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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Orangeburg County
Maite Murphy, Circuit Court Judge

JOHNNY WHITE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002167

APPENDIX

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EXAMINATION OF JOHNNY G. WHITE
BY THE COURT

4

SENTENCE OF THE COURT

23

E X H I B I T

NONE.

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DATE:

JULY 20, 2009

SOLICITOR SORENSON: THE STATE CALLS
JOHNNY WHITE. IF IT PLEASE THE COURT, YOUR HONOR.

THE COURT: YES, SIR.

SOLICITOR SORENSON: BEFORE YOU IS
MR. JOHNNY WHITE PRESENT WITH HIS LAWYER, MS. JILL
ULLMAN. IT'S MY UNDERSTANDING HE WISHES TO ENTER A
GUILTY PLEA AT THIS TIME ON INDICTMENTS 2008-GS-38-1592,
CHARGING HIM WITH ASSAULT AND BATTERY WITH INTENT TO
KILL, AND 2009-GS-38-0951, CHARGING HIM WITH BURGLARY IN
THE FIRST DEGREE. THE STATE HAS AGREED TO RECOMMEND A
CAP OF TWENTY-EIGHT YEARS, YOUR HONOR, TO THESE TWO
CHARGES.

THE COURT: ALRIGHT, SIR.

CLERK: RAISE YOUR RIGHT AS BEST YOU
CAN.

(Whereupon, Johnny G. White
is duly sworn.)

(NOTE: Blank lines on this page do not indicate any
part of record has been omitted. Headers on testimony
pages and hard page breaks between testimony are now
required by the Court. See next ensuing page for
sequential continuation of record.)

1 EXAMINATION OF JOHNNY G. WHITE

2 BY THE COURT:

3 Q. AND MR. WHITE, HOW ARE YOU DOING?

4 A. ALRIGHT.

5 Q. OKAY. MR. WHITE, DO YOU UNDERSTAND THAT ON THE
6 BURGLARY, FIRST DEGREE, YOU CAN GET A SENTENCE OF
7 BETWEEN A MINIMUM OF FIFTEEN AND UP TO LIFE?

8 A. I DO.

9 Q. OKAY. DO YOU UNDERSTAND WITH THE ASSAULT AND
10 BATTERY WITH INTENT TO KILL YOU COULD BE
11 SENTENCED UP TO TWENTY YEARS?

12 A. YES, SIR.

13 Q. DO YOU UNDERSTAND THAT THE SOLICITOR'S OFFICE HAS
14 ADVISED ME THAT THEY HAVE AGREED TO A CAP OF
15 TWENTY-EIGHT YEARS?

16 A. YES, SIR.

17 Q. OKAY. IF AFTER I LISTEN TO EVERYTHING I DECIDE I
18 CAN'T AGREE WITH THAT CAP I'LL LET YOU KNOW AND
19 WILL ALLOW YOU TO WITHDRAW YOUR PLEA. OKAY?

20 A. YES, SIR.

21 Q. OTHERWISE YOU'RE FACING A MAXIMUM OF TWENTY-EIGHT
22 YEARS RIGHT NOW. DO YOU UNDERSTAND THAT?

23 A. UH HUH.

24 Q. OKAY. YOU ARE BEING REPRESENTED BY MS. ULLMAN?

25 A. YES, SIR.

EXAM - JOHNNY G. WHITE BY THE COURT

5

- 1 Q. SHE'S GONE OVER THE CHARGES WITH YOU?
- 2 A. UH HUH.
- 3 Q. OKAY. SHE'S GONE OVER YOUR CONSTITUTIONAL RIGHTS?
- 4 A. UH HUH.
- 5 Q. DO YOU UNDERSTAND YOU HAVE THE RIGHT TO A JURY
- 6 TRIAL?
- 7 A. YES, SIR.
- 8 Q. DO YOU WANT A JURY TRIAL?
- 9 A. NO, SIR.
- 10 Q. OKAY. YOU WANT TO COME HERE TODAY AND PLEAD
- 11 GUILTY?
- 12 A. YES, SIR.
- 13 Q. YOU DO THIS FREELY AND VOLUNTARILY?
- 14 A. YES, SIR.
- 15 Q. OTHER THAN THE NEGOTIATIONS, OR OTHER THAN WHAT
- 16 THE SOLICITOR HAS TOLD ME ABOUT THIS HAS ANYBODY
- 17 THREATENED YOU TO GET YOU TO PLEAD GUILTY HERE
- 18 TODAY?
- 19 A. NO, SIR.
- 20 Q. HAS ANYBODY MADE ANY OTHER PROMISES TO YOU TO GET
- 21 YOU TO PLEAD GUILTY?
- 22 A. NO, SIR.
- 23 Q. OKAY. ALRIGHT, SIR. YOU ARE THIRTY-TWO YEARS
- 24 OLD?
- 25 A. YES, SIR.

EXAM - JOHNNY G. WHITE BY THE COURT

1 Q. HOW FAR DID YOU GO IN SCHOOL?

2 A. ELEVENTH GRADE.

3 Q. WHERE WERE YOU GOING IN SCHOOL?

4 A. ORANGEBURG-WILKERSON.

5 Q. WHY DID YOU DROP OUT?

6 A. I JUST DID.

7 Q. YOU JUST GOT TIRED OF GOING?

8 A. NO, THAT AIN'T THE REASON, I JUST, I AIN'T HAD
9 THAT MANY CREDITS, SO - - -

10 Q. OKAY.

11 A. --- I HAD TO DROP OUT AND I HAD TO GO NIGHT
12 SCHOOL.

13 Q. OH, DID YOU GO TO NIGHT SCHOOL TO GET YOUR G.E.D.?

14 A. YEAH, I WENT TO NIGHT SCHOOL.

15 Q. YOU GOT YOUR G.E.D.?

16 A. HUH UH.

17 Q. OKAY. DID YOU GET ANY OTHER TRAINING?

18 A. I'VE GOT A TRADE.

19 Q. WHAT KIND OF TRADE?

20 A. BLUE PRINTS.

21 Q. OKAY. WERE YOU WORKING UP UNTIL THE TIME OF THIS
22 INCIDENT?

23 A. UH HUH.

24 Q. WHERE WERE YOU WORKING?

25 A. BURGER KING.

EXAM - JOHNNY G. WHITE BY THE COURT

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Q. HOW LONG HAD YOU BEEN THERE?

A. ABOUT FIVE MONTHS.

Q. ALRIGHT. MR. WHITE, THE FIRST INDICTMENT I HAVE IS INDICTMENT NUMBER 2008-GS-38-1592, WHICH IS AN INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL. IT ALLEGES THAT YOU DID, IN ORANGEBURG COUNTY, ON JANUARY TWENTY-SEVENTH, TWO THOUSAND AND EIGHT, DID COMMIT ASSAULT AND BATTERY UPON THE VICTIM, TIMOTHY GREEN, BY SHOOTING HIM WITH A NINE MILLIMETER HAND GUN IN VIOLATION OF THE LAWS OF THE STATE OF SOUTH CAROLINA. DO YOU UNDERSTAND THE FACTS CONTAINED IN THIS INDICTMENT?

A. YES, SIR.

Q. ALRIGHT. HOW DO YOU PLEAD TO THE CHARGE OF ASSAULT AND BATTERY WITH INTENT TO KILL?

A. GUILTY.

Q. ALRIGHT. THE NEXT INDICTMENT I HAVE IS INDICTMENT NUMBER 2009-GS-38-951, BURGLARY, FIRST DEGREE IS THAT INDICTMENT. AND MR. WHITE, IT ALLEGES THAT YOU DID, IN ORANGEBURG COUNTY, ON JANUARY TWENTY-SEVENTH, TWO THOUSAND AND EIGHT, DID WILLFULLY AND UNLAWFULLY ENTER THE DWELLING OF TIMOTHY GREEN WITHOUT CONSENT WHILE ARMED WITH A DEADLY WEAPON. AND THIS EVENT OCCURRED AT NIGHT TIME IN VIOLATION OF THE LAWS OF THE STATE OF SOUTH CAROLINA. DO

1 YOU UNDERSTAND THE ALLEGATIONS CONTAINED IN THIS
2 INDICTMENT?

3 A. YES, SIR.

4 Q. ALRIGHT. HOW DO YOU PLEAD TO THE CHARGE OF
5 BURGLARY, FIRST DEGREE?

6 A. GUILTY.

7 Q. ALRIGHT. MR. WHITE, ARE YOU TAKING ANY KIND OF
8 MEDICATION. TODAY, ARE YOU ON ANY KIND OF
9 MEDICATION?

10 A. YES, I WAS TAKING MEDICATION, YEAH.

11 Q. WHAT DO YOU TAKE IT FOR?

12 A. I DON'T KNOW WHETHER, I DON'T KNOW WHAT IT'S FOR
13 BUT I JUST TAKE MEDICATION.

14 Q. OKAY. DOES IT AFFECT YOUR THINKING?

15 A. NO.

16 Q. DO YOU UNDERSTAND WHAT YOU WERE JUST DOING?

17 A. UH HUH.

18 Q. OKAY. YOU DID IT KNOWINGLY?

19 A. YES, SIR.

20 Q. ALRIGHT, SIR.

21 THE COURT: ANYTHING ELSE YOU WANT
22 TO TELL ME?

23 SOLICITOR SORENSON: YOUR HONOR, JUST
24 ONE THING, JUST SO WE CAN KIND OF, JUST SO IT'S
25 INCORPORATED INTO THIS RECORD, WE ACTUALLY HAD A HEARING

EXAM - JOHNNY G. WHITE BY THE COURT

1 LAST WEEK IN FRONT OF JUDGE SEALS. I BELIEVE THAT WOULD
 2 HAVE BEEN ON TUESDAY, THE FOURTEENTH, WHERE MR. WHITE
 3 HAD ACTUALLY MOVED FOR A MENTAL EVALUATION. I DON'T
 4 BELIEVE HIS LAWYER NECESSARILY JOINED IN THAT MOTION,
 5 BUT AT LEAST ALLOWED HIM TO PRESENT THAT TO JUDGE SEALS.
 6 AND JUDGE SEALS HAD QUESTIONED MR. WHITE, GOTTEN INTO
 7 SOME OF HIS BACKGROUND WITH HIM, AND AT THAT POINT IN
 8 TIME HAD DENIED HIS REQUEST FOR A MENTAL EVALUATION.

9 THE COURT: OKAY.

10 SOLICITOR SORENSON: I'M NOT SURE IF
 11 A WRITTEN ORDER OR ANYTHING WAS DONE TO THAT EFFECT. I
 12 KNOW WE HAD HAD SOME TALKS ABOUT THAT BEING DONE BUT I
 13 WAS GONE THE REST OF THE WEEK SO I'M NOT SURE IF THAT
 14 WAS DONE. BUT I JUST WANTED -- JUST SO THERE'S SOME
 15 REFERENCE TO THAT IN THIS PLEA ALSO.

16 THE COURT: THE HEARING WAS LAST
 17 WEEK?

18 SOLICITOR SORENSON: IT WAS LAST
 19 TUESDAY, YOUR HONOR.

20 THE COURT: LAST TUESDAY?

21 SOLICITOR SORENSON: YES, SIR.

22 Q. MR. WHITE, YOU HEARD WHAT THE SOLICITOR'S OFFICE
 23 HAS TOLD ME ABOUT THAT?

24 A. UH HUH, YEAH.

25 Q. OKAY. JUDGE SEALS QUESTIONED YOU ABOUT YOUR

1 MENTAL STATUS AT THAT TIME?

2 A. YES, SIR.

3 Q. OKAY. AND HE DIDN'T ORDER ANY FURTHER TESTING,
4 DID HE?

5 A. NO, SIR.

6 Q. OKAY. YOU UNDERSTAND WHAT YOU'RE DOING HERE
7 TODAY, RIGHT?

8 A. YES, SIR.

9 Q. ALRIGHT, SIR. THANK YOU.

10 THE COURT: ANYTHING ELSE YOU WANT
11 TO TELL ME ABOUT THESE CHARGES?

12 SOLICITOR SORENSON: YES, SIR. AS
13 FAR AS THE FACTS, YOUR HONOR, THE VICTIM IN THIS CASE,
14 YOUR HONOR, IS THIRTY-ONE YEAR TIMOTHY GREEN. MR. GREEN
15 IS STANDING BEHIND ME HERE, YOUR HONOR. MR. GREEN HAD
16 MOVED DOWN HERE FROM NEW YORK BACK IN I BELIEVE THE
17 FOURTH GRADE, AND ESSENTIALLY AT THAT POINT IN TIME HAD
18 MET AND WENT TO SCHOOL WITH MR. WHITE ALL THE WAY
19 THROUGH, THE TWO OF THEM, I'M NOT SURE EITHER ONE OF
20 THEM FINISHED HIGH SCHOOL, BUT THEY WERE FRIENDS AND
21 ACQUAINTANCES ALL THROUGH MIDDLE SCHOOL AND HIGH
22 SCHOOL. THEY HAD HAD SOME SORT OF FALLING OUT IN THE
23 SUMMER OF TWO THOUSAND AND SEVEN OR SOMEWHERE AROUND
24 THEN. MR. GREEN TELLS ME THAT HE REALLY HAD HAD NO
25 FURTHER CONTACT LEADING UP TO THIS INCIDENT WITH THE

EXAM - JOHNNY G. WHITE BY THE COURT

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DEFENDANT. MR. GREEN BACK WHEN THIS OCCURRED WAS LIVING AT [REDACTED] WHICH IS LOCATED HERE IN ORANGEBURG COUNTY. HE HAD BEEN OUT THAT EVENING WITH IS GIRL FRIEND. THE TWO OF THEM HAD COME BACK AND WERE IN THE RESIDENCE WATCHING T.V. MR. GREEN ULTIMATELY ENDED UP GOING TO ANSWER THE DOOR WHEN HE HEARD A KNOCK AT THE DOOR. THIS WAS A LITTLE AFTER TWO O'CLOCK IN THE MORNING ON JANUARY TWENTY-SEVENTH OF TWO THOUSAND AND EIGHT. WHEN HE OPENED THE DOOR HE SAW MR. WHITE AT HIS DOOR. THERE WAS ANOTHER INDIVIDUAL IN THE BACKGROUND THAT HE DID NOT RECOGNIZED. THAT'S WHEN HE INDICATES THAT HE GOT SHOT AT THAT POINT ONE TIME IN THE LEG. HE CLOSED THE DOOR AND LOCKED IT. AT THAT POINT IN TIME THE DOOR GOT KICKED OPEN. AND IF I CAN HAND UP A PICTURE SHOWING YOU HOW WE KNOW, YOUR HONOR, THAT HE ACTUALLY HAD GOTTEN THE, THE DOOR HAD BEEN BOLTED, YOU CAN SEE WHERE THE DEAD BOLT IS EXTENDING OUT, AND THE DOOR FRAME WAS DAMAGED, THERE'S A PIECE OF WOOD KNOCKED OFF THE DOOR FRAME ALONG WITH THE STRIKE PLATE FOR THE DEAD BOLT WAS FOUND ON THE OTHER SIDE OF THE LIVING ROOM. AT THAT POINT IN TIME THE DOOR WAS FORCED OPEN. MR. GREEN WAS SHOT TWO MORE TIMES IN THE LEG AND ONE TIME IN THE LEFT ELBOW. SOME OF THAT OCCURRED RIGHT THERE IN THE LIVING ROOM. MR. GREEN ATTEMPTED TO FLEE OUT INTO HIS CAR PORT AREA AND WAS SHOT OUT THERE ALSO.

1 AND THE SCENE WHEN THE LAW ENFORCEMENT ARRIVED BASICALLY
2 CONFIRMED THAT. THERE WAS BLOOD OUT IN THE CAR PORT
3 AREA AND THEN BACK INTO THE HOUSE. HIS GIRLFRIEND, MS.
4 WILLIAMS, WAS IN THE BEDROOM WHILE ALL THIS OCCURRED.
5 SHE HEARD THE DOOR BEING KICKED OPEN. BASICALLY, THE
6 BED ROOM AS YOU ENTER THE LIVING ROOM IS RIGHT ON THE
7 RIGHT HAND SIDE THERE. SHE HAD BASICALLY DOVE INTO A
8 CLOSET WHICH WAS PRETTY MUCH RIGHT ON THE OTHER SIDE OF
9 THE WALL FROM WHERE ALL OF THIS OCCURRED. SHE HAD
10 INDICATED THAT SHE HEARD TIMOTHY OUT THERE GOING, NO,
11 JOHNNY, NO, JOHNNY, SEVERAL TIMES. SHE NEVER ACTUALLY
12 SAW WHO WAS OUT THERE. THE TWO OF THEM, MR. WHITE AND
13 THE OTHER INDIVIDUAL THAT WAS OUTSIDE TOOK OFF AT THAT
14 POINT IN TIME. MR. GREEN CAME BACK INSIDE, HIS
15 GIRLFRIEND ULTIMATELY ENDED UP CALLING LAW ENFORCEMENT
16 AND ALSO HIS BROTHER TO COME TO THE SCENE. HE
17 ULTIMATELY KIND OF WANDERED AROUND THE ENTIRE HOUSE AND
18 THERE WAS BLOOD LITERALLY ALL OVER THE ENTIRE HOUSE FROM
19 WHERE HE BLED IN THE KITCHEN, THE BEDROOM, THE LIVING
20 ROOM, FROM THOSE INJURIES TO THE LEG AND ALSO A PRETTY
21 SUBSTANTIAL INJURY TO HIS LEFT ELBOW. AS INDICATED,
22 ORANGEBURG PUBLIC SAFETY ARRIVED THAT NIGHT. THEY
23 ULTIMATELY WERE ABLE TO TAKE A STATEMENT FROM MR. GREEN
24 A COUPLE OF DAYS LATER IN THE HOSPITAL. HE WAS ACTUALLY
25 FLOWN TO RICHLAND MEMORIAL HOSPITAL WHERE HE WAS TREATED

EXAM - JOHNNY G. WHITE BY THE COURT

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THERE. HE DID IDENTIFY MR. WHITE AS BEING THE PERSON THAT SHOT HIM. HE ADDITIONALLY HAD GIVEN THAT INFORMATION TO HIS BROTHER THAT NIGHT AT THE SCENE, SO THE BROTHER HAD RELAYED THAT INFORMATION TO PUBLIC SAFETY EARLY THAT MORNING. SO, THEY HAD ACTUALLY BEGUN LOOKING FOR MR. WHITE INTO THE EARLY, INTO THE MORNING HOURS OF JANUARY TWENTY-SEVENTH. THEY WERE UNABLE TO LOCATE HIM AT THAT POINT IN TIME. THEY DID FIND A, WENT BY I BELIEVE HIS MOTHER'S RESIDENCE HERE IN ORANGEBURG, COULD NOT LOCATE HIM, WENT BY A TRAILER THAT THEY LEARNED HE WAS STAYING AT IN VANCE, WERE UNABLE TO LOCATE HIM THERE. ULTIMATELY, THEY FOUND OUT THAT HE WAS WORKING AT THE BURGER KING IN SANTEE AND HAD GONE BY THAT BURGER KING ALSO, AND HAD LEARNED THAT MR. WHITE HAD SUPPOSEDLY WORKED THE NIGHT BEFORE BUT WASN'T THERE AT THAT TIME. THEY ULTIMATELY WERE UNABLE TO LOCATE HIM IN JANUARY OF TWO THOUSAND AND EIGHT, ACTUALLY HAD PUT HIS NAME ON THE NEWS AND IN THE NEWSPAPER LOOKING FOR HIM. MR. WHITE FINALLY TURNED UP UP IN NORTH CAROLINA IN APRIL OF TWO THOUSAND AND EIGHT ABOUT THREE MONTHS LATER WHERE HE WAS ARRESTED UP THERE, HAD A HOLD PLACED ON HIM. HE REFUSED AT THAT POINT IN TIME TO WAIVE EXTRADITION AND THEY ACTUALLY HAD TO GO THROUGH THE PAPERWORK TO GET HIM EXTRADITED BACK HERE. I BELIEVE HE MADE IT BACK IN AUGUST, ON AUGUST TWELFTH OF TWO

EXAM - JOHNNY G. WHITE BY THE COURT

14

1 THOUSAND AND EIGHT IS WHAT I'M SHOWING THAT HE WAS, THE
2 BOOKING PAPERWORK WAS DONE HERE AT THE ORANGEBURG COUNTY
3 JAIL. HE NEVER AT THAT POINT IN TIME GAVE A STATEMENT
4 AS TO WHETHER -- ANY INVOLVEMENT HE MAY OR MAY NOT HAVE
5 HAD IN THIS.

6 THIS, YOUR HONOR, IS A CASE THAT WAS
7 ACTUALLY ON THE TRIAL LIST THAT WE WERE GETTING READY TO
8 TRY; IT WAS SCHEDULED FOR POTENTIALLY THIS WEEK, WHEN A
9 COUPLE OF WEEKS AGO, ABOUT A MONTH AGO I HAD RECEIVED AN
10 ALIBI FROM THE DEFENSE INDICATING THAT HE HAD BEEN AT
11 WORK THAT NIGHT AT THE BURGER KING AND HAD BEEN PICKED
12 UP BY TWO YOUNG WOMEN AND AN INDIVIDUAL NAMED HENRY
13 CLARK AND THAT THEY HAD GONE BACK TO HIS TRAILER AND
14 STAYED THERE UNTIL THE EARLY MORNING HOURS, AND THAT
15 THEY HAD ALL LEFT AND LEFT HIM THERE.

16 LIKE I SAID, I MET WITH MR. GREEN
17 MULTIPLE TIMES LEADING UP TO THIS AND HE'S ALWAYS BEEN
18 ADAMANT THAT THERE'S NO DOUBT IN HIS MIND WHO THAT WAS
19 THAT SHOT HIM. HE'S KNOWN THIS MAN SINCE HE WAS A KID.
20 HE HAD NO PROBLEM SEEING HIM, NO DOUBT IN HIS MIND.

21 ABOUT TWO WEEKS AGO I GOT SOME
22 INFORMATION FROM THE U. S. ATTORNEY'S OFFICE AND THE
23 DRUG ENFORCEMENT AGENCY THAT THEY, IN FACT, HAD AN
24 INDIVIDUAL HERE IN ORANGEBURG THAT THEY WERE
25 INVESTIGATING BACK IN JANUARY OF TWO THOUSAND AND EIGHT

EXAM - JOHNNY G. WHITE BY THE COURT

15

1 NAMED SIGMUND JAMES, AND AS A RESULT OF THAT
2 INVESTIGATION HAD A WIRE TAP ON MR. JAMES'S TELEPHONE.
3 AND ONE OF THE CALLS THAT THEY HAD INTERCEPTED AND
4 RECORDED OCCURRED ON THE MORNING OF JANUARY TWENTY-
5 SEVENTH, TWO THOUSAND EIGHT, BY AN INDIVIDUAL
6 IDENTIFYING HIMSELF AS JOHNNY WHO BASICALLY ADMITTED TO
7 THIS SHOOTING, WENT INTO ALL THE DETAILS OF IT,
8 INDICATED THAT THEY HAD HAD SOME FALLING OUT, AND HE
9 BASICALLY CORROBORATED WHAT MR. GREEN HAD ALREADY TOLD
10 LAW ENFORCEMENT AS TO THE REASON. THE REASON I BRING
11 THIS UP, AS YOU KNOW, THIS INFORMATION IS KIND OF WHAT
12 HAS LED TO HIM I THINK FINALLY REALIZING THAT HE NEEDED
13 TO PLEAD GUILTY. BUT THE DISTURBING PART OF LISTENING
14 TO THAT PHONE CALL IS JUST HOW THE FACT, I MEAN, THIS IS
15 GOING TO BE SIX, SEVEN HOURS AFTER THIS SHOOTING
16 OCCURRED, THAT YOUNG MAN IS SITTING IN A HOSPITAL
17 FIGHTING FOR HIS LIFE, AND JUST HOW CALLOUS AND HOW AS
18 MATTER OF FACT AND JOKING AROUND HE IS ON THAT TELEPHONE
19 CALL WITH THIS INDIVIDUAL ABOUT, ABOUT THE WHOLE
20 SCENARIO, ABOUT WHY IT HAPPENED, WHAT HE DID, WHO WAS
21 WITH HIM, AND ALSO THE FACT THAT SIX OR SEVEN HOURS
22 LATER HE'S TALKING ALREADY ABOUT THE ALIBI THAT HE'S
23 PLANNING WHICH JUST HAPPENED TO BE THE SAME ALIBI
24 BASICALLY THAT I GOT SERVED WITH THREE WEEKS EARLIER.
25 AND I THINK IT JUST GOES TO SHOW A LOT ABOUT THIS MAN'S

EXAM - JOHNNY G. WHITE BY THE COURT

16

1 LACK OF CHARACTER.

2 YOUR HONOR, AS TO HIS PRIOR RECORD,
3 HE HAS, FROM BACK IN NINETEEN NINETY-SEVEN A STRONG ARM
4 ROBBERY CONVICTION WHICH HE RECEIVED A TEN YEAR
5 SENTENCE, A POINTING AND PRESENTING A FIREARM. HE'S GOT
6 A CRIMINAL DOMESTIC VIOLENCE CONVICTION FROM TWO
7 THOUSAND THREE, AND TWO DRUG CONVICTIONS, IT LOOKS LIKE
8 MAYBE PWID CONVICTIONS FROM TWO THOUSAND FIVE.

9 YOUR HONOR, I SPOKE WITH MR. GREEN;
10 I WOULD LIKE YOU, IF YOUR HONOR WOULD, TO HEAR FROM HIM.
11 I MEAN, I OBVIOUSLY CAN KIND OF SUMMARIZE WHAT HE HAS
12 GONE THROUGH, BUT YOU REALLY HEAR IT FROM HIM TO REALIZE
13 JUST HOW MUCH THIS HAS AFFECTED HIM, KEEPING IN MIND
14 THAT THIS ALL HAPPENED A YEAR AND A HALF AGO. I MEAN,
15 IT'S NOT LIKE WE'RE SEEING HIM TODAY, YOU KNOW, A MONTH
16 AFTER. THIS IS WHAT HE'S STILL LIVING WITH A YEAR AND
17 A HALF AFTER THIS INCIDENT OCCURRED.

18 THE COURT: YES, SIR, I'LL BE GLAD
19 TO HEAR FROM HIM.

20 MR. GREEN: I HAVE NO LEFT SIDE
21 FEELINGS IN MY LEFT SIDE. I'VE GOT TO TAKE INJECTIONS
22 TO KILL ALL THE PAIN. THEY HAD TO PUT AN IRON ROD TO
23 HOLD MY ARM UP. I DON'T HAVE NO MORE USE IN IT, MY ARM
24 IS GONE. AND HALF OF MY LEG IS HANGING DOWN. THEY SHOT
25 ME IN MY MAIN ARTERY.

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THE COURT: IN THE MAIN ARTERY OF YOUR LEG?

MR. GREEN: YEAH.

THE COURT: YES, SIR.

MR. GREEN: SO, I JUST GOT TO GO THROUGH A COUPLE MORE SURGERIES TO GET EVERYTHING BACK RIGHT AND EVERYTHING. BUT MY ARM IS NOT, IS GONE.

THE COURT: WERE YOU WORKING PRIOR TO THIS?

MR. GREEN: YEAH, I WAS DOING LANDSCAPING.

THE COURT: OKAY. AND I GUESS YOU'RE NOT DOING THAT NOW?

MR. GREEN: NO.

THE COURT: HOW DO YOU EARN A LIVING?

MR. GREEN: I'M ON DISABILITY.

THE COURT: OKAY.

SOLICITOR SORENSON: AND THE PICTURES, I MEAN, BEAR THAT OUT, YOUR HONOR. I MEAN, THERE IS LITERALLY BLOOD, ARTERIAL SPURT, I MEAN, IT'S AMAZING HE DID NOT BLEED TO DEATH. THERE IS BLOOD THROUGHOUT THAT ENTIRE HOUSE. AS YOU CAN SEE, THIS IS SOMETHING, I MEAN, HE'S GOING TO LIVE WITH FOR THE REST OF HIS LIFE. AND YOUR HONOR, I MEAN, WE AGREED TO A CAP

EXAM - JOHNNY G. WHITE BY THE COURT

18

1 OF TWENTY-EIGHT YEARS, AND WE'D JUST RESPECTFULLY ASK
2 YOUR HONOR TO GIVE MR. WHITE THAT TWENTY-EIGHT YEARS,
3 THE TOP OF THAT CAP, YOUR HONOR.

4 Q. MR. WHITE, YOU'VE HEARD WHAT THE SOLICITOR'S
5 OFFICE HAS TOLD ME?

6 A. YES, SIR.

7 Q. AND YOU'VE HEARD WHAT MR. GREEN HAS TOLD ME. DO
8 YOU STILL WANT ME TO ACCEPT YOUR PLEA IN THIS
9 CASE?

10 A. YES, SIR.

11 THE COURT: ALRIGHT, SIR. I FIND
12 THAT YOUR DECISION TO PLEAD GUILTY IS FREELY,
13 VOLUNTARILY AND INTELLIGENTLY MADE. I FIND THAT YOU'VE
14 HAD THE ADVICE AND COUNSEL OF A COMPETENT ATTORNEY WITH
15 WHOM YOU'VE TOLD THIS COURT YOU ARE SATISFIED. I FIND
16 THAT THERE IS A FACTUAL BASIS FOR YOUR PLEA TO BOTH OF
17 THESE CHARGES. I WILL ACCEPT YOUR PLEA.

18 MS. ULLMAN.

19 MS. ULLMAN: THANK YOU, YOUR HONOR.

20 THE COURT: YES, MA'AM.

21 MS. ULLMAN: AS HE HAS TOLD YOU, HE
22 IS THIRTY-TWO YEARS OLD. HE'S SINGLE AND HAS TWO
23 CHILDREN, HE HAS A THIRTEEN YEAR OLD DAUGHTER AND AN
24 ELEVEN YEAR OLD SON THAT HE DOES HAVE COURT ORDERED
25 SUPPORT ON. HE TELLS ME HE HASN'T SEEN HIS CHILDREN IN

1 ABOUT A YEAR SINCE HE'S BEEN IN JAIL.

2 YOUR HONOR, YOU'VE HEARD THE FACTS.
3 THIS IS A SITUATION THAT OBVIOUSLY DIDN'T NEED TO
4 HAPPEN. IT WAS A VERY BAD MISTAKE, A VERY BAD DECISION
5 THAT MR. WHITE MADE AND HE IS GOING TO PAY FOR THAT FOR
6 QUITE SOME TIME, AND I HAVE EXPLAINED THAT TO HIM. I
7 HAVE GONE OVER THOROUGHLY WITH HIM THE COLLATERAL
8 CONSEQUENCES TO THESE PLEAS, THE - - -

9 THE COURT: THESE ARE BOTH MOST
10 SERIOUS.

11 MS. ULLMAN: THEY ARE BOTH MOST
12 SERIOUS AND THEY ARE BOTH VIOLENT. THEY ARE BOTH NO
13 PAROLE. HE UNDERSTANDS HE WILL BE DOING EIGHTY-FIVE, AT
14 LEAST EIGHTY-FIVE PER CENT OF HOW MUCH EVER TIME YOUR
15 HONOR FEELS FIT TO GIVE HIM. I HAVE SPOKEN WITH HIS
16 FAMILY. I SPOKE WITH HIS FATHER AND HIS MOTHER TODAY
17 AND HIS GIRLFRIEND. ALL THREE WOULD HAVE BEEN HERE HAD
18 THEY BEEN ABLE TO GET OFF WORK, THEY ALL THREE DO WORK.
19 WHAT HIS MOTHER, BARBARA WHITE, TELLS ME IS THAT HE IS
20 HER SON AND SHE LOVES HIM. SHE SUPPORTS HIM IN ANY WAY
21 THAT SHE CAN. SHE TELLS ME THAT SHE FEELS THAT MR.
22 WHITE HAS A DRUG PROBLEM AND THAT THAT HAS AFFECTED HIM
23 A LOT IN HIS DECISIONS. SHE IS OF THE OPINION, SHE DOES
24 NOT KNOW BUT SHE IS OF THE OPINION THAT DRUGS PROBABLY
25 PLAYED A PART IN HIS DECISION ON THIS EVENING. SHE

1 TELLS ME THAT THE THINGS SHE WOULD LIKE TO SEE COME OUT
2 OF THIS MOST IS HELP FOR HIM WITH THE DRUG PROBLEM. I
3 TOLD HER HOW MUCH TIME THE RANGE WAS IF YOUR HONOR
4 STAYED WITH IN THE CAP OF FIFTEEN TO TWENTY-EIGHT, AND
5 SHE THAT THAT'S AN AWFUL LOT OF TIME FOR HIM TO BE ABLE
6 TO GET HIS MIND RIGHT AND TO DEAL WITH THIS DRUG
7 PROBLEM. SO, I WOULD ASK YOUR HONOR TO CONSIDER
8 RECOMMENDING THE ATU FOR MR. WHITE. HE CERTAINLY WILL
9 HAVE PLENTY OF TIME ON HIS SENTENCE FOR BED SPACE TO
10 BECOME AVAILABLE, AND I DO THINK THAT THAT COULD HELP
11 HIM. AGAIN, AS I SAID, HIS MOTHER, HIS FATHER AND HIS
12 GIRLFRIEND WOULD ALL BE HERE PRESENT TODAY IF NOT FOR
13 THEM HAVING JOBS.

14 YOUR HONOR, HE IS A YOUNG MAN, HE
15 MADE A HORRIBLE MISTAKE. ALL WE CAN DO IS ASK YOUR
16 HONOR FOR MERCY AND UNDERSTANDING THAT HE IS GOING TO DO
17 A GOOD BIT OF TIME. I ASK YOUR HONOR TO CONSIDER
18 SOMEWHERE LESS THEN THE TWENTY-EIGHT.

19 THE COURT: ALRIGHT. THE ATU?

20 MS. ULLMAN: THE ALCOHOL AND DRUG
21 TREATMENT UNIT, YOUR HONOR, WE WOULD ASK YOU TO
22 RECOMMEND THAT. OBVIOUSLY, THE PRISON SYSTEM WILL PUT
23 HIM THERE IF BED SPACE BECOMES AVAILABLE WHILE HE'S
24 STILL IN, BUT WE WOULD ASK YOU TO RECOMMEND THAT WITHIN
25 THE SENTENCING SHEET.

1 AND ALSO FOR THE RECORD, IN REGARDS
2 TO THE MENTAL HEALTH ISSUES, I'VE MET WITH MR. WHITE
3 SINCE DECEMBER OF TWO THOUSAND EIGHT. HE DID TELL ME AT
4 THAT TIME THAT HE DID HAVE A HISTORY WITH MENTAL HEALTH,
5 THAT HE WAS ON SEROQUIL, WHICH I DO BELIEVE IS FOR
6 DEPRESSION, AND THAT HE PRIOR IN LIFE HAD BEEN GETTING
7 HALDAL SHOTS. IN ALL MY MEETINGS WITH HIM I NEVER HAD
8 ANY CONCERN, HE ALWAYS SEEMED VERY COHERENT AND
9 UNDERSTANDING WHAT WE WERE DOING. OBVIOUSLY, WE EVEN
10 DISCUSSED AN ALIBI. I GOT MY INVESTIGATOR INVOLVED, WE
11 RAN ALL OF THAT DOWN, SO I CERTAINLY PERSONALLY NEVER
12 FELT THAT A MENTAL EVALUATION WAS NECESSARY. AND EVEN
13 THROUGH TODAY I DO BELIEVE THAT HE'S UNDERSTOOD
14 EVERYTHING I'VE SPOKEN WITH HIM ABOUT. I'VE HAD MS.
15 HINDS, ANOTHER ATTORNEY IN OUR OFFICE, PRESENT TO MAKE
16 SURE THAT I WAS CORRECT, AND SHE DID AGREE WITH ME ALSO.
17 SO, I DO NOT THINK THAT THERE IS A MENTAL HEALTH ISSUE
18 IN THIS CASE.

19 THE COURT: WELL -- AND YOU KNOW,
20 MR. WHITE, YOU SEEM TO KNOW WHAT YOU'RE DOING HERE
21 TODAY.

22 DEFENDANT WHITE: YES, SIR.

23 THE COURT: WHICH IS THE REASON I'M
24 GOING TO ACCEPT YOUR PLEA, WHICH I HAVE ALREADY ACCEPTED
25 YOUR PLEA.

1 IS THAT PROGRAM WITHIN THE PRISON
2 SYSTEM?

3 MS. ULLMAN: YES, SIR.

4 THE COURT: HE DOESN'T GET OUT OR DO
5 ANYTHING LIKE THAT?

6 MS. ULLMAN: NO, SIR. IT IS A KIND
7 OF A SPECIAL WING IN THE PRISON WHERE IF YOU ARE IN FOR
8 I BELIEVE AT LEAST FOUR YEARS THEY WILL PUT YOU IN THAT
9 SPECIAL WING AND GIVE YOU THE ALCOHOL AND DRUG TREATMENT
10 WHILE YOU'RE STILL IN DOING YOUR NORMAL TIME. YOU'RE
11 NOT RELEASED, YOU'RE NOT MOVED.

12 THE COURT: AND IT'S JUST ALCOHOL
13 AND DRUG USE, ADU?

14 MS. ULLMAN: YES, SIR.

15 SOLICITOR SORENSON: ATU.

16 MS. ULLMAN: ATU, ALCOHOL TREATMENT
17 UNIT.

18 THE COURT: OKAY. ATU. OKAY.

19 MS. ULLMAN: I BELIEVE IT'S
20 BASICALLY JUST CLASSES WITHIN THE JAIL, A SPECIAL UNIT
21 THAT THEY HAVE FOR PEOPLE WHO HAVE ALCOHOL AND DRUG
22 PROBLEMS, OR WITHIN THE PRISON, I'M SORRY.

23 THE COURT: OKAY.

24 MR. WHITE, WOULD YOU AGREE WITH WHAT
25 YOUR MOTHER TOLD MS. ULLMAN?

1 DEFENDANT WHITE: YES, SIR.

2 THE COURT: OKAY. ALRIGHT. MR.
3 WHITE, I'M VERY SORRY THAT YOU MADE THE DECISION THAT
4 YOU MADE. YOU KNOW, MR. GREEN, SOMEONE YOU'VE KNOWN
5 SINCE THE FOURTH GRADE, IS ALSO VERY SORRY. YOU KNOW,
6 I HATE TO SEE PEOPLE THROW THEIR LIVES AWAY WHEN THEY
7 DON'T HAVE TO, YOU KNOW.

8 SENTENCE OF THE COURT

9 THE SENTENCE OF THIS COURT IN
10 INDICTMENT NUMBER 2008-GS-38-1952, ASSAULT AND BATTERY
11 WITH INTENT TO KILL, THE SENTENCE OF THIS COURT IS THAT
12 YOU ARE SENTENCED TO THE STATE DEPARTMENT OF CORRECTIONS
13 FOR A PERIOD OF TWENTY YEARS.

14 ON THE INDICTMENT NUMBER 2009-GS-38-
15 951, BURGLARY, FIRST DEGREE, THE SENTENCE OF THIS COURT
16 IS THAT YOU ARE COMMITTED TO THE STATE DEPARTMENT OF
17 CORRECTIONS FOR A PERIOD OF TWENTY-EIGHT YEARS.

18 THESE SENTENCES ARE CONCURRENT.

19 YOU GET CREDIT FOR TIME SERVED, AND
20 I AM RECOMMENDING THE ATU.

21 SO, GOOD LUCK TO YOU.

22 MS. ULLMAN: THANK YOU, YOUR HONOR.

23 SOLICITOR SORENSON: THANK YOU,

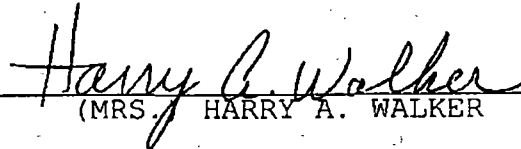
24 JUDGE.

CERTIFICATE

1
2 I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF
3 ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR
4 THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH
5 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
6 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL
7 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
8 CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF
9 GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA,
10 ON THE TWENTIETH DAY OF JULY, 2009.

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

13
14 DATE: SEPTEMBER 10, 2009

15
16 
17 (MRS. HARRY A. WALKER
18

The South Carolina Court of Appeals

The State.

Respondent

v.

Johnny G. White,

Appellant.

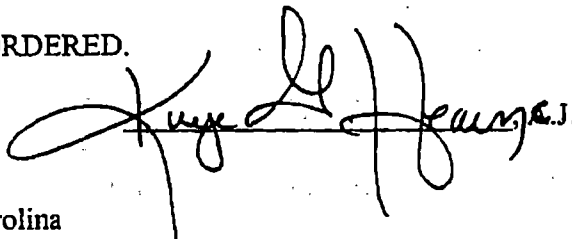
The Honorable Edgar Dickson
Orangeburg County
Trial Court Case No. 2008-GS-38-01591
2008-GS-38-01592

ORDER

FILED FOR RECORD
WINNIFA B. CLARK
CLERK OF COURT
2009 SEP 22 P 12:09

Appellant appeals his guilty plea and conviction imposed by Judge Edgar Dickson. Rule 203 (d)(B)(iv), SCACR, requires "a written explanation showing that there is an issue(s) which can be reviewed on appeal....including how the issue(s) was raised below and the ruling of the lower court on that issue(s)." After careful review, we find Appellant failed to show how any issue was preserved for our review. Therefore, due to Appellant's failure to establish any preserved issues for appellate review, the appeal is dismissed.

AND IT IS SO ORDERED.



Columbia, South Carolina

9/21/2009

cc: Chief Appellate Defender Joseph L. Savitz, III
Johnny G. White #00243047
Assistant Deputy Attorney General Sally W. Elliot
The Honorable Winnifa Brown-Clark

FILED
9/21/09

FORM 5

2010-CP-38-00086

STATE OF SOUTH CAROLINA)
)
County of Orangeburg)
)
Johnny Gerrard White)
)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

FILED FOR RECORD
WINTERA B. CLARK
CLERK OF COURT
ORANGE COUNTY, SC

2010 JAN 19 P 2:59

v.)

APPLICATION FOR

State of South Carolina)
)
)
)
)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE CI
990 Wisacky Hwy Bishopville S.C 29010
2. Name and location of Court which imposed sentence Orangeburg County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) ABWTK 08-GS-38-1592
 - (b) 1st Degree Burglary 08-GS 38-1591

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6-20-09 - 20 Years
 - (b) 6-20-09 - 28 Years
 - (c) CONCURRENT
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty ✓
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
- 8. If you answered "yes" to (7), 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. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Because of Guilty Plea
 - (b) Because of Guilty Plea

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

- (a) Ineffective Assistance of Counsel
- (b) 5th, 6th, 14 AMENDMENT VIOLATIONS
- (c) DUE PROCESS VIOLATIONS

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

- (a) COUNSEL FAIL TO SEEK MY MEDICAL EVALUATION CONCERNING MY MENTAL HEALTH
- (b) VIOLATE LIFE AND LIBERTY INTEREST
- (c) FAIL TO FILE A DIRECTED APPEAL / MOTION FOR RECONSIDERATION + MULLIN SENTENCE

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

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

N/A

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

(a) which grounds have been presented:

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

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

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

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

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

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Jillian De Vllman Assistant Public Defender
P.O. Box 1112 Orangeburg S.C. 29116-1112
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea
 - ii. _____
 - iii. _____

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

~~Time Reduction~~ Time Reduction
on Burglary charge / Also Time Reduction on
ABWIK charge

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

NO

STATE OF SOUTH CAROLINA)
)
County of Orangeburg)

VERIFICATION

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

Johnny White

SWORN to and subscribed before me this 14
day of Jan. 2010.

Debra Suris (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED FOR RECORD
MIRRELL B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2010 JAN 19 P 2:59

Article 1 § 3 S.C. Constitution

Fourteenth Amendment United States Federal Constitution
SEE: ATTACHMENT Pg. 3 line 10-11

Defendant contends that the state sought to charge him with first degree burglary when he and parties had a fight and defendant admitted kicking Timothy Green down but never went into the house.

Defendant challenge the burglary indictment for the sole reasons that he should have been charge with, Trespassing and destroying Mr. Green front door.
J-69574 Affidavit + Brady violation Rule 5

The Appellate Defense violate Defendant 6th Amendment -
Next right and their failure to represent my case constitute also Ineffectiveness Assistance of Counsel and denied him a preliminary hearing to confront accuser

Defendant contends that the Body of Indictment is missing and there is a general question concerning the Affidavit and Indictment for Burglary 1st

Please return original for application clock stamp
AND DATE for Defendant records

FILED FOR RECORD
WILLIAM B. CLARK
CLERK OF COURT
COLUMBIA, S.C.
200 JAN 19 P 2:59

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)	
)	
)	2010-CP-38-0086
)	
Johnny G. White,)	
)	
Applicant,)	
)	
v.)	RETURN
)	(Appointment of Counsel Requested)
State of South Carolina,)	
)	
Respondent.)	
)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 19, 2010, 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 Orangeburg County Clerk of Court. The Applicant was indicted for Burglary – First Degree (2008-GS-38-1591) and Assault and Battery with Intent to Kill (ABWIK) (2008-GS-38-1592). Jillian Ullman, Esquire, represented him. On July 20, 2009, the Applicant pled guilty. He was sentenced by the Honorable Edgar W. Dickson to twenty (20) years for ABWIK. The remaining charge was *nolle prossed* pursuant to the plea.

A notice of appeal was filed. The appeal was dismissed on September 21, 2009, because no issue reviewable on appeal had been identified. The remittitur was sent on October 8, 2009.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department

of Corrections, the appellate records, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. "Counsel fail to seek my medical evaluation concerning my mental health."
 - b. "Fail to file a directed appeal/motion for reconsideration and mollified sentence."
2. "5th, 6th, 14th Amendment Violations."
 - a. "Violate life and liberty interest."
3. "Due Process Rights."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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

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

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

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.

For the purposes of this Return, Respondent interprets Applicant's second and third allegations to be that he was denied due process of law. The Applicant's allegation claims infringement of his rights under 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. This allegation is so vague that it is impossible for the State to respond.

V.

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

VI.

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

[Signatures on next page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: *Mary S. Williams*
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 1, 20 *11*

STATE OF SOUTH CAROLINA)

COUNTY OF ORANGEBURG)

JOHNNY G. WHITE,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

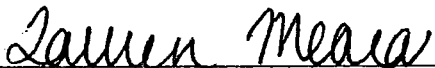
2010-CP-38-0086

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 by depositing same in the United States mail, postage prepaid:

Thomas R. Sims, Esquire
Post Office Box 2016
Orangeburg, SC 29116

DATED this 1st day of April, 2011.


 Lauren Meara, Legal Assistant
 For Respondent

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[All exhibits pre-marked prior to start of trial unless otherwise indicated in transcript]

PLAINTIFF

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Johnny White v State of S.C.
Proceedings
May 29, 2014

1 PROCEEDINGS
2 MS. HARRIGAN: May it please the court?
3 THE COURT: Yes, ma'am.
4 MS. HARRIGAN: Your Honor, the next case is Johnny
5 White versus the State of South Carolina, docket number
6 2010-CP-38-0086. Mr. White was indicted by the
7 Orangeburg County Grand Jury for Burglary in the 1st
8 Degree and Assault and Battery with Intent to Kill. He
9 was represented by Jillian D. Ullman.
10 On July 20th, 2009 he appeared before the Honorable
11 Edgar W. Dixon where he pled guilty. He was sentenced to
12 20 years for the Assault and Battery with Intent to Kill
13 and the remaining charge was dismissed pursuant to a plea
14 agreement with the State. A notice of appeal was filed
15 and the appeal was dismissed on September 21, 2009 by the
16 South Carolina Court of Appeals because no issue
17 reviewable on appeal had been identified. The remittitur
18 was sent on October 8th, 2009.
19 He filed an application for post conviction relief
20 on January 19, 2010 alleging allegations of ineffective
21 assistance of counsel for counsel's failure to seek a
22 medical evaluation concerning his mental health and for
23 failure to file a directed appeal or motion for
24 reconsideration and mollify his sentence as well as
25 allegations that his life and liberty interests were

Johnny White v State of S.C.
Proceedings
May 29, 2014

1 violated and due process rights. He is represented in
2 this action by Tommy Thomas and I'll turn it over to Mr.
3 Thomas at this time.

4 THE COURT: Mr. Thomas?

5 MR. THOMAS: Your Honor, good morning. One
6 thing...

7 [Whereupon, Mr. Thomas confers with Ms. Harrigan]

8 MR. THOMAS: Your Honor, if it please the court.
9 We have just a little bit of background about what was
10 going on. There was this reference to hearing that was
11 held in regards to competency or having an evaluation.
12 We were hopeful to get a copy of that transcript and we
13 found out last week that the transcript is not available.
14 The court reporter has retired and we don't think it
15 exists anymore.

16 As a result one of his concerns was that there were
17 medical records from the Department of Mental Health that
18 counsel did get and review with him prior to this plea
19 and he was saying that in essence she was ineffective in
20 part for not doing that.

21 Also, I did obtain his medical records from the
22 South Carolina Department of Corrections because I was
23 concerned when I found out that there was no transcript
24 of the hearing that it kind of put us in a different
25 situation, Your Honor. I would like to submit those to

Johnny White v State of S.C.
Proceedings
May 29, 2014

1 the court just for review in his post conviction. I
2 think the State has an objection to that. I didn't know
3 if it was best to address that issue up front prior to
4 taking any testimony or how the court would like to
5 handle that.

6 THE COURT: Why don't we take the testimony and
7 then see if it's relevant or not.

8 MR. THOMAS: Yes, ma'am. Thank you. Your Honor,
9 if it please the court we'd call Mr. Johnny White to the
10 stand.

11 THE COURT: Mr. White, if you would come to the
12 witness stand please.

13 [Whereupon, Mr. White comes forward]

14 CLERK OF COURT: Please raise your right hand.
15 State your full name for the record.

16 THE WITNESS: Johnny White.

17 [Whereupon, the witness is duly sworn by the Clerk
18 of Court]

19 THE COURT: Your witness.

20 MR. THOMAS: Your Honor, if it please the court?
21
22
23
24
25

Johnny White v State of S.C.
Johnny White-Direct Examination by Mr. Thomas
May 29, 2014

1 JOHNNY WHITE,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. THOMAS:
6 Q. Mr. White, you're currently serving a sentence with
7 the South Carolina Department of Corrections?
8 A. Yes.
9 Q. And what kind of sentence are you serving?
10 A. Twenty eight years.
11 Q. All right. And are you 85 percent?
12 A. Yes, I am.
13 Q. So you have no parole eligibility?
14 A. No, I don't.
15 Q. And what are you serving time for?
16 A. Assault and Battery with Intent to Kill and First
17 Degree Burglary.
18 Q. First Degree Burglary. You understand that under
19 Burglary 1st that carries up to life imprisonment?
20 A. Yes, I do.
21 Q. And you're asking the court today to grant your post
22 conviction?
23 A. Yes.
24 Q. You understand that if the court grants your post
25 conviction that the only relief you can receive is a new

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- 1 trial or a new plea?
- 2 A. Yes.
- 3 Q. You understand that these charges would be
4 reinstated against you?
- 5 A. Yes.
- 6 Q. And that you have exposure?
- 7 A. Yes.
- 8 Q. You and I talked about that in that your exposure
9 could be that you could be tried for Burglary 1st and in
10 fact receive a life sentence.
- 11 A. Yes.
- 12 Q. You're willing to take that and assume that risk
13 today?
- 14 A. Yes.
- 15 Q. You want to go forward?
- 16 A. Yes.
- 17 Q. All right, sir. Mr. White, when were you arrested
18 do you remember roughly?
- 19 A. No, I don't.
- 20 Q. Okay. But you were arrested of course for this
21 crime?
- 22 A. Yes.
- 23 Q. And did you -- you were taken to the county jail?
- 24 A. Yes.
- 25 Q. And did you make bond?

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1 A. No.

2 Q. So you were retained at the county?

3 A. Uh Huh.

4 Q. And how long were you in the county jail prior to
5 you coming up for this plea?

6 A. I think about a year.

7 Q. Now Mr. White you're currently receiving treatment
8 for mental health problems?

9 A. Yes, I am.

10 Q. And do you know what your diagnosis is?

11 A. It's Schizophrenia -- so much stress.

12 Q. Okay. How long have you been diagnosed as
13 Schizophrenia?

14 A. Probably like 15 years now.

15 Q. All right, sir. You and I talked and we've talked
16 again this morning you have some trouble remembering some
17 things?

18 A. Yes.

19 Q. All right, sir. And are you currently on
20 medication?

21 A. No, I'm not.

22 Q. Have you been prescribed medication?

23 A. Yes.

24 Q. Are you taking medication?

25 A. Yes.

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- 1 Q. And you said you're not today on medication. Is
2 there a reason for that?
- 3 A. Because I wanted to know what's going on.
- 4 Q. Okay. But was your bus in an accident?
- 5 A. Yes.
- 6 Q. And was your medication on the bus?
- 7 A. Yes.
- 8 Q. You didn't receive that medication today though?
- 9 A. No.
- 10 Q. And you want to go forward with this?
- 11 A. Yes.
- 12 Q. You understand what's going on?
- 13 A. Yes.
- 14 Q. Okay. Now Johnny when -- you said that you were
15 diagnosed sometime in the past; do you remember how old
16 you were when that diagnosis was given?
- 17 A. Probably about 10.
- 18 Q. You were 10 years old?
- 19 A. Probably about 10 or 13.
- 20 Q. Okay. Have you been hospitalized before?
- 21 A. Yes.
- 22 Q. And where have you been hospitalized?
- 23 A. I think it was Bull Street -- that's what they call
24 it.
- 25 Q. How long were you there?

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1 A. Like six months.

2 Q. All right, sir. And you're currently being treated
3 in the mental health unit for South Carolina Department
4 of Corrections?

5 A. Yes.

6 Q. Okay. Now during this period of time when you got
7 arrested you'd been treated by mental health?

8 A. Yes.

9 Q. And were you taking medication from mental health?

10 A. Yes.

11 Q. Did you bring that to your attorney's attention?

12 A. Yes.

13 Q. Okay. And when you were in the county jail were
14 you receiving medications from mental health treatment?

15 A. Yes.

16 Q. Do you remember what you were receiving?

17 A. Haldol and Seroquel.

18 THE COURT REPORTER: Could you speak up just a
19 little bit?

20 THE WITNESS: Haldol and Seroquel.

21 Q. [Mr. Thomas] Okay. And what kind of medications
22 are you taking today?

23 A. You mean like what? Haldol, Risperdal, and
24 Cogentin.

25 Q. Okay. Does that help?

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1 A. Yes.

2 THE COURT REPORTER: What's the last medication?

3 THE WITNESS: Risperdal and Cogentin.

4 Q. [Mr. Thomas] Now what type of symptoms have you had
5 Johnny as far as what does your mental health issues --
6 what kind of -- what symptoms do you have with that?

7 A. Hallucinations.

8 Q. And do you hear voices as well?

9 A. Yes.

10 Q. And is that something that has been ongoing for you?

11 A. Yes.

12 Q. Did you bring that to the attention of your
13 attorney?

14 A. Yes, I did.

15 Q. You told her about it?

16 A. Yes.

17 Q. And what did she do about that?

18 A. She said that she thought that was okay.

19 Q. Okay. And you had asked her to get copies of your
20 records from the Department of Mental Health?

21 A. Yes.

22 Q. And we've received those records is that right?

23 A. Yes.

24 Q. And they reflect what your treatment has been with
25 mental health prior to you entering into the plea?

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1 A. Yes.

2 Q. And they are indicative of or they show what
3 medications that you were taking?

4 A. Yes.

5 Q. And they give you a diagnosis of schizophrenia is
6 that correct?

7 A. Yes.

8 MR. THOMAS: Your Honor, if I could beg the court's
9 indulgence just for a second.

10 [Whereupon, Mr. Thomas reviews documents]

11 MR. THOMAS: Your Honor, may I approach?

12 THE COURT: You may.

13 Q. [Mr. Thomas] Johnny, I want to show you this
14 document and ask if you can identify it. Can you
15 identify that?

16 [Whereupon, the witness is shown document]

17 A. Stuff from the Department of Mental Health.

18 Q. Okay. And I want to show you over on page 13 of
19 this document this is a referral from the South Carolina
20 Department of Corrections mental health when you were
21 released?

22 A. Yes.

23 Q. And what kind of diagnosis were you given?

24 A. Schizophrenia.

25 Q. Okay. And that's consistent with what your

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- 1 diagnosis is now?
- 2 A. Yes.
- 3 Q. Okay. Now you've been incarcerated before?
- 4 A. Yes.
- 5 Q. And what were you incarcerated for?
- 6 A. Distribution of crack cocaine.
- 7 Q. And during that period of time were you being
- 8 treated for mental health issues?
- 9 A. Yes.
- 10 Q. And matter of fact this document is where you were
- 11 being referred to the Department of Mental Health from
- 12 Corrections?
- 13 A. Yes.
- 14 Q. For further treatment?
- 15 A. Yes.
- 16 Q. And those documents were not obtained by your
- 17 attorney?
- 18 A. No.
- 19 Q. Okay. Now how did you -- you're in jail and you're
- 20 not on bond.
- 21 A. No.
- 22 Q. And how many times did your attorney come to see you
- 23 to prepare for this case?
- 24 A. Probably like quite a few times -- like 10 times.
- 25 Q. Okay. And did you talk about what was going on?

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- 1 A. Yes.
- 2 Q. Did you talk about what evidence the State had
3 against you?
- 4 A. Yes.
- 5 Q. And did you want to go to trial or did you want to
6 do a plea?
- 7 A. Trial.
- 8 Q. And why did you want to go to a trial?
- 9 A. Because I didn't do it.
- 10 Q. Now, how did you prepare with your attorney? What
11 preparations did y'all make for a trial of this case?
- 12 A. Statements, witnesses.
- 13 Q. In that there were inconsistencies in those
14 statements or?
- 15 A. No, not that I recall.
- 16 Q. Okay. What kind of statements that you had how
17 were they going to help you?
- 18 A. They were going to prove my innocence.
- 19 Q. Prove your innocence?
- 20 A. Uh Huh.
- 21 Q. Was that in relation to you had an alibi?
- 22 A. Yes.
- 23 Q. And what was your alibi?
- 24 A. That I was at home at the time playing video games.
- 25 Q. And you had witnesses who were going to come in and

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1 testify?

2 A. Yes.

3 Q. Now were you working during that period of time?

4 A. Yes.

5 Q. And where were you working?

6 A. Burger King.

7 Q. Okay. Was that part of your alibi?

8 A. Yes.

9 Q. That you were at work?

10 A. Uh Huh.

11 THE COURT REPORTER: Is that yes?

12 THE WITNESS: Yes.

13 Q. [Mr. Thomas] Now why did you decide to enter into a
14 plea?

15 A. I don't know.

16 Q. Okay. Did you understand what was going on in the
17 courtroom that day?

18 A. No.

19 Q. Okay. And why didn't you understand what was going
20 on?

21 A. I really can't remember too much about that day.

22 Q. Okay. And it's hard for you to remember just in
23 general or hard to remember about that day?

24 A. That day.

25 Q. Okay. But you do have memory problems?

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- 1 A. Yes.
- 2 Q. And that's associated with your Schizophrenia?
- 3 A. Yes.
- 4 Q. Now what process, if any, did you go through with
5 your attorney in regards to -- did you have an
6 opportunity to sit down with her to talk about if you try
7 this case how you were going to do it?
- 8 A. Yes.
- 9 Q. Okay. And you understood that?
- 10 A. Yes.
- 11 Q. Okay. Now how about a telephone conversation? Was
12 there a telephone conversation that came into play in
13 this case?
- 14 A. Yes.
- 15 Q. And what was that?
- 16 A. It was someone speaking about a crime.
- 17 Q. And was that someone who -- there was a Federal
18 wiretap going on?
- 19 A. Yes.
- 20 Q. And they obtained information from that Federal
21 wiretap?
- 22 A. Yes.
- 23 Q. Now you were not subject to the Federal wiretap were
24 you?
- 25 A. No.

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- 1 Q. You don't have any Federal charges?
- 2 A. No.
- 3 Q. Okay. And supposedly this person on that
4 conversation admitted to this crime?
- 5 A. Yes.
- 6 Q. Was that you?
- 7 A. No.
- 8 Q. Okay. And a matter of fact they didn't have a name
9 other than just a first name on the caller is that
10 correct?
- 11 A. Correct.
- 12 Q. And did you talk to your attorney about that
13 conversation?
- 14 A. Yes.
- 15 Q. Did you talk to her about trying to suppress that?
16 What I mean is to keep that conversation from coming in
17 and being used against you?
- 18 A. No.
- 19 Q. Did she say that there was any possibility that that
20 conversation could be kept out?
- 21 A. No.
- 22 Q. Just didn't talk about it.
- 23 A. No.
- 24 Q. And was that part of the reason that you decided to
25 enter into this plea?

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1 A. Yes.

2 Q. Okay. Now Johnny we've talked about this and we've
3 talked about your -- prior when you and I met we talked
4 about your medical situation and we talked about your
5 plea that you had to know about what you were doing and
6 you had to understand what you were doing?

7 A. Yes.

8 Q. Do you feel like that you entered into this plea
9 knowing or understanding?

10 A. No.

11 Q. Okay. And the plea has to be -- you have to enter
12 into it freely and you have to voluntarily enter into
13 this plea. Do you feel like that your plea was freely
14 and voluntarily entered into?

15 A. No.

16 Q. And you believe this was not freely and voluntarily
17 entered into because of your illness?

18 A. Yes.

19 Q. And because of the things that your attorney didn't
20 do for you?

21 A. Yes.

22 Q. Now you brought this to my attention in regards to
23 an issue about the issuing of the arrest warrant and the
24 amount of time that the State has to indict you in
25 regards to that warrant, is that correct?

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1 A. Yes.

2 Q. And that's something that you wanted me to present
3 to the court today?

4 A. Yes.

5 Q. And why do you feel like there was a problem with
6 that?

7 A. I think something was done with the 90 day period.

8 Q. Right.

9 A. I think it was done in like 100 and something days.

10 Q. And you're saying that under the Rules of Criminal
11 Procedure under Rule 3(c) that the State has 90 days to
12 indict you?

13 A. Yes.

14 Q. And was that done?

15 A. No.

16 MR. THOMAS: Your Honor, I've got a copy of that if
17 the court would like.

18 THE COURT: That's okay. I've got it --

19 MR. THOMAS: Your Honor, if I could beg the court's
20 indulgence?

21 THE COURT: Yes, sir.

22 [Whereupon, Mr. Thomas reviews documents]

23 MR. THOMAS: May I approach, Your Honor?

24 THE COURT: You may.

25 [Whereupon, Mr. Thomas confers with Ms. Harrigan]

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- 1 MR. THOMAS: Your Honor, if I could approach?
- 2 Q. [Mr. Thomas] Johnny, I'm going to show you these two
3 documents.
- 4 [Whereupon, the witness is shown documents]
- 5 Q. Are those your arrest warrants do you remember?
- 6 A. Yes.
- 7 Q. Okay. And those are for Burglary 1st and the
8 Assault and Battery with Intent?
- 9 A. Yes.
- 10 Q. And it shows a date on here that it was signed and
11 can you read that date to us?
- 12 A. January the 28th --
- 13 THE COURT REPORTER: I couldn't hear you.
- 14 THE WITNESS: January 28, 2008.
- 15 Q. [Mr. Thomas] And that's correct for both of them?
- 16 A. Yes.
- 17 Q. All right, sir. I want to show you this document,
18 which is your indictment for Burglary 1st and also for
19 Assault and Battery with Intent.
- 20 [Whereupon, the witness is shown document]
- 21 Q. And is there a true bill stamp on there? It says
22 action by the Grand Jury.
- 23 A. Yes.
- 24 Q. And is there a date on there?
- 25 A. December 10, 2008.

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1 Q. Okay. And is that more than 90 days?

2 A. Yes.

3 MR. THOMAS: Your Honor, it's my understanding I
4 think this is in the record that is before the court.

5 THE COURT: It is.

6 Q. [Mr. Thomas] And Johnny you feel like that's in
7 violation of the Rules ---

8 A. --- yes ---

9 Q. --- of Criminal Procedure?

10 A. Yes.

11 Q. Did you talk about this with your attorney or did
12 you find out about this later?

13 A. Found out about it later.

14 Q. When you were incarcerated?

15 A. Uh Huh.

16 Q. Now how about your appeal? Did you -- was a notice
17 of intent -- was an appeal filed?

18 A. Yes, something was filed.

19 Q. And did you receive an appeal?

20 A. Yes.

21 Q. But it was dismissed?

22 A. Yes.

23 MR. THOMAS: May I approach, Your Honor?

24 THE COURT: You may.

25 Q. [Mr. Thomas] Johnny I'm going to show you this.

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- 1 [Whereupon, the witness is shown document]
- 2 Q. And that is from who?
- 3 A. South Carolina Court of Appeals.
- 4 Q. All right. And there is an order?
- 5 A. Uh Huh.
- 6 Q. Okay. And does it give a reason as to why it was
7 dismissed?
- 8 A. Yes.
- 9 Q. And why was it dismissed do you know?
- 10 A. Failed to show how -- issues was preserved for our
11 review.
- 12 Q. Because it was a guilty plea?
- 13 A. Yes.
- 14 Q. Okay. Johnny I want to show you this one, this
15 document.
- 16 [Whereupon, the witness is shown document]
- 17 Q. And who is that from?
- 18 A. South Carolina Court of Appeals.
- 19 Q. And what is that title? Can you read that?
- 20 A. A remittitur.
- 21 Q. Okay. And that's where your case was dismissed.
- 22 A. Yes.
- 23 MR. THOMAS: Your Honor, I believe this is part of
24 the record as well.
- 25 THE COURT: It is.

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- 1 Q. [Mr. Thomas] Johnny, did you want an appeal?
- 2 A. Yes.
- 3 Q. And you wanted it to be dismissed or you wanted it
4 to go forward?
- 5 A. Go forward.
- 6 Q. Did you ever talk -- did anybody ever come and talk
7 with you about it?
- 8 A. No.
- 9 Q. Johnny, this is your day in court. And I'm not
10 suggesting that we have forgotten something or left
11 something out, okay?
- 12 A. Okay.
- 13 Q. So I'm not saying that you have to say something so
14 don't get me wrong. But I know that you have been
15 waiting for a long time to come to court.
- 16 A. Yes.
- 17 Q. Is there anything else that you wanted to bring to
18 the court's attention that I may have missed or forgotten
19 or that you feel that is important?
- 20 A. No.
- 21 Q. We covered everything that you wanted covered?
- 22 A. Yes.
- 23 THE COURT: Cross-Examination?
- 24 MS. HARRIGAN: Yes, Your Honor. May it please the
25 court?

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1 CROSS-EXAMINATION
2 BY MS. HARRIGAN:
3 Q. Good afternoon, Mr. White. You testified that you
4 asked Ms. Ullman to get a copy of your mental health
5 records but she didn't do so correct?
6 A. Yes.
7 Q. Okay. Did she tell you she was going to get a copy
8 of them?
9 A. No.
10 Q. How do you know she didn't get a copy of them?
11 A. Because she never showed them to me. She never
12 mentioned them.
13 Q. And you made a motion personally to have a mental
14 health evaluation before your guilty plea correct?
15 A. Yes.
16 Q. Did your counsel, Ms. Ullman join in that motion?
17 A. No.
18 Q. And you had a hearing on that motion before Judge
19 Seals correct?
20 A. I think.
21 Q. You don't recall having a hearing on that motion?
22 A. No.
23 Q. Do you recall that being discussed during your
24 guilty plea with Judge Dixon that you had moved to be
25 evaluated, had a hearing and it was denied?

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1 A. I remember something like that.

2 Q. Do you recall him reviewing that with you and
3 reviewing whether or not you understood what was going on
4 at the guilty plea?

5 A. No.

6 Q. You don't recall that?

7 A. No.

8 MS. HARRIGAN: Moment's indulgence, Your Honor.

9 [Whereupon, Ms. Harrigan reviews documents]

10 MS. HARRIGAN: Your Honor, may I approach?

11 THE COURT: You may.

12 Q. [Ms. Harrigan] Mr. White, I'm handing you a copy of
13 your guilty plea transcript.

14 [Whereupon, the witness is shown document]

15 Q. Will you read page 8 to yourself briefly?

16 [Whereupon, the witness complies]

17 A. Okay.

18 Q. Did Judge Dixon ask you during your guilty plea if
19 you understood what you were doing there today?

20 A. Yes, it says that.

21 Q. And did you answer him that you did understand what
22 was going on that day?

23 A. Yes.

24 Q. And did you tell him on page 8 that you were
25 knowingly entering your guilty plea?

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- 1 A. That's what it says.
- 2 Q. Do you not recall telling him that?
- 3 A. No.
- 4 Q. You testified before that you had numerous
5 discussions with Ms. Ullman about your defense and
6 preparing your case for trial correct?
- 7 A. Yes.
- 8 Q. I believe you testified that you understood these
9 discussions about preparing for trial and your defense
10 correct?
- 11 A. Yes.
- 12 Q. So you were able to assist her in preparing your
13 defense and getting ready for trial?
- 14 A. Yes.
- 15 Q. You testified before about the audio recording
16 correct?
- 17 A. [No response]
- 18 Q. The audio recording of someone who you allege wasn't
19 you describing the crime that the State attempted to
20 introduce you discussed it with your attorney?
- 21 A. I guess.
- 22 Q. Okay. And you're alleging today that that wasn't
23 you on that recording?
- 24 A. No, it wasn't.
- 25 Q. Did you have an opportunity to listen to the

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1 recording?

2 A. Yes.

3 Q. Do you recall any of that recording?

4 A. No.

5 Q. Do you recall whether or not someone on that
6 recording purporting to be you described setting up an
7 alibi that could be used in your defense at trial?

8 A. No.

9 Q. The victim in this case you had known him prior
10 correct?

11 A. Yes.

12 Q. He was a prior friend and you had had a falling out
13 correct?

14 A. No.

15 Q. Did the State say that at your guilty plea
16 proceeding do you recall?

17 A. Yes.

18 Q. Do you recall whether or not the victim, your former
19 friend, identified you as the perpetrator who shot him?

20 A. No.

21 Q. You testified that you wanted an appeal of this case
22 correct?

23 A. Yes.

24 Q. Did you ask Ms. Ullman to file one on your behalf?

25 A. Yes.

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1 Q. And she did file an appeal on your behalf correct?

2 A. Someone did.

3 Q. You don't know who it was though?

4 A. No.

5 Q. And based on those documents that your attorney had
6 you review the Court of Appeals dismissed it for failing
7 to state a claim on which relief could be granted
8 correct?

9 A. Yes.

10 MS. HARRIGAN: Moment's indulgence.

11 [Whereupon, Ms. Harrigan reviews documents]

12 Q. [Ms. Harrigan] When you -- did you discuss any plea
13 offers made by the State with Ms. Ullman?

14 A. I don't know.

15 Q. Do you remember whether the State was recommending a
16 particular sentence or a range of sentences when you pled
17 guilty?

18 A. I don't remember.

19 Q. Do you recall anything about a cap of a 28 year
20 sentence?

21 A. No.

22 Q. Do you recall discussing plea negotiations with Ms.
23 Ullman?

24 A. No.

25 Q. No you don't recall or no you never discussed with

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1 her?

2 A. I don't recall.

3 Q. But again you did testify that you were able to
4 communicate with her and understood discussions about
5 trial preparation and your defenses to set forth a trial
6 correct?

7 A. Yes.

8 Q. Do you recall telling Judge Dixon during the guilty
9 plea that you wanted to plead guilty?

10 A. No.

11 Q. Do you recall telling Judge Dixon that you were
12 indeed guilty?

13 A. No.

14 Q. Are you guilty?

15 A. No.

16 Q. Why'd you plead guilty?

17 A. I don't know.

18 Q. Did you plead guilty because you didn't want a
19 harsher sentence if convicted at trial?

20 A. I don't know.

21 Q. You don't know at all why you pled guilty?

22 A. No.

23 Q. Do you recall agreeing with the facts as stated by
24 the State during your guilty plea proceeding?

25 A. No.

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1 Q. Do you recall telling Judge Dixon during your guilty
2 plea that you were satisfied with Ms. Ullman?

3 A. No.

4 Q. And I believe you testified to this briefly before
5 on direct but you do have a prior record correct?

6 A. Yes.

7 Q. So this wasn't your first time in General Sessions
8 court correct?

9 A. No.

10 MS. HARRIGAN: Moment's indulgence, Your Honor.

11 [Whereupon, Ms. Harrigan reviews documents]

12 Q. [Ms. Harrigan] Do you know whether or not Ms. Ullman
13 had filed notice of an alibi defense in preparation for
14 your trial?

15 A. I think, I don't know. I'm not sure.

16 Q. But you discussed your alibi witnesses with Ms.
17 Ullman correct?

18 A. Yes.

19 MS. HARRIGAN: No further question, Your Honor.

20 THE COURT: Any redirect?

21 MR. THOMAS: Yes, Your Honor, just one or two.

22

23

24

25

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- 1 A. Yes.
- 2 Q. And when you went in on that incarceration you were
3 suffering from mental health problems then?
- 4 A. Yes.
- 5 Q. And you were treated within the South Carolina
6 Department of Corrections?
- 7 A. Yes.
- 8 Q. And that's in the treatment notes that we obtained
9 on your behalf?
- 10 A. Yes.
- 11 Q. And then you were released to the care of the
12 Department of Mental Health?
- 13 A. Yes.
- 14 Q. And you were under their care and treatment when
15 this crime allegedly occurred?
- 16 A. Yes.
- 17 Q. And then when you were in the county jail you were
18 being treated then?
- 19 A. Yes.
- 20 Q. And you're being treated today?
- 21 A. Yes.
- 22 Q. Okay. And what you had asked your attorney was to
23 obtain these records for you; mainly the Department of
24 Mental Health treatment records?
- 25 A. Yes.

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1 Q. And did she do that for you?

2 A. I don't recall.

3 Q. You don't recall, all right. And you're asking the
4 court today to grant your request for post conviction?

5 A. Yes.

6 MR. THOMAS: Thank you, Your Honor.

7 THE COURT: Thank you. You may step down sir,
8 thank you.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

11 THE COURT: You may call your next witness.

12 MR. THOMAS: Your Honor, if it please the court
13 we'd call Ms. Ullman to the stand.

14 THE COURT: Ms. Ullman?

15 [Whereupon, Ms. Ullman comes forward]

16 CLERK OF COURT: Raise your right hand and state
17 your full name for the record?

18 THE WITNESS: Jillian Denise Ullman.

19 [Whereupon, the witness is duly sworn by the Clerk
20 of Court]

21 THE COURT: Your witness.

22 MR. THOMAS: Your Honor, if it please the court?
23
24
25

Johnny White v State of S.C.
Jillian Ullman-Direct Examination by Mr. Thomas
May 29, 2014

1 JILLIAN ULLMAN,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. THOMAS:
6 Q. Ms. Ullman, I want to thank you for being here
7 today.
8 A. Yes, sir.
9 Q. And you, of course, know Johnny White?
10 A. Yes, sir.
11 Q. And were you appointed or retained to represent him?
12 A. Appointed.
13 Q. And you represented him in the Burglary 1st and the
14 Assault and Battery with Intent?
15 A. Yes, sir.
16 Q. How long did you represent him?
17 A. I was appointed October 20th, of 2008 and the case
18 closed July 20th, 2009; so almost a year.
19 Q. Okay. Almost a year? During that period of time
20 you had an opportunity to meet with him?
21 A. I met with him several times.
22 Q. All right. And did you know or understand that he
23 was being treated for mental health issues?
24 A. One of the first things I discuss with everybody is
25 just basic information about themselves and mental health

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1 is a question I do ask about. And my notes show where he
2 told me that he had seen mental health; not that he was
3 seeing.

4 And I asked him if he had any medicines he took and
5 he told me he took Haldol and Seroquel and that he used
6 to take those and Risperdal; I wrote it down. But he did
7 not tell me he was currently being treated.

8 Q. Right. But I would imagine that when he said Haldol
9 that would say to me and I would assume it would say to
10 you that he has a mental health issue.

11 A. It would say to me that at one point somebody
12 decided to give him medicine for mental health. But in
13 my experience people that are in the criminal system
14 often end up with mental health medicines that later are
15 determined that they did not need.

16 Q. Did you take -- did you follow up on any of that to
17 contact the Department of Mental Health to see if he was,
18 in fact, being treated?

19 A. I don't see in my notes anywhere that me or my
20 secretary requested the medical records so I don't
21 believe that I did.

22 Q. All right. Did you have prior knowledge that he
23 had been incarcerated before?

24 A. Yes.

25 Q. And did you have any knowledge that he was being

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1 treated for mental health in his prior incarceration?

2 A. I did not.

3 Q. Okay. You didn't -- then therefore you didn't make
4 any attempt to obtain any kind of medical records from
5 them?

6 A. Correct.

7 Q. How about at the county jail? Did you inquire to
8 see if he was being treated for mental health issues at
9 the county jail?

10 A. I did not. When we discussed it and he told me that
11 he had been seen by mental health I assumed that that
12 meant it was over. I figured if he was seeing mental
13 health at the jail he would have told me.

14 Q. Right. But this issue kind of boiled over I mean at
15 some point didn't it? I mean he was requesting that he
16 be evaluated?

17 A. How that came about this case was obviously pending.
18 Throughout the entire case he was able to discuss the
19 allegations, his alibi; he told me who his alibi
20 witnesses were, what they would tell me, how to find
21 them.

22 Mental health was never an issue. We never
23 discussed any of that. And I didn't -- in my experience
24 by the time I represented him I had been a public
25 defender two years. I didn't feel there was a reason to

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1 have him evaluated and his request for an evaluation did
2 not come up until we received the transcript from the
3 Federal wiretap.

4 And his offer, which was originally a cap of 20
5 years then went up to a cap of 28 years and we were put
6 on a timeline that we either accepted the cap of 28 or
7 went to trial with that Federal wiretap information
8 coming in.

9 And at that point he decided he needed a mental
10 health evaluation and as an officer of the court based on
11 our experience together I didn't join that motion. I
12 didn't feel that I could.

13 Q. But I mean it's true that he was having mental
14 health issues though. I mean this just didn't kind of --
15 this wasn't made up.

16 A. Throughout the time that I represented him he never
17 brought up to me that he was having any symptoms of
18 Schizophrenia, hearing voices, memory issues; he never
19 said any of that to me or I would have had him evaluated;
20 at least sought medical records.

21 All I knew is that at one time previously he had
22 been treated. And again, when people are in the
23 Department of Corrections in my experience a lot of times
24 medicines are prescribed that once they are out and see
25 other doctors they don't actually need those medicines.

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1 So the fact that he told me he had been on medicine and
2 wasn't currently taking any along with his interactions
3 with me honestly mental health never came up except for
4 during our very first meeting when he told me he had been
5 seen and then once everything changed he decided he
6 needed an evaluation right before the trial.

7 Q. But this turned out to be a situation where he was
8 actually being treated from a fairly young age for mental
9 health ---

10 MS. HARRIGAN: --- Your Honor, I would object to
11 the testimony on leading questions.

12 THE COURT: Please rephrase.

13 MR. THOMAS: Yes, ma'am.

14 Q. [Mr. Thomas] Did you have any understanding as to
15 how long he had been treated for any mental health
16 issues?

17 A. No.

18 Q. And did you have any knowledge that he was being
19 treated for mental health issues as a child or young man?

20 A. No.

21 Q. Was there a hearing that was actually continued at
22 one point in time due to the fact that -- his request to
23 be evaluated, do you remember that?

24 A. I'm sorry; give me a second to review my notes.

25 Q. Certainly.

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1 [Whereupon, the witness reviews documents]

2 A. I don't see any notes where that happened. What I
3 can tell you for sure is we met June 19th and I had just
4 recently met with my investigator and his witnesses; the
5 witnesses Mr. White gave me for his alibi.

6 We then met my investigator -- no, excuse me; just I
7 met with him on June 19th and he requested a trial. June
8 29th is when we got the Federal wiretap information and
9 July 14th was the next term we were in court and that's
10 when he asked for his evaluation.

11 Q. Was there a motion filed to suppress the wiretap
12 information?

13 A. No, sir. As Mr. White was not the person being
14 wiretapped he had no standing to complain that the tap
15 was invalid.

16 Q. Was there any investigation into the fact of whether
17 or not it was a legal or illegal wiretap to begin with?

18 A. No, sir. And again if it was illegal since Mr.
19 Johnny White was not being wiretapped I don't feel --
20 irrelevant to what I feel the law does not allow him
21 based on standing issues to complain that somebody else's
22 phone was being wiretapped and he just happened to call
23 that phone and get recorded.

24 Q. Now pursuant to his request some sort of competency
25 hearing was held?

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1 A. Yes, sir. In front of Judge Seals there was a
2 competency hearing. I understand we can't get that
3 transcript but from my memory Mr. Sorensen [phonetic]
4 would have said you know defense has a motion.

5 At that point I told the court that Mr. White had a
6 motion that I was not joining in and that the court could
7 hear from him. In the public defender's office we often
8 do that for other reasons such as when they want to fire
9 their attorney or have the public defender's office
10 relieved.

11 So I stood back and let Mr. White explain to Judge
12 Seals why he felt a mental evaluation was necessary. And
13 I believe Judge Seals questioned him about his history
14 and his participation with me in this trial and preparing
15 for it. And at that point he denied the motion.

16 Q. Two questions. One, your position was based upon
17 your earlier testimony that many times folks are
18 overmedicated in the Department of Corrections?

19 A. Could you say that again; I'm sorry?

20 Q. Okay. You testified that you felt like that folks
21 who were incarcerated would sometimes receive medication
22 that was not necessary for mental health issues in either
23 I guess county jail or Department of Corrections?

24 A. Yes, sir.

25 Q. And was that part of the basis of your reasoning in

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1 not joining with him for the motion for evaluation?

2 A. No. The reason I brought that up is just to explain
3 why I didn't request his mental health records. The
4 reason I didn't join in his motion is because I didn't
5 feel he needed a mental evaluation.

6 The purpose of a mental evaluation especially the
7 one he was requesting because it was not under the
8 M'Naghten standard it was under the competency standard.

9 Q. Right.

10 A. The only purpose in that is to determine if the
11 person is at a level whether it be mental health wise or
12 educational wise that they can sufficiently assist their
13 counsel in preparing for trial and preparing a defense.

14 Certainly I understand he has a history a mental
15 health issues; many people do. But that doesn't affect
16 necessarily your legal competency in the sense of
17 assisting an attorney with your defense.

18 And in that matter Mr. White had assisted me in his
19 defense throughout the entire time that we had been
20 together by giving me his alibi witnesses, explaining who
21 they were, what they would say, what part of the alibi
22 from the time he got off work to the time he got I
23 believe to his girlfriend's house is where they finally
24 ended up. He filled in every bit of timeline and
25 explained why that person could provide him with that

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1 alibi necessary for that timeline. I never had any
2 reason to think that on a legal competency level that he
3 was not legally competent.

4 Q. Well, I guess you've got two stages then. You've
5 got a situation where guilty but mentally ill, not guilty
6 by reason of insanity as far as potential defenses I
7 guess to this.

8 But the third thing is the plea itself whether or
9 not it is knowingly and intelligently given, freely and
10 voluntarily given. Did you have any concern going into
11 that stage?

12 A. No, sir. The only issue, if you want to call it
13 that is I think the main reason he pled was because of
14 the wiretap. So in the sense of that kind of made him do
15 it but it was certainly voluntary in the sense that he
16 knew that if he went to trial that wiretap was coming in
17 and his alibi was out the door.

18 I'd also mention that he had two alibi witnesses --
19 three; a person from work who would have let him out of
20 the Wendy's facility, his girlfriend, and a friend who I
21 believe was playing video games with him most of the
22 night was going to be the alibi.

23 Prior to trial that friend was killed. So at that
24 point our only alibi -- we lost part of our alibi
25 witnesses certainly of no fault of our own but that

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1 certainly affected what could have and would have
2 happened at trial.

3 Q. And as it turned out he had much more of a mental
4 health history than you were aware of.

5 A. Correct. All he told me was that he had seen mental
6 health and didn't give me any sort of diagnosis and told
7 me that he had been on some medicine.

8 Q. Okay.

9 A. I'll also point out he got his G-E-D, was working,
10 and was providing child support for children. So there
11 were other reasons I did not think mental health was an
12 issue.

13 Q. Now he brought this to my attention and I guess you
14 heard his testimony in regards to Rule 3(c) of the Rules
15 of Criminal Procedure?

16 A. Yes, sir.

17 Q. Were you aware of that? This requirement for 90
18 days?

19 A. I was not. What I am aware of is in Orangeburg,
20 which is where I practiced criminal law Solicitor's don't
21 seek indictments until they are ready to go to trial.

22 And in my experience with myself and watching other
23 defense attorneys object to timeliness and indictment
24 issues, such as not being presented, they never mattered.
25 The indictment is always fixable, the warrant is always

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1 fixable whether it be Scribner's errors or mistakes they
2 can amend to change and fix just about anything unless it
3 truly affects the actual charge.

4 I mean they can't change burglary to murder but
5 pretty much I've never seen that matter and I was a
6 public defender for seven years.

7 Q. So it is not something that you pursued?

8 A. No, because it would have been a gigantic waste of
9 time.

10 Q. Now how about the appeal? You did file a notice of
11 intent on his behalf?

12 A. I did.

13 Q. And what happened from that point forward do you
14 know?

15 A. We filed the notice and being that it is a guilty
16 plea we are not required as defense attorneys to tell the
17 court in our notice whether we believe there's actually
18 grounds to appeal or kind of like in the mental
19 evaluation situation if we kind of stand back and just
20 say we don't really know why he is appealing but he wants
21 to so we're doing it.

22 Q. Right.

23 A. I believe that is what I did in this matter. If you
24 let me look I can double check. But I couldn't come up
25 with any reason to appeal. I didn't feel the mental

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1 health issue was relevant especially since Judge Seals
2 had already decided that.

3 A. And certainly his...

4 [Whereupon, the witness reviews documents]

5 A. Yes sir I did file saying that I did not know of a
6 reason, a legal basis for his appeal but he expressed a
7 desire to do so and as his attorney I was required to
8 file that.

9 Based on standard practice once the court receives
10 that they notify the defendant that that is what's been
11 filed and give the defendant an opportunity to tell the
12 court what they believe the problems are.

13 And certainly the court allows them to not have to
14 be a lawyer and make it completely a legal statement just
15 as in these P-C-R applications.

16 And I'm not aware that he filed anything on his own
17 and I didn't know of any legal basis due to all the
18 evidence that ended up being presented by the time he
19 pled.

20 Q. Do you remember if you followed up with him in
21 regards to what he might be able to do if he wanted to
22 file something on his behalf as far as giving reasons or
23 was that kind of when you closed your file?

24 A. Once we filed the appeal we also get notice. We get
25 copied on the same letter that the defendant gets about

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1 we need a reason specifically from you, the defendant,
2 regarding why you want to appeal. And when I do receive
3 that letter standard practice is to forward that to the
4 defendant to make sure I know he got it.

5 And I usually attach a letter saying you just need
6 to write to the court and let them know why you're
7 wanting to appeal and tell them what your reasons are.

8 But by then he would have already been in Columbia.
9 I wouldn't have had the ability to really have contact
10 with him like I would have at the jail. He would have
11 been at the R and E facility.

12 Q. Right.

13 MR. THOMAS: Your Honor, if I could beg the court's
14 indulgence?

15 THE COURT: Yes, sir.

16 [Whereupon, Mr. Thomas confers with his client]

17 MR. THOMAS: Your Honor, if I may just one more
18 question.

19 Q. [Mr. Thomas] Counsel, you said that he received his
20 G-E-D?

21 A. Yes, sir.

22 Q. In the system?

23 A. I don't know that he received it in the system and
24 let me just say this. What I know about their personal
25 history, how old they are, if they are married or not,

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1 how many children they have, if they're working, whether
2 they've been treated for alcohol or drugs, whether they
3 graduated, whether they have been treated for mental
4 health and their prior record. All of those are my first
5 original questions.

6 Q. Right.

7 A. Other than prior record all the information is based
8 on what they tell me. What he told me was that he went
9 to Orangeburg Wilkinson High School did not graduate but
10 got his G-E-D in 2001.

11 Q. Okay. So if he was telling me that he didn't have
12 a G-E-D you wouldn't have any way to know that to be true
13 or false?

14 A. No. What I can tell you is that based on my notes
15 he told me that he did get his G-E-D in 2001.

16 Q. Thank you.

17 MR. THOMAS: I have no further questions, Your
18 Honor.

19 MS. HARRIGAN: The State has no questions for this
20 witness.

21 THE COURT: You may step down Ms. Ullman. Thank
22 you.

23 THE WITNESS: Thank you.

24 [Whereupon, the witness is excused and exits the
25 witness stand]

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1 THE COURT: Anything further from either party.

2 MR. THOMAS: Your Honor, if it please the court
3 that's the applicant's case.

4 MS. HARRIGAN: The State has no witnesses to call
5 but does have a brief argument.

6 THE COURT: All right. I'll be happy to hear your
7 arguments.

8 [Whereupon, Ms. Harrigan and Mr. Thomas confer]

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Johnny White v State of S.C.
Closing Argument-By Ms. Harrigan
May 29, 2014

1 CLOSING ARGUMENT

2 BY MS. HARRIGAN:

3 The State would submit that this application should
4 be denied in full. I'll turn to each of the three issues
5 he raised.

6 First dealing with the competency and Ms. Ullman's
7 alleged ineffective assistance for failing to have him
8 evaluated the State would submit that no deficiency has
9 been shown. The uncontroverted testimony from both Mr.
10 White and Ms. Ullman is that he helped her prepare for
11 trial and assisted in his defense. And there was
12 testimony from Ms. Ullman that she had no reason to doubt
13 his competency.

14 Additionally, a hearing was held before Judge Seals
15 and it was denied so the State would also submit that no
16 prejudice can be shown and we'd ask that allegation be
17 denied in full for failure to meet the burden of
18 deficiency and prejudice as required by Strickland v
19 Washington.

20 Turning to the issue of failure to move to quash or
21 challenge the indictment pursuant to Rule 3(c) of the
22 South Carolina Rules of Civil Procedure. The State would
23 also submit that the two prongs as required by Strickland
24 have not been met by applicant. We had testimony from
25 Ms. Ullman that she was at the public defender's office

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Closing Argument-By Ms. Harrigan
May 29, 2014

1 in Orangeburg for seven years and other members of her
2 office or the local Bar often would move to quash or
3 challenge these indictments. And these indictments
4 routinely could be amended. There is no deficiency based
5 on her prior experience.

6 And additionally the State would submit that there
7 is no prejudice. It would not have resulted in a
8 permanent dismissal. And applicant is required to show
9 that the result would have been different but for
10 counsel's alleged deficiency and here the State would
11 submit it would not have resulted in a permanent
12 dismissal. The State easily could have amended the
13 warrants or the indictments and therefore no prejudice
14 can be shown.

15 Turning finally to the issue that Ms. Ullman was
16 ineffective in regards to filing for an appeal or
17 protecting his appellate rights. The State would submit
18 there is no deficiency. She filed an appeal at the
19 request of her client. She is bound as officer of the
20 court to be truthful in all of her filings and
21 communications with the court.

22 She told the court there were no grounds. She again
23 here today said there were no grounds. And the State
24 would also submit that there is no prejudice as no
25 grounds can be shown for that so we'd ask that that

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May 29, 2014

1 allegation also be denied and that the application be
2 denied in full.

3 THE COURT: Mr. Thomas?

4 MR. THOMAS: Your Honor, if it please the court.

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Johnny White v State of S.C.
Closing Argument-By Mr. Thomas
May 29, 2014

1 CLOSING ARGUMENT

2 BY MR. THOMAS:

3 We would ask the court just in general that we have
4 met our burden of proof to show that he is entitled to be
5 granted a post conviction relief as well as a belated
6 appeal.

7 But more specifically in regards to a mental health
8 issues a plea has to be freely and voluntarily given. It
9 has to be knowingly and intelligently given. And I think
10 there is sufficient evidence in this case to show that he
11 did not understand and he did not know what was going on.
12 And clearly I think he was prejudiced by that.

13 What kind of strikes me today is that there was
14 every indication that counsel had a client who had a
15 problem and unfortunately just didn't take the step to go
16 further to identify and see what was going on. I mean in
17 this case he actually made his own motion to say that
18 I've got a mental health problem. I feel like I need to
19 be evaluated.

20 And no matter how you look at it if you say well, I
21 understand these people they go to Corrections or they go
22 to the county jail they have a lot of anxiety because
23 they've been arrested or they have a lot of depression
24 because you know I've got these serious charges pending
25 against me. But clearly I think in this case there was

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1 more to it than that. And in fact that's why we would
2 move to ask the court to consider both the Department of
3 Mental Health records and the records from Corrections is
4 because there is no diagnosis of depression.

5 I mean if we're saying that he needed to be
6 medicated because he was depressed or had anxiety he
7 doesn't really have that. What he has is Schizophrenia.
8 He's had it since he was fairly young in age and this is
9 a Type 1 or Axis 1 diagnosis in regards to a mental
10 health issue. It is significant.

11 And I think there was every opportunity was
12 presented to say hey, I've got a problem. And I don't
13 think what we can do is put the burden on the person who
14 is mentally ill to come forward and say I've had this
15 hospitalization, and I've taken this kind of medication,
16 and I'm doing this and I'm doing that. I think the best
17 thing that we can ask for those kinds of people is that
18 they tell you that they are having a problem. And he
19 told her that he had a problem.

20 As a matter of fact he went a step further and said
21 I need an evaluation. And because of him either
22 functioning that well that day or whatever reason the
23 court -- and counsel never took that other step to say
24 well let's see what's going on. And because of the
25 history of his prior incarceration, being released to the

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May 29, 2014

1 care of D-M-H, D-M-H taking care of him, him receiving
2 meds when he was in the county jail; I think all of that
3 is important. And all of that stuff needed to be taken
4 into consideration to make sure he knew what he was doing
5 when he entered into this plea.

6 So we would ask the court to consider the medical
7 records both D-M-H and Corrections and consider granting
8 the post conviction on the basis that counsel was
9 ineffective and that his plea was not knowingly and
10 intelligently and freely and voluntarily entered into.

11 THE COURT: Thank you.

12 MR. THOMAS: Yes, ma'am. Thank you.

13 THE COURT: I'll take the time to review all the
14 records and the transcript and issue a ruling in writing.

15 MR. THOMAS: Your Honor, if it please the court. I
16 have copies of D-M-H and Corrections if you would like to
17 have those.

18 MS. HARRIGAN: Your Honor, the State does object to
19 those coming into the record. The State objects on
20 several grounds. We object on hearsay. Throughout the
21 record there is actually double hearsay often. Its
22 various people from the Department of Corrections or
23 D-M-H discussing what Mr. White has told them. We think
24 that based on hearsay grounds and for the truth of the
25 matter asserted is clearly why they are being offered.

Johnny White v State of S.C.
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May 29, 2014

1 The State would object on hearsay grounds. Additionally,
2 they are cumulative at this point. We already have
3 testimony from Mr. White about his prior history and
4 testimony from Ms. Ullman about what he told her about
5 his prior history so the State would object.

6 THE COURT: I think certainly the court is able to
7 distinguish what's contained in there as what is hearsay
8 and what's not is hearsay and able to extract that. So
9 I'll review them.

10 MR. THOMAS: Thank you, Your Honor.

11 MS. HARRIGAN: Thank you, Your Honor.

12 [Whereupon, plaintiff's exhibit numbers 1 and 2 are
13 marked by the court reporter]

14 [Whereupon, plaintiff's exhibit numbers 1 and 2 are
15 entered into evidence by the court]

16 *****END OF TRANSCRIPT OF RECORD*****
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Johnny White v State of S.C.
Certificate of the Court Reporter
May 29, 2014

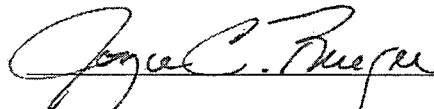
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth 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 trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Orangeburg County, South
Carolina on the 29th day of May, 2014.

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

November 25, 2014


Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS)
FOR THE FIRST JUDICIAL CIRCUIT)

Johnny White, #243047,)

Case No. 2010-CP-38-00086)

Applicant,)

ORDER OF DISMISSAL)

v.)

State of South Carolina,)

Respondent.)

2011 SEP 15 11 11 AM '11
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed January 19, 2010. The State made its Return on April 1, 2011, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on May 29, 2014, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by counsel, Tommy Thomas, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. After reviewing all testimony and other evidence presented at the hearing, along with a review of all records provided to the Court, this Court finds that there are no constitutional deprivations or other grounds on which to grant relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the December 2008 term of the Orangeburg County Grand Jury for Burglary in the First Degree (2008-GS-38-1951) and Assault

ATTEST: TRUE COPY

Winnysa B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

and Battery with Intent to Kill (2008-GS-38-1592). He was represented by Assistant Public Defender Jillian D. Ullman, Esquire. On July 20, 2009, Applicant appeared before the Honorable Edgar W. Dickson, where he pled guilty as indicted. Judge Dickson sentenced Applicant to twenty-eight years imprisonment for Burglary in the First Degree and to twenty years for Assault and Battery with Intent to Kill.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed the appeal for failure to provide a sufficient explanation as required by Rule 203(d)(B)(iv), SCACR. The Remittitur was issued October 8, 2009.

In his application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel.
 - a. "Counsel fail[ed] to seek my medical evaluation concerning my mental health."
 - b. "Fail to file a directed appeal/motion for reconsideration and mollified sentence."
2. "5th, 6th, 14th Amendment Violations."
 - a. "Violate life and liberty interest."
3. "Due Process Rights."

At the evidentiary hearing, Applicant also alleged that Counsel was ineffective for failing to challenge his indictments pursuant to Rule 3(c), SCRCrimP. Applicant did not proceed forward on allegations 2 and 3 from above.

SUMMARY OF TESTIMONY PRESENTED AT EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and testimony was presented from plea counsel, Jillian D. Ullman (hereinafter "Counsel"). This Court also had before it Applicant's guilty plea transcript, the records from the Orangeburg County Clerk of

Court regarding the subject convictions, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. He testified that Counsel was appointed to represent him and that he met with her at least ten times before he pled guilty. He testified that he was able to discuss his case with Counsel and assist her in preparation for trial. He testified that he reviewed the elements of the offense and possible sentences with Counsel. He testified that he reviewed discovery with Counsel, including an audio recording where he described the crime, his involvement, and his need to fabricate an alibi defense that was obtained through a wiretap of another person's phone on an unrelated federal case. However, he denied that he was a participant to this call and stated that it was someone else being recorded. He testified that he discussed possible defenses with Counsel, including a possible alibi defense. He testified that he was preparing to proceed to trial with an alibi defense, but pled guilty on Counsel's recommendation after the audio recording was provided. He testified that his plea was not voluntary because he did not commit the offenses. He acknowledged that he pled guilty while under oath and admitted to the facts giving rise to these charges. He testified that he pled guilty because he did not know what was going on and did not think Counsel was prepared for trial.

He testified that he has mental health problems and a current diagnosis of schizophrenia brought on by stress. He testified that he suffers from memory related problems due to his condition. He testified that he is currently on medication to control the symptoms. He testified that he informed Counsel of his mental health concerns and requested she seek a mental health evaluation and obtain records from the Department of Mental Health, but she failed to do so. He

introduced copies of these records as Applicant's Ex. No 1 and 2. He testified that he was forced to move for an evaluation on his own. He acknowledged that he had a hearing on this motion, which was ultimately denied by the court. He acknowledged that he was able to discuss his charges and defenses with Counsel and assist in his defense.

He testified that he was not indicted within ninety days of his arrest as required by Rule 3(c), SCRCrimP. He testified that Counsel should have moved to quash his indictment based on this. He testified that he wanted to appeal his convictions and sentences, but that Counsel never discussed it with him. He testified that he was forced to file a notice of appeal on his own and that it was dismissed for failure to state an arguable basis for proceeding.

Counsel testified following Applicant. Counsel testified that she was appointed to represent Applicant as an Assistant Public Defender for Orangeburg County. She testified that she met with Applicant numerous times. She testified that one of her initial questions for new clients is whether he or she has any mental health concerns and she recalled having this discussion with Applicant. She testified that Applicant told her that he was previously treated and medicated for a mental health condition, but that he was not currently being treated or experiencing any symptoms. She testified that she had no reason to doubt Applicant's competency, as she communicated with him well and he assisted in preparing his defense for trial. She testified that Applicant never asked her to request his mental health records and she did not request any records because mental health was not a concern during her representation of Applicant. She elaborated that Applicant had his GED, was employed, and was consistently paying child support, all indicative of competency.

She testified that Applicant only began to discuss mental health concerns after the wiretapped telephone conversation surfaced. She testified that he appeared to be malingering in an attempt to minimize his involvement and to lessen his potential sentence. She testified that she did not join in his *pro se* motion for an evaluation because she did not believe Applicant was incompetent or that an evaluation was necessary. However, she testified that she allowed Applicant to present his motion to the court, which was ultimately denied.

Counsel testified that she was preparing for Applicant's trial and had noticed the State of a possible alibi defense when the wiretapped telephone conversation was provided to her. She testified that the voice on the recording was clearly Applicant describing how he had committed the crime and a fabricated alibi he planned to use in his defense. She testified that she reviewed the recording with Applicant and discussed how it negatively impacted his case. She testified that she advised Applicant that the recording would likely be used against him at trial and that she had no standing to move for suppression. She testified that based on this recording, as well as other overwhelming evidence including the victim knowing Applicant and being able to identify him, she advised Applicant it was in his best interest to plead guilty. She testified that she was able to reach a plea deal with the State for a recommended cap of twenty-eight years imprisonment. She testified that it was Applicant's decision alone whether to accept his plea offer. She testified that she thinks that resolving Applicant's charges by plea was in his best interest, as he likely would have been convicted at trial.

Counsel testified that she did not see any successful or viable basis on which to challenge Applicant's indictments. She testified that in her experience, any errors with an indictment are

curable and readily fixed by the Solicitor's office. She testified that even if she had moved to quash Applicant's indictments under Rule 3(c), SCRCrimP, Applicant's charges would not have been dismissed, but rather, the State would have amended the indictments.

Counsel testified that she filed a notice of appeal on Applicant's behalf after he requested she do so. She testified that because Applicant was challenging an appeal, she was required to provide a sufficient explanation as to why he should be allowed to proceed with his appeal pursuant to Rule 203(d)(B)(iv), SCACR. She testified that she did not think Applicant had such a reason, and therefore, was unable to provide one for the Court of Appeals.

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. This Court finds that Counsel's testimony is credible and should be afforded great weight; conversely, this Court finds that Applicant's testimony lacks credibility. 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).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant has the burden of proving the allegations in his or her application and establishing that he is entitled to relief. Abney v. State, 408 S.C. 41, 45, 757 S.E.2d 544, 546 (S.C. Ct. App. 2014), *reh'g denied* (Apr. 24, 2014) (citing Goins v. State, 397 S.C. 568, 573, 726 S.E.2d 1, 3 (2012)). Where ineffective assistance of counsel is

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

The proper measure of performance is whether an 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. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. "[T]he court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Abney, 408 S.C. at 46, 757 S.E.2d at 546 (citing Strickland, 466 U.S. at 690). 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 (1985); Roscoe v. State, 345 S.C. 16546 S.E.2d 417 (2001).

After careful review based on the standard discussed above, including a review of the testimony of the witnesses presented at the evidentiary hearing, this Court denies this application on the basis that Counsel's performance did not fall below the standard required and there was no resulting prejudice to Applicant from these alleged deficiencies. Below are the findings in regards to each of Applicant's claims of ineffective assistance of counsel:

Allegation that Counsel failed to seek a mental health evaluation

Applicant alleges that Counsel was ineffective for failing to request a mental health evaluation. Applicant made a *pro se* motion for an evaluation, which was denied by the trial court after a motions hearing. Counsel testified that she did not join in Applicant's motion or make her own motion for an evaluation because she had no reason to doubt Applicant's competency. Counsel testified that Applicant informed her that he previously had mental health issues, but he did not have any on-going issues and was not experiencing any symptoms indicative of a mental health condition. She testified that Applicant assisted her in trial preparation and that she was able to communicate with him without concern. Additionally, she testified that Applicant did not begin to raise any competency challenge until after a damaging video recording surfaced and that he appeared to be malingering.

This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. First, this Court finds that Counsel's performance was not deficient, as she testified that Applicant was able to discuss his case and assist in his defense during the course of

her representation and Counsel had no reason to question Applicant's competency. This Court finds that Counsel's performance was reasonable according to professional standards and, therefore, did not perform deficiently in regards to this allegation.

Furthermore, this Court finds that Applicant has failed to establish that he was prejudiced by Counsel's alleged deficiency, as his *pro se* motion for an evaluation was heard and denied by the trial court. See Cherry, supra (holding that to establish prejudice, the result of the proceeding would have been different but for counsel's unprofessional error). Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel failed to perfect an appeal on Applicant's behalf

Applicant alleges that Counsel was ineffective for failing to perfect a direct appeal on his behalf. Applicant elaborated that Counsel never discussed an appeal with him or asked if he would like to appeal his guilty plea. Counsel testified that she filed a notice of appeal upon Applicant's request, but that she was unable to provide the Court of Appeals with a sufficient reason for why the appeal should be allowed to proceed forward under Rule 203(d)(B)(iv), SCACR because she did not believe such a reason existed.

"[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S.Ct. 1029 (2000). "Even in cases when the defendant pleads guilty, the court must consider such factors as whether the defendant received the

sentence bargained for as part of the plea and whether the plea expressly reserved or waived some or all appeal rights.” Id. Absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea. Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008). “One extraordinary circumstance which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal.” Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in regards to this allegation. Counsel testified that she filed a notice of appeal upon Applicant’s request, but that she was unable to provide a sufficient explanation as to why the appeal should proceed forward based on her duty of candor to the court. Counsel testified that she did not believe that Applicant had a meritorious ground on which an appeal could be sought, as Applicant pled guilty and was sentenced in accordance with the recommendation reached in plea negotiations with the State. This Court finds that Counsel’s performance was reasonable based on professional standards. Additionally, this Court finds that Applicant cannot establish the requisite prejudice, as he was afforded an opportunity to provide a sufficient reason why his appeal should go forward pursuant to Rule 203(d)(B)(iv), SCACR. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

Allegation that Counsel failed to challenge his indictments

Applicant alleges that Counsel was ineffective for failing to move to quash his indictments because he was not indicted within ninety days of his arrest pursuant to Rule 3(c), SCRCrimP. Counsel testified that she did not make a motion to quash his indictment because in her experience, such defects are commonly and readily remedied by amendments or other means and rarely, if ever, result in dismissal of charges.

~~Criminal rule requiring solicitor to act within 90 days after receipt of an arrest warrant from the Clerk of Court is administrative and nonjurisdictional, and thus failure of solicitor to act on warrant within 90 days does not within itself invalidate warrant or prevent subsequent prosecution. State v. Edwards 374 S.C. 543, 649 S.E.2d 112 (S.C.App. 2007), *rehearing denied, certiorari granted, reversed on other grounds*, 384 S.C. 504, 682 S.E.2d 820 (2009); State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984) (rule requiring solicitor to take action on warrant within 90 days after its receipt by him was not jurisdictional, and thus failure of solicitor to act within 90 days did not within itself invalidate warrant or prevent subsequent prosecution).~~

This Court finds that this allegation is without merit and must be denied and dismissed with prejudice. This Court finds that Applicant has failed to establish that he was prejudiced by Counsel's alleged deficiency, such a challenge would not have resulted in the dismissal of his charges or prevented subsequent prosecution. Therefore, Applicant cannot show that the result of the proceeding would have been different absent Counsel's alleged deficiency and this allegation must be denied and dismissed with prejudice.

CONCLUSION

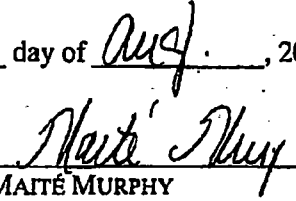
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

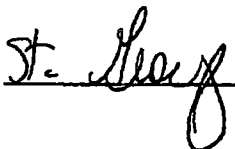
This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an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

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 26 day of Aug., 2014.


 MAITÉ MURPHY
 Presiding Judge
 First Judicial Circuit


 _____, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2008GS38-1591

At a Court of General Sessions, convened on December 10, 2008 the Grand Jurors of Orangeburg present upon their oath:

BURGLARY - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about January 27, 2008, the Defendant, Johnny G. White, did willfully and unlawfully enter the dwelling of Timothy Green, without consent and with the intent to commit a crime therein and the defendant did kicked the door open and shot the victim with a gun. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

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



Charlie Johnson, Jr., Solicitor

WITNESSES

Victor Cordon

Orangeburg Police Department

08-00214

ARREST WARRANT NUMBER

J-695574

Arrested: August 12, 2008

ACTION OF GRAND JURY

TRUE BILL



Date: DEC 10 2008

Foreperson of Grand Jury

Date: December 10, 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008GS38-1591

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

December 08, 2008 TERM

THE STATE

vs.

Johnny G. White

Indictment for

BURGLARY - FIRST DEGREE

SC Code: 16-11-311

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

Defendant

110

I 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.

FILED FOR RECORD
LISA W. HIZELL
CLERK OF COURT
ORANGEBURG, SC

2008 DEC 10 P 12: 02

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2008GS38-1592

At a Court of General Sessions, convened on December 10, 2008 the Grand Jurors of Orangeburg present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That in Orangeburg County, South Carolina, on or about January 27, 2008, the Defendant, Johnny G. White, with malice aforethought, did commit an assault and battery upon the victim, Timothy Green by means of shooting the victim with a 9mm handgun. This offense is in violation of Section 16-3-620 of the South Carolina Code of Laws, as amended.

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



Charlie Johnson, Jr., Solicitor

WITNESSES

Victor Cordon

Orangeburg Police Department

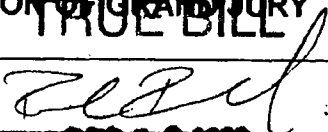
08-00214

ARREST WARRANT NUMBER

J695575

Arrested: August 12, 2008

ACTION OF GRAND JURY
TRUE BILL



DEC 10 2008

Date

Foreperson of Grand Jury

Date: December 10, 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008GS38-1592

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

December 08, 2008 TERM

THE STATE

vs.

Johnny G. White

Indictment for

**ASSAULT AND BATTERY WITH INTENT
TO KILL**

SC Code: 16-3-620

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

Defendant

112

I 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.

FILED FOR RECORD
LISA W. MIZELL
CLERK OF COURT
ORANGEBURG, SC
2008 DEC 10 P 12: 02