on fire was what
19 Mr. Leddy told me.

20 So I'm not sure what he meant by that, but that's what
21 Mr. Leddy told me.

22 Q So he was appointed -- he started working -- January --

23 A 2008.

24 Q 2008. So he worked for you for more than a year?

25 A Over a year.

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1 Q Before your guilty plea?

2 A Yes, sir.

3 Q Okay. During that time how many opportunities did you
4 have to speak to Mr. Leddy?

5 A All --

6 Q Were you in jail or were you out on bond?

7 A I was in jail. I talked to him at least four or five
8 times?

9 Q Did y'all go over the discovery, the charges?

10 A No. I was never furnished with discovery.

11 Q Well, in your meetings with Mr. Leddy did y'all discuss
12 what was in discovery, what evidence was being --

13 A No.

14 Q Is there anything else you want the Court to know as it
15 pertains to your PCR and your allegations of ineffective
16 assistance of counsel?

17 A Let me look over my notes real quick.

18 Q Take your time.

19 A Oh, there was a matter -- I didn't know this until two
20 weeks ago. I was not indicted in 90 days of my warrants
21 being issued.

22 There was a court case in Greenwood with a former
23 principle -- I think I sent a copy of that to -- I don't
24 believe my warrant, my indictments should stand because I
25 wasn't indicted within 90 of my warrant being issued. This

1 young lady, this woman, Janet Blackwell got a case thrown
2 out because she wasn't indicted in 90 days.

3 According to my -- I'm a little nervous so bear with
4 me. According to my warrants I turned myself in on August
5 31st when the warrant was issued. I wasn't indicted until
6 December 13th, which is over a hundred and something days.
7 I can figure it out, but I don't have it written down. I
8 wasn't indicted within 90 days according to my statute. One
9 of the things my attorney should have brought up, to have my
10 indictments squashed.

11 Q All right. Thank you, Mr. Jenkins. I want you to
12 answer any questions Mr. Petrano has for you.

13 RONALD JENKINS - CROSS-EXAMINATION

14 BY MR. PETRANO:

15 Q The conflict of interest -- when did you find that out,
16 when did you realize that the victim had been a solicitor?

17 A This -- long before I was arrested. It's not in my
18 divorce. This is my ex-wife's divorce attorney, and he had
19 an ad in the Yellow Pages, and it says that he's a former
20 solicitor, magistrate judge and he used to clerk for the
21 South Carolina Court of Appeals.

22 Q And so you knew all that, but then you went ahead and
23 pled guilty, right?

24 A I had no choice?

25 Q You could have gone to trial couldn't you?

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1 A Well, he -- here's the thing, Mr. Leddy came and spoke
2 to me in January -- actually, he came and spoke to me in
3 February, like a week before -- I'm trying to get it down --
4 What happened was once Mr. Marsella did not appear at my
5 plea and Judge Childs recused herself, and Mr. Leddy tried
6 to get me in front of Judge Goode, and, again, Mr. Marsella
7 would not come to my pleas, he came to me in like September
8 of 2009 and he said that he's -- the solicitor has been
9 changed from Elam to assistant solicitor, and that they were
10 going to seek consecutive sentences going to trial. That
11 part we discussed. He set up the evaluation appoint and I
12 went. It was cancelled. I came back there was no trial.
13 So it came the Christmas Holidays, and he called Solicitor
14 Meadows and Solicitor Meadows wouldn't return his phone
15 calls, but he would try to get it reduced to a lesser
16 included plea of attempted to burn. Okay. That didn't
17 happen. Then he came to me after the Superbowl, the first
18 week of, I guess, February. He decided he wanted to go to
19 trial again. That he was going to seek consecutive
20 sentences.

21 I asked Mr. Leddy if we go to trial would he present my
22 evidence of fraud against Mr. Marsella and when he said no
23 he wouldn't be able to get it in. I said, well, if I go to
24 plea can I present it myself and could I introduce all this
25 evidence, which I have with me today that Mr. Marsella

1 attempted to defraud me. He said you can do whatever you
2 want to. You can present whatever you want, you can say
3 whatever you want to. So at that point I said well, I'll go
4 ahead and plea if I can present this evidence of fraud, and
5 he said, okay. So I decided to plea.

6 So in my mind I was forced to. He was not going to
7 present this evidence of fraud and this evidence of fraud
8 would show mitigating circumstances. It would show that Mr.
9 Marsella was in fact commit crime against me.

10 Like I said, he took my name off my house without me
11 refinancing it. He -- there were car liens on my house in
12 Columbia that were over \$27,000. He's been back in family
13 court, and he's got those liens placed against my mother's
14 estate to get them paid off. He's -- he had my wife alimony
15 put in that \$27,000, he had his attorney fees put in that
16 \$27,000. So now there's a lump sum of \$65,000 in liens on
17 my mother's estate and all the money is coming to him. He
18 can or may not give my wife any money that's due to her, so
19 he's defrauded and he's defrauded the car companies in
20 Columbia that he had paid off. So it's fraudulent all the
21 way around.

22 This is in civil court, and it will come out in due
23 time.

24 Q And so all that led you to burn down his office?

25 A No, we don't know who burned his office.

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1 Q Well, actually, sir, we do. You said you did it at the
2 plea, didn't you?

3 A I decided to plea so I could present evidence of fraud.
4 Mr. Leddy had objection to my charge of fraud, you know, it
5 wasn't substantiated. If he defrauded me -- so we don't
6 know what happened on August 31 --

7 Q So you were lying then when you told the plea court,
8 Judge Cooper that you were guilty of these offenses?

9 A By pleading it was the only way I could present this
10 evidence of fraud. That's the reason why I decided to plea.

11 Q Are you going to answer my question?

12 A Am I going to answer your question?

13 Q Were you lying to Judge Cooper or not?

14 A No. I did what I had to do to present evidence of
15 fraud.

16 MR. PETRANO: Nothing further. Thank you.

17 THE COURT: Anything further?

18 MR. JEFFRIES: No, Your Honor.

19 THE COURT: All right. Step down, sir.

20 Any additional witnesses?

21 MR. JEFFRIES: None from the applicant, Your Honor.

22 THE COURT: All right.

23 MR. PETRANO: Judge, state calls Mr. Micah Leddy.

24 THE COURT: Mr. Leddy.

25 (WHEREUPON, Micah Leddy was sworn

1 to tell the truth.)

2 MICAH LEDDY - DIRECT EXAMINATION

3 BY MR. PETRANO:

4 Q Sir, do you recall your representation of this
5 applicant?

6 A Yes.

7 Q And just for the record, have you been here today
8 throughout his testimony for his PCR?

9 A Yes.

10 Q He said y'all met about four or five times; is that
11 your recollection?

12 A I don't remember exactly the number of times.

13 Q Did you meet with him?

14 A Yes.

15 Q Did you go over discovery with him?

16 A Yes.

17 Q What did you discuss with him, his charges, his
18 defenses; just tell us about that?

19 A We talked -- well, you know, we talked about -- we
20 talked a lot about his proceedings in family court and what
21 happened, and I got the file Megan Lee (sp) had had it for
22 however long before that, so she had pulled all -- the cases
23 and proceedings from family court. I went through all that,
24 and we talked about it. Then we talked about -- I'm sure we
25 talked about what the offenses carried, what evidence they

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1 had. I'm sure -- just normal stuff.

2 He really likes to -- wants to talk about these things
3 and I understand that, so we talked.

4 Q Did he indicate to you that he wanted to plea or go to
5 trial?

6 A When I got the case I thought it was going to be a
7 trial, because I don't think he ever told Megan Lee that he
8 wanted anything else. So when I first got the case I got it
9 under the impression that it was going to be a trial, and he
10 didn't -- I don't remember him being so eager to take this
11 plea when I first got the case, but --

12 Q Were there any plea offers?

13 A I think at one point I think they said they would go
14 with the current time. I think he said that at some point.
15 So then I think he actually got the case -- the case was
16 transferred to Meredith (sp) at some point, which is
17 unusual. I don't think I saw that happen otherwise. And
18 that that current time had been taken off the table. I
19 don't remember exactly what the --

20 Q On his direct testimony he said something about you
21 told him it would be like pleading to burn down a crack
22 house.

23 Did you hear that and follow that; do you recall that?

24 A No. I think that may have entered the discussion when
25 we were talking about different degrees of arson and a

1 difference in what degree of arson it is. But -- no, I
2 don't remember that.

3 Q Did he ever tell you that he did this?

4 A I don't remember if we ever really crossed that subject
5 or not. It's not something I typically ask.

6 Q That was my next question. Is that something you
7 typically ask or do not ask?

8 A I don't. I mean, I don't ask that question. It's not
9 really relevant to my job.

10 Q You indicated that you were hesitant -- a few minutes
11 ago on direct -- that you were hesitant to put forth the
12 defense that he wanted to if you had gone to trial; did you
13 hear that part of his testimony, do you have any reply?

14 A Well, what he was talking about was whether or not the
15 stuff from family court was going to be admissible. I
16 didn't think it was relevant unless we were going to pursue
17 an insanity defense, which I didn't think we had grounds
18 for.

19 You know, it was very important to him to have a day on
20 the record where he could discuss all these things. I
21 understand that. I just didn't think we were going to be
22 able to do it at trial.

23 So you know the point of going to trial is so you can
24 air your grievances. There's no point in getting more -- no
25 point in taking the risk of getting more time at the trial

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1 if you're not going to be able to get into it anyway.

2 MR. PETRANO: Nothing further. Thank you.

3 THE COURT: Mr. Jeffries?

4 MR. JEFFRIES: Just a couple of questions.

5 MICAH LEDDY - CROSS EXAMINATION

6 BY MR. JEFFRIES:

7 Q Mr. Leddy, would you agree that the applicant, Mr.
8 Jenkins, did not have access to his file, his discovery,
9 during the period of time when he was in jail?

10 A I mean, I don't know if I gave it to him or not.

11 Q You wouldn't disagree if he said he didn't have it?

12 A I don't remember, so I wouldn't disagree.

13 Q Okay, and going back to the issue of competency and the
14 potential defense of insanity and something along those
15 lines, could you describe the situation with the mental
16 health evaluation that he had or did not have?

17 A Well, what I remember is we had a conversation in that
18 he didn't want to get an evaluation so I had it canceled,
19 but I had forgotten about that until today, but I think
20 that's how it happened. But, you know, it doesn't cost me
21 anything to get somebody evaluated, so I don't have any
22 reason not to want to do it.

23 Q Do you have any independent recollection as to whether
24 or not your conversations with him would lead you believe he
25 might need an evaluation?

1 A I'm always very careful about that. I try and be
2 careful about that, especially when I was a public defender,
3 you know.

4 When you first look at the file and somebody is going
5 through something that is incredibly stressful for anybody,
6 and the allegations and the evidence seem to indicate that
7 they took the measure to burn down an attorney's building
8 makes you wonder if there would be grounds for an insanity
9 defense. So yeah.

10 Q And would you agree that Mr. Jenkins, in his mind,
11 through y'all's conversations believed that at the guilty
12 plea he would be allowed to enter evidence of this fraud and
13 that that somehow would be a defense, even though it was a
14 guilty plea?

15 A What I told him was that he could say whatever you want
16 during -- at the end of the plea, and only very, very rarely
17 have I had anybody that had been limited to what they could
18 say or not say. But I also told him that -- that if you
19 talk about this at length, then the judge is going to be
20 afraid that you haven't gotten over this and that you are
21 going to go back out and kill somebody is you get a lenient
22 sentence. So if you want to talk about it, that's up to
23 you, but my thoughts would be to not go through all that,
24 but that's what I recall that conversation to be, but
25 whether or not entering evidence -- I don't remember him

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1 using that terminology, but, you know, I knew he would at
2 least be able to talk, which seemed very important to him.
3 So --

4 MR. JEFFRIES: Nothing further.

5 MR. PETRANO: Just one, very brief --

6 THE COURT: Yes, sir.

7 MICAH LEDDY - REDIRECT EXAMINATION

8 BY MR. PETRANO:

9 Q There's a difference between giving an inmate -- an
10 incarcerated individual a copy of his discovery and going
11 over it, right?

12 A There is, and I don't remember if I took it over and
13 sat down with Ronald. I don't know if I did. I know we
14 talked about what was in it, but I usually try to talk
15 people out of sending it to them, because if somebody gets
16 ahold of it in the jail and reads it and they say, Ronald
17 told me he bought gas at this place, and then all of a
18 sudden you've got a jail house snitch, and that's not
19 helpful.

20 So I try to talk people out of having their discovery
21 at the jail, but if they insist I would send it to them.

22 MR. PETRANO: Thanks.

23 THE COURT: Did you review the transcript --

24 MR. LEDDY: Briefly, Your Honor, yes, sir.

25 THE COURT: I'll direct you to Page 7, Line 12

1 where the Court is talking to Mr. Jenkins. Judge Cooper
2 asks him: Do you understand that -- has he shared with you
3 what is know as Rule 5 or your discovery information.
4 Referencing whether you had shared the discovery information
5 with him -- with the defendant, Mr. Jenkins, and the
6 response from Mr. Jenkins was: Yes, Your Honor.

7 What do you interpret all that to mean?

8 MR. LEDDY: Well, his answer was that -- we looked
9 at it. I don't know if we sat down and looked at it, but I
10 don't think that we did. I don't remember. But it seems to
11 me that that would be what the judge was asking.

12 THE COURT: Did you ever have a client say that you
13 shared discovery and you had not discussed it with your
14 client?

15 MR. LEDDY: No, not that I remember.

16 THE COURT: Are there any additional questions
17 from Mr. Jeffries?

18 MR. JEFFRIES: None from the applicant.

19 MR. PETRANO: Nothing from the state.

20 THE COURT: Step down.

21 MR. LEDDY: Thank you.

22 MR. PETRANO: Your Honor, may this witness be
23 excused from his subpoena?

24 THE COURT: Yes, sir.

25 The state has no other witnesses or evidence beyond

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1 what you already have in the packet, being the application,
2 the court records, the SCDC records, and the transcript.

3 THE COURT: Any argument?

4 MR. JEFFRIES: If I could, just a brief summation,
5 Judge.

6 THE COURT: All right.

7 MR. JEFFRIES: I'd ask you to grant Mr. Jenkins
8 application for post conviction relief on the basis of
9 ineffective assistance of counsel in that according to Mr.
10 Jenkins he did not receive the discovery nor -- which I
11 think his testimony was that he did ask to have discovery
12 and never had it throughout the time he was detained in the
13 jail.

14 Also, based on the fact of Mr. Jenkins competency did
15 come up and for whatever reason Mr. Leddy did not follow
16 through with the evaluation.

17 According to Mr. Jenkins, he indicated that he felt
18 that it was necessary and since he did not have one that was
19 also ineffective assistance.

20 Third, Your Honor, based on Mr. Jenkins testimony that
21 he was misled and coerced into the guilty plea because his
22 thinking was that after his discussions with his attorney
23 was that he could somehow present evidence in his defense at
24 the guilty plea and that was the basis for him entering the
25 guilty plea. He felt he would have gone to trial, but for

1 the fact that he could present that evidence, which I think
2 he testimony would be that he did not properly present that
3 evidence, and it did not benefit him at the guilty plea.
4 For those reasons I'd ask that you grant his PCR
5 application.

6 THE COURT: Yes, sir.

7 MR. PETRANO: Your Honor, the state submits the
8 record is clear. First of all, you've got some divergent
9 testimony although plea counsel didn't specifically recall
10 if it was his practice to go over everything, and he didn't
11 seem to hesitate as to the fact that he went over the
12 materials, the discovery materials, it was just how he did
13 it. But you have that coupled with Page 7, Your Honor.
14 You've already indicated that. Page 7 indicates -- There's
15 two separate questions. Has he shared with you all the
16 evidence the state has available? Yes. Has the shared with
17 you the whole file or discovery. Basically re-asking the
18 question. Yes, again, Your Honor, confirming that twice.
19 Then we deal with the competency issue, Your Honor.

20 There's been no evidence presented here that the
21 applicant is or was incompetent. So I don't see how they
22 can satisfy their burden of proof that counsel was somehow
23 deficient without -- an avenue that he hasn't demonstrated
24 actually exists.

25 As far as being misled into the plea, I think counsel

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1 has explained what the conversation was. It was, you know,
2 if you plea you can go ahead at the end and basically say
3 anything you want.

4 Also, counsel explained that with a warning, he said
5 that you don't want to demonstrate the you haven't gotten
6 over this because that will make the sentence harsher. That
7 was his explanation.

8 The applicant admitted to the facts of the plea. He
9 was evasive on the stand. That goes towards his
10 credibility. I was going to follow up on the question about
11 did he receive the discovery, but since he wouldn't even --
12 he was evasive on the simple open questions at the
13 beginning, so there was no point in getting into that, Your
14 Honor. That goes towards his credibility and whether he
15 satisfied that burden of proof and it is his burden under
16 the PCR, it's the preponderance of the evidence, and that's
17 Rule 71.1 part (e).

18 Thank you, Judge.

19 State stands by its attorney.

20 THE COURT: Well, this is a transcript in which
21 Judge Cooper thoroughly went over with Mr. Jenkins all his
22 constitutional rights, clearly -- thoroughly went over with
23 him the voluntariness of the plea and whether or not he was
24 fully informed as to evidence that state had against him,
25 whether he was fully satisfied with the representation of

1 his lawyer. Whether or not he had any emotional, mental, or
2 physical problems or anything that might prevent him from
3 understanding what he was doing and that, in fact, when the
4 judge asked him: Mr. Jenkins, are you aware of any mental,
5 emotional or nervous condition that you have that would
6 interfere with your ability to understand what you're doing
7 here today, Mr. Jenkins stated, None, Your Honor. Then
8 later in the plea Mr. Jenkins went on and told the judge
9 about his history, including his military career, training,
10 and very skilled -- that he had acquired during his period
11 of living -- here on this earth.

12 It is clear to me that the lawyer did a admirable job
13 in defending Mr. Jenkins. His services were not deficient.
14 He did not fault in the standard required for effective
15 representation. There is no basis for a PCR application
16 being granted here today.

17 With regard to the issue of whether Mr. -- two issues,
18 one regarding conflict of interest, Mr. Jenkins had all the
19 information he needed to -- he waived that issue. The fact
20 that the lawyer one time worked as an assistant solicitor is
21 not in itself a conflict. It's not a basis for the state
22 not to provide that citizen with resources to prosecute
23 criminal acts against him. So that is not a grounds for
24 PCR.

25 Mr. Jenkins also went into his problems with Mr.

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1 Marsella in great detail. The reason this is a 50 page
2 transcript is Mr. Jenkins spoke extensively to the Court as
3 to why he was upset with Mr. Marsella and what motivated him
4 to do what he did. So the judge had the benefit of all of
5 that information as to why Mr. Jenkins, himself, as well as
6 -- the judge considered all of that in imposing sentence.

7 I deny the post conviction relief application.

8 MR. PETRANO: Thank you, Your Honor.

9 MR. JEFFRIES: Thank you, Your Honor.

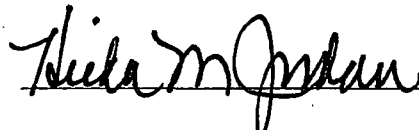
10 THE COURT: Yes, sir.

11 (This proceeding was concluded.)
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1 CERTIFICATE

2 I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT
3 REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF
4 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
5 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
6 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF
7 THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF
8 COMMON PLEAS, RICHLAND COUNTY, SOUTH CAROLINA, ON THE 15TH
9 DAY OF APRIL, 2010.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,
11 NOR INTEREST IN ANY PARTY HERETO.

12
13 
14

15 HILDA M. JORDAN, CVR
16
17

18 COLUMBIA, SOUTH CAROLINA

19 NOVEMBER 30, 2010
20
21
22
23
24

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON LEAS

2009CP4002452

Ronald Jenkins, # 333126,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

JEANETTE W. McBRIDE
NC.C.P. & G.S.

2009 AUG 25 AM 10:09

RICHLAND COUNTY
FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 3, 2009. The Respondent made its Return on July 8, 2009. The Applicant filed a *pro se* amended application for PCR on July 27, 2009. An evidentiary hearing into the matter was convened on April 15, 2010 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Bryan Jeffries, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Micah Leddy, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Micah Leddy, Deputy Public Defender. On February 9, 2009, the Applicant pled guilty and was sentenced by The Honorable G. Thomas Cooper, Jr. to the following:

Grand Jury Term	Indictment Number	CDR - SC codes	Charged Offense - Potential Sentence	Offense Description	Sentence Received	Sentence to Officer
12-07	2007GS408419	2551 16-11-0110(B) * 25	Arson / Arson - Second degree		20	No
12-07	2007GS408426	0086 16-11-0312(B) * 15	Burglary / Burglary (Violent) (After 06/20/85) - Second degree		15	No
12-07	2007GS408428	2406 16-03-1730(A) * 5	Aggravated Stalking		5	No
NOTES: Plea was without negotiations; sentences are concurrent					TOTAL	POSSIBLE

The Applicant did not appeal his guilty plea or sentence.

Apart from any overlapping issues that were otherwise presented at the hearing, this Court cannot consider any allegations made solely in the Applicant's *pro se* amendment, filed June 30, 2009. Rule 11, SCRCP, requires every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion, or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11, SCRCP. South Carolina does not recognize any right to hybrid

representation at trial or on appeal. See, e.g., Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).¹

In his PCR application the Applicant makes the following allegations:

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

- ineffective assistance of counsel
- SUBJECT MATTER JURISDICTION
- Involuntary Guilty Plea

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

- CONFLICT OF INTEREST / counsel failed to conduct a pretrial investigation.
- INSUFFICIENT INDICTMENT FOR BURGLARY 2d / DENIAL OF DISCOVERY
- Plea was not knowing and voluntary / Plea was Coerced / Adversal by a CONFLICT OF INTEREST.
See attached memorandum of Law In Support

See attached memorandum of Law In Support

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

- ineffective assistance of counsel / SUBJECT MATTER JURISDICTION
- Involuntary Guilty plea / CONFLICT OF INTEREST
- was not presented because counsel was ineffective and failed to file a appeal or review by writ of CERTIORARI.

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

a new Trial That is conflict free / OR a plea That is properly presented That includes a lesser included plea and a lesser sentence.

¹ This Court is fully aware of our Court's recent ruling that "Rule 11 of the South Carolina Rules of Civil Procedure does not apply to PCR proceedings." Hiott v. State, 381 S.C. 622, 674 S.E.2d 491 (2009). However, this Court interprets the Hiott decision to be narrowly tailored to the issue(s) presented in Hiott [sanctions] and not to negate any and all applicability of Rule 11(a) for PCR proceedings. This Court, respectfully, does not interpret Hiott to implicitly abrogate Jones v. State, 348 S.C. 13, 558 S.E.2d 517, (2002), or Foster v. State, 298 S.C. 306, 379 S.E.2d 907, (1989).

1.

State of South Carolina County of Richland

Ronald L. Jenkins, #333126.

Petitioner/

Applicant,

In The Court of Common Pleas

Case No.

VS.

Memorandum of Law In Support of
Motion for Relief Pursuant to The
Uniform Post-Conviction Procedure
ACT S.C. Code ANN. 17-27-10, et Seq.

The State,

Respondent.

AS a matter of introduction, The Petitioner/Applicant Respectfully Submits That The events which transpired in the instant case constitute a denial of the petitioner's rights to due process of law as guaranteed by The Fifth Amendment to The United States Constitution and to the effective assistance of counsel guaranteed by Sixth Amendment to The United States Constitution. These errors was not merely procedural, but substantially infringed upon the petitioner's right to due process of law.

Statement of The issues

- (1) Did petitioner Receive ineffective assistance of Counsel when Trial Counsel failed To conduct a proper pre-trial Investigation?
- (2) Was petitioner denied due process and equal protection of The law when The petitioner was forced To proceed To Trial in violation of a fair Trial due To his plea and conviction being unlawful due To a conflict of interest?

2.

(3) Did The TRIAL COURT Lacked Subject MATTER JURISDICTION due To The Insufficiency of The indictment for Burglary 2d ?

(4) Was petitioners plea knowingly and Voluntary due To Counsel's Unpreparedness and Failure To present Client with discovery?

Statement of Jurisdiction

South Carolina Law provides an avenue for Those whose convictions have been obtained in violation of The Constitution of The United States. The uniform post-conviction procedure act, S.C. Code ANN. 17-27-10, et seq., provides an avenue for Redress of Federal Constitutional violations by a South Carolina Court. A prisoner in custody under sentence by a South Carolina Court may challenge his conviction and sentence IF such were obtained in violation of The Constitution of The United States or The Constitution or Laws of South Carolina". S.C. Code ANN. 17-27-20

(a)(1). The petitioner feels That his best opportunity To obtain fair and substantial Justice Regarding his conviction is Through this petition, as The procedural Remedy Utilized herein has historically Served as a safety net for Those who have had Their Constitutional Rights Violated.

ARGUMENT

In order To ~~proceed~~ succeed in a post-conviction proceeding, The petitioner must show That The adjudication of a Claim in a South

3.

CAROLINA COURT RESULTED in a conviction OR Sentence That was imposed in Violation of The Constitution OR Laws of The United States. S.C Code ANN. 17-27-20(6)(1). The Constitution, AS The Framework From which all South Carolina Law Springs, must NOT be Violated as applied To The petitioner.

- (1) Did The petitioner Receive ineffective assistance of Counsel When Trial Counsel Failed To conduct a proper pre-Trial investigation?

The petitioner Submits That he Received ineffective assistance of Counsel PRIOR To and during his Trial. The Sixth Amendment To The United States Constitution Guarantees That every Criminal defendant is entitled To The effective assistance of Counsel in presenting Their defense. See also, S.C CONST. ART. 1, Section 14. The Supreme Court has stated, "The Right To Counsel is a Fundamental Right of Criminal defendants; IT ASSURES The FAIRNESS, and Thus The Legitimacy, of our adversary process." KIMMELMAN V. MORRISON, 477 U.S. 365 (1986). Furthermore, The Supreme Court has Recognized That "The Right To Counsel is The Right To effective assistance of Counsel." McMANN V. RICHARDSON, 397 U.S. 759 (1970). To see whether Counsel has Fallen below The minimum standard needed For effective assistance of Counsel Under The Sixth Amendment To The Constitution, a two prong Test must be met. In STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984). The Supreme Court held That a determination of ineffective assistance of Counsel would be conditioned on Two factors:

- (1) Counsel's performance must have Fallen below an objective standard of Reasonableness; and

4.

(2, There must be a Reasonable probability That, but for counsel's errors, The RESULTS of The proceedings would probably have been different.

South Carolina has adopted The STRickland Standard, see, e.g., *Cherry v. State*, 386 S.E.2d 624 (1989). The Right To effective assistance of Counsel may be violated by even an isolated error of Counsel if The error is sufficiently egregious and prejudicial. See also, *Murray v. Carrier*, 477 U.S. 478 (1986). "It is The Client's Right To expect That his Lawyer will use every skill, expend every energy, and tap every legitimate Resource in The exercise of independent professional Judgment on behalf of The client and in undertaking Representation of The Client's interest." *Frazier v. United States*, 18 F.3d 778 (9th Cir. 1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of The defendant; keep The defendant fully informed of developments in The case and consult with The defendant on all major decisions To be made; conduct a Reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequately and professionally for trial; conduct The trial in The best of his ability; and, at The bottom, serve as a vigorous and devoted advocate of The defendant's cause." See, *United States ex. Rel. Batee v. Lane*, 926 F.2d 694 (7th Cir. 1991).

AS The Supreme Court Recognized In STRickland, "counsel bears a duty To make a Reasonable investigation of The law and facts in his Client's case." STRickland, 466 U.S. at 691.

5.

Additionally, The ABA Standards Relating To The Administration of Criminal Justice provide:

It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation shall always include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt or the accused's stated desire to plead guilty.

A defendant's right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. When a lawyer fails to conduct a substantial investigation into any of his client's plausible lines of defense, the lawyer has failed to render effective assistance of counsel. Gibbs v. State, 408 S.E.2d 223 (1991). Pre-trial preparation, principle principally because it provides a basis upon which most of the defense case must rest, is perhaps, the most critical stage of a lawyer's preparation. Id. Failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. Id.

6. (2. Was petitioner denied due process and equal protection of The Law when The petitioner was forced to proceed To Trial in violation of a fair trial due to his plea and conviction being unlawful due to a conflict of interest?

In The instant case, The petitioner was denied due process, equal protection and due process of Law when Trial Counsel negligently allowed petitioner to proceed To Trial By and Through a conflict of interest. The victim Robert Masella is a former Richland County Magistrate, and is also an officer of The Court (Attorney); The Trial Judge is also a Richland County Judge:

Not only was defense counsel ineffective for failing to conduct a proper pretrial investigation; Trial Counsel's performance fell below an objective standard of reasonableness; Thus, The errors did prejudice The petitioner, whereas, had counsel objected To The conflict, motion for recusal or motion for change of venue; Thus, but for counsel's errors, The results of The proceedings would probably have been different. Strickland, 466 U.S. at 691; see, Cherry v. State, 386 S.E.2d 624 (1989); and Murray v. Garris, 477 U.S. 478 (1986).

Ineffective assistance of Counsel may result from an attorney's conflict of interest. Strickland v. Washington, 466 U.S. 668, 692 (1984); (Right to effective assistance of Counsel impaired when defense Counsel operates under conflict of interest, because "Counsel breaches the duty of loyalty, perhaps the most basic of Counsel's duties").

7.

In the instant case, Trial Counsel was grossly neglect in his duties because Counsel knowingly knew that Victim was a Former Richland County Magistrate, The Prosecutor a Richland County Prosecutor and The Trial Judge a Richland County Circuit Court Judge.

In Cuyler v. Sullivan, 446 U.S. 335 (1980), The Supreme Ruled That a defendant can demonstrate a Sixth Amendment Violation by Showing: (1), That defense Counsel was actively Representing Conflicting Interests, and (2), That The Conflict had an adverse effect on specific instances of Counsel's performance. Id. at 350. Compare Lopez v. Scully, 58 F.3d 38, 41 (2d Cir. 1995). When a defendant alleges That his or her guilty plea Resulted From defense Counsel's Conflict of Interest, The defendant must show a Reasonable probability That he or she would have insisted on a Trial but for The effect of The Conflict of Interest on his or her Counsel's advice. See, Thomas v. Foltz, 818 F.2d 476 (6th Cir. 1987). A Trial Court has a limited duty to avoid potential Conflicts of Interest. Cuyler, 446 U.S. at 346-47. The Court must initiate an inquiry if it knows or Reasonably should know That a potential Conflict exists. Id. at 347. When The Trial Court has notice of a potential Conflict but fails to make such an inquiry, The Reviewing Court will presume a Violation of The Sixth Amendment Right to Counsel. Compare, Holloway, 435 U.S. at 484; U.S. v. Greig, 967 F.2d 1018 (5th Cir. 1992).

In the instant case, The Trial Court had notice That a potential Conflict of Interest existed when The honorable Judge Childs Recused herself From The Trial, but yet The Sentencing and

8.

Trial Judge failed to make an inquiry. See, Jackson v State, 495 S.E.2d 768 (1998); Duncan v State, 315 S.E.2d 809 (1984)

- (3) Did The Trial Court Lack Subject Matter Jurisdiction due To The Insufficiency Of The indictment For burglary 2d?

In The instant case, The Trial Court Lacked Subject matter Jurisdiction To accept petitioners guilty plea, whereas his plea is not a lesser included plea, and petitioner did not waive presentment. (See Sentencing Sheet, There is no written waiver that he waived presentment To The Grand Jury); Hooks v State, 571 S.E.2d 211 (2003); State v. Small, 581 S.E.2d 850 (S.C. App. 2003). Thus, The Circuit Court Lacked Subject matter Jurisdiction because his indictments failed to allege The essential elements of burglary second.

- (4) Was petitioners guilty plea knowingly and voluntarily due To Counsel's unpreparedness and failure To present client with discovery?

In The instant case, petitioner was denied due process and equal protection, and fundamental fairness by counsel's failure To provide petitioner with discovery prior To trial. Thus, because of counsel's errors, The errors rendered The trial fundamentally unfair; Thus, petitioners guilty plea was not knowingly and intelligently made because Trial Counsel was unprepared for trial and due To The conflict of interest and denial of discovery The ~~petitioner~~ petitioner was

9.

FORCED To PROCEED To TRIAL and COERGED To plead guilty. See DAVIS V. STATE, 486 S.E. 2d 747 (1977); BRADY V. MARYLAND, 83 S. CT. 1194 (1963); GIBSON V. STATE, 514 S.E. 2d 320 (1999).

In Conclusion

Based on the foregoing arguments the Applicant/PETITIONER is entitled to a new TRIAL.

Date: March 31, 2009

Ronald L. Jenkins

At the evidentiary hearing, Applicant proceeded, in part, on the allegations stated in the application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

The Applicant testified that he pled guilty and received a twenty (20) year sentence and that he understands that he could be subjected to a longer sentence if his plea was vacated and he was later retried and convicted. The Applicant claimed that there was a conflict of interest and that the plea court should not have accepted the plea because the victim was a supposed high profile lawyer and ex-magistrate/clerk of court/solicitor... The Applicant explained that the victim defrauded him and that there were issues stemming from the victim's representation of the Applicant's wife during their divorce proceeding(s). The Applicant claimed plea counsel was ineffective for failing to have him evaluated, that there was an evaluation scheduled but that it was canceled. The Applicant testified that he thought he was going to plea in front of Judge Childs but that the victim and/or the Solicitor's office had that scheduled plea continued. The Applicant claimed that the Solicitor's office is also biased. The Applicant explained that he thought the case was going to be treated as if he set a crack house on fire. The

Applicant testified that he met with plea counsel four (4) or five (5) times but that he never saw the discovery materials or discussed the evidence with the plea counsel.² The Applicant complained that he was not indicted within the proper time frame of his arrest. The Applicant complained that he was threatened with consecutive sentences and that he thought he could ask for a lesser charge of *attempt to burn*. The Applicant complained that plea counsel refused to present his "fraud" evidence at trial, but that he was told if he pled guilty he could explain the "fraud" claims to the plea court. The Applicant explained that he pled guilty so that he could present his "fraud" evidence but that we do not really know who burned down the victim's law office.

Plea counsel testified that he recalled his representation of the Applicant and that he and the Applicant discussed the family court matter(s) extensively. Plea counsel explained that at first the Applicant did seem to want to go to trial, that it is not easy for most defendants to accept an open plea. Plea counsel explained that he thought at one point there was an offer but that the prosecution was handed off to a higher level solicitor and the offer (that had not yet been accepted) was withdrawn. Plea counsel testified that he did not see how the family court matter [motive] was relevant to the defense but it was immensely important to the Applicant to discuss the family court issue(s). Plea counsel testified that the Applicant insisted that he did not need an evaluation that is why the evaluation

² This is directly refuted by the plea transcript. (Guilty plea transcript, p. 7).

was canceled. Plea counsel testified that he advised his client that that he could say pretty much anything he wanted at the end of a guilty plea, so if he wanted to explain the family court issue(s) that would be the best opportunity to do so. However, plea counsel testified that he warned the Applicant not go on too much because it would be apparent that he still held a grudge.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there

is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

Beyond his review of the undisputed procedural history, this Court finds Applicant's testimony is not credible. Plea counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

This Court finds that the Applicant's testimony was not credible. The Applicant's testimony was directly refuted by the plea transcript. Also, his claims of

a conspiracy were things he knew when he entered the plea, so there can be no prejudice because the Applicant necessarily waived any issues with the case by pleading guilty. A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir.1976). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness. Porter v. State, 368 S.C. 378, 383-84, 629 S.E.2d 353, 356 (2006); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). The "prejudice," requirement focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985). In other words, the applicant must prove prejudice by showing that, but for counsel's inadequacy, there is a reasonable probability he would not have pleaded guilty and, instead, would have insisted on going to trial. Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). The Applicant in this case has failed to demonstrate counsel's performance was deficient or that he was prejudiced. The Applicant

merely voiced his complaints about the victim. The fact is the Applicant admitted to burning down the victim's law office (and an accompanying 2nd degree burglary) and he also admitted to aggravated stalking. (Guilty plea transcript, p. 16 - 17). The Applicant explained that he felt it was the victim who enraged him so much and that is why he threatened him and burned down his office, i.e. what "motivated" him. (Guilty plea transcript, p. 34 - 44).

The Applicant claims plea counsel was ineffective for failing to have him evaluated yet the Applicant has not presented any evidence of a current evaluation to show that he was *or is* effected by any mental issues. Prejudice from counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a mental evaluation would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

Finally, The Applicant contends that the indictments were void because the State did not obtain indictments within ninety days of the Applicant's arrest. This

allegation does not warrant relief. The grand jury returned each indictment. The failure to obtain an indictment within ninety days of arrest does not render it void for lack of jurisdiction. State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984). The Applicant has not shown that the sentencing court lacked subject matter jurisdiction to accept his plea.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional

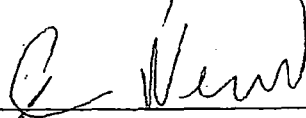
relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief 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 19th day of July, 2010.


 The Honorable Clifton Newman
 Presiding Judge
 Fifth Judicial Circuit

Kingsley, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

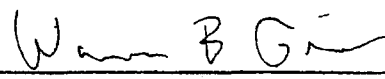
INDICTMENT

At a Court of General Sessions, convened on December 12, 2007, the Grand Jurors of Richland County present upon their oath:

AGGRAVATED STALKING

That Ronald Lynn Jenkins did in Richland County on or between about July 1, 2007, and August 31, 2007, wilfully, maliciously, and repeatedly engage in a pattern of words, conduct, written, or electronic, that was intended and did cause a targeted person, Robert Masella, and would cause a reasonable person in the position of Robert Masella, to fear death, assault, kidnapping, or property damage against himself and/or his family members, and such pattern of words or conduct was accompanied or followed by an act of violence, to wit: the defendant on August 31, 2007, committed the violent crime of arson second degree in furtherance of his stalking activities, by pouring gasoline in and setting fire to Robert Masella's law firm, in violation of §16-3-1730(A), *Code of Laws of South Carolina*.

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


WARREN B. GIESE, SOLICITOR

135

WITNESSES

(S) Inv. R.J. Benson, CPD

RD Seel - CPD

ARREST WARRANT NUMBER

90190

ACTION OF GRAND JURY

TRUE BILL

Benson Wilson
person of Grand Jury

DEC 13 2007

VERDICT

person of Petit Jury

DOCKET NO. 2007-GS-40- 8428

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2007

95

THE STATE
vs.

RONALD LYNN JENKINS

Indictment for
AGGRAVATED STALKING

SC Code: 16-3-1730(A)
CDR Code: 2406
Class F FELONY

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

Defendant

RONALD JENKINS

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

James H. Wilson
C. C. C. P. & G. S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 12, 2007, the Grand Jurors of Richland County present upon their oath:

ARSON 2ND

That Ronald Lynn Jenkins did in Richland County on or about August 31, 2007, willfully and maliciously attempt to cause an explosion, set fire to, burn or cause to be burned a dwelling house, to wit: the law office of Robert Masella located on 917 Calhoun St., Columbia, SC. All in violation of SC Code of Laws § 16-11-110.

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

Warren B Giese
Warren B. Giese, SOLICITOR

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WITNESSES

(S) R D SEEL - CPD

ARREST WARRANT NUMBER

K290203

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

DEC 13 2007

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-40-8419

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2007

95

THE STATE
vs.

RONALD LYNN JENKINS

Indictment for

ARSON 2ND

SC Code: 16-11-110(B)

CDR Code: 2551

Class FEL-B(V)

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

Defendant

I, RONALD JENKINS

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

TRUE COPY

Sealed by W. McBride
J. C. C. P. & G. S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 12, 2007, the Grand Jurors of Richland County present upon their oath.

BURGLARY/(VIOL)(AFTER 6/20/85) - 2ND DEG

That Ronald Lynn Jenkins did in Richland County on or about August 31, 2007, commit the offense of Burglary second degree, in that the defendant did enter the law office of Robert Masella, without consent and with the intent to commit a crime therein, and entry was during the hours of darkness, and/or defendant was armed with deadly weapon or explosive, to wit; gasoline and ignition source, and/or defendant used or threatened to use deadly weapon, to wit; ignite gasoline. All in violation of S.C. Code of laws §16-11-312(B), as amended.

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

Warren B Giese
WARREN B. GIESE, SOLICITOR

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WITNESSES

(S) R D SEEL - CPD

ARREST WARRANT NUMBER

K290204

ACTION OF GRAND JURY

TRUE BILL

Sharon Wilson
Representative of Grand Jury
Date: DEC 13 2007

VERDICT

Representative of Petit Jury
Date:

DOCKET NO. 2007-GS-40-8426

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2007

95

THE STATE

vs.

RONALD LYNN JENKINS

Indictment for

BURGLARY/(VIOL)(AFTER 1/20/85)
2ND DEG

SC Code: 16-11-312(B)

CDR Code 0086

Class FEL-D(V)

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

Defendant

RONALD JENKINS

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

Ronald Lynn Jenkins

G. S. C. P. & G. S.