

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

RECEIVED

MAY 14 2015

S.C. Supreme Court

JAMES GLISSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002163

APPENDIX

TIFFANY L. BUTLER
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2011-GS-22-00492

The State,)

Plaintiff,)

Transcript of Record

vs.)

Guilty Plea

James R. Glisson, Jr.,)

October 24, 2012

Defendant.)

B E F O R E :

Honorable Edward B. Cottingham
Georgetown County Courthouse
Georgetown, South Carolina

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

Scott Hixson, Esquire
Attorney for Plaintiff

Matthew S. Swilley, Esquire
Bobby G. Frederick, Esquire
Attorneys for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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(There were no exhibits marked during the hearing.)

State v. Glisson

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1 (On the record October 24, 2012.)

2 MR. HIXSON: May it please the Court?

3 THE COURT: Yes, sir.

4 MR. HIXSON: Your Honor, standing before you is James
5 Robert Glisson, Jr. He is before the Court on indictment
6 2011-GS-22-492 and that is the State of South Carolina versus
7 James Robert Glisson, Jr., a burglary first degree indictment,
8 I believe Your Honor is looking at. That's a true-billed
9 indictment. We believe Mr. Glisson is here for the purpose of
10 a guilty plea to the lesser included offense of burglary in
11 the second degree, non-violent, Your Honor, and as Your Honor
12 is well aware Mr. Frederick is representing him and he stands
13 before the Court today. This case was on the trial roster and
14 it is our intention to pick a jury and try this case today.
15 As Your Honor well knows we had a status conference in
16 chambers and you discussed this issue and Mr. Frederick
17 indicated that Mr. Glisson might be willing to plead to
18 something given the fact I was not calling it as a burg first
19 due to the unavailability of a witness and as such we believe
20 he's prepared to plead guilty to that and obviously it's a
21 trial roster case. So, we're not recommending anything, Your
22 Honor.

23 THE COURT: Give me the factual basis for the
24 indictment, please.

25 MR. HIXSON: Between the dates of March 23rd and March

1 24th of 2011 in the Georgetown Section or, excuse me, in the
2 Litchfield Beach Section of Georgetown County at [REDACTED]
3 [REDACTED], there's a beach house, an unoccupied beach house. It's
4 a family home owned by the Neely Family. It's lived in. No
5 one was home at the time. It wasn't a home invasion type
6 situation. Somewhere between two o'clock p.m. and seven to
7 eight o'clock in the morning on the morning of the 24th, thank
8 you, the next-door-neighbor noticed that the doors had been
9 opened. The windows, the doors had been pried and the back
10 beachfront window was open. They called the police. Sean
11 Seebode from the Georgetown County Sheriff's Department
12 arrived on scene, looked through the house, realized the point
13 of entry and called Investigator Phil Hanna who, who arrived
14 and looked through the house, took photographs, looked for
15 latent prints and found a latent print on the inside door, on
16 the inside of the house on the entry window doorframe. There
17 were pry marks as well as a right-hand four fingers on the
18 right-hand side of whoever entered, entered the house. Those
19 prints were ultimately sent to, ultimately sent to Robbie
20 Caulder, who is an AFIS operator who compared it to a known
21 ten-print card and that known ten-print card being of Mr.
22 Glisson. It was a match, relating to the fingerprints in AFIS
23 to the fingerprints taken from that scene. The reason it was
24 indicted as a burglary in the first degree, Your Honor, was
25 the next-door-neighbor at about 1:40 in the morning had heard

State v. Glisson

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1 - she was aroused because her dog was barking and she, she
2 told the officer that she heard what thought was a window,
3 excuse me, a wooden screen door closing at [REDACTED] [REDACTED] and that
4 was establishing the timeframe we're dealing with around 1:40,
5 two o'clock in the morning. Emma Williams is recalcitrant to
6 testify. She doesn't want to. She's a widow and anyway,
7 nonetheless, she informed me of that this morning or
8 yesterday. As a result of that we're calling it as a burglary
9 second degree.

10 THE COURT: What if anything was taken from the
11 property?

12 MR. HIXSON: There were - a television set was taken
13 from the entertainment center in the, in the room. A stovetop
14 was removed from the kitchen counter, bottles of liquor were
15 taken or they were pulled out of their location and we believe
16 that the dog barking startled Mr. Glisson, got him out of
17 there before he could complete it, but the TV was taken.

18 THE COURT: So, your proof would be, one, that it was
19 a residence.

20 MR. HIXSON: That's correct. Mr. Neely's prepared for
21 that.

22 THE COURT: Two, that there was an entering without
23 consent based on the fingerprints found inside?

24 MR. HIXSON: Based on the pry marks and damage to the
25 frame and Mr. Neely's testimony.

1 THE COURT: And three, that entry made by someone was
2 with intent to steal and certain property was removed; is that
3 correct?

4 MR. HIXSON: That's correct. That's correct.

5 THE COURT: Well, if proven beyond a reasonable doubt
6 that's certainly sufficient to justify a burglary in the
7 second degree.

8 Mr. Frederick, you represent this Defendant?

9 MR. FREDERICK: I do, Your Honor.

10 THE COURT: And does he fully understand the charges
11 against him?

12 MR. FREDERICK: He does, Your Honor.

13 THE COURT: He was originally indicted for burglary
14 first but there was a witness who was prepared to testify that
15 this occurred in the nighttime around 1:30. That witness, of
16 course, as the Solicitor says, is not now available. So, he
17 is permitting your client to plead to burglary second degree,
18 which is the entry of a dwelling with intent to commit a crime
19 therein, that entry being without permission and is that the
20 set of facts to which he pleads?

21 MR. FREDERICK: That's correct, Judge.

22 THE COURT: I would want the record to reflect that
23 we've had a pretrial hearing in connection with this matter
24 and while the Solicitor makes no recommendation, it carries up
25 to ten years, I have told you and will give a sentence of four

1 years if the plea is accepted by me. Beyond that there is no
2 negotiations of any kind. Can we agree with that?

3 MR. FREDERICK: That's correct, Judge.

4 THE COURT: As I understand it now there are numerous
5 other charges pending against your client and they will remain
6 open for trial.

7 MR. FREDERICK: Yes, sir, and Judge ---

8 THE COURT: This plea as to this case relates to this
9 case only, there being no agreement or negotiations other than
10 the fact that he is going to be called for trial on these
11 other pending cases. Can we agree with that?

12 MR. FREDERICK: Yes, sir.

13 THE COURT: All right.

14 MR. FREDERICK: And for the record Mr. Glisson
15 understands that the remaining charges are burglary second
16 degree but following this plea he will have two prior
17 burglaries on his record and they may call those cases as a
18 burglary first degree.

19 THE COURT: All right, sir.

20 Mr. Glisson, do you understand why you're here?

21 MR. GLISSON: Yes, sir.

22 THE COURT: And do you understand that your attorney
23 is telling me that it is your desire to plead guilty to this
24 particular home invasion?

25 MR. GLISSON: Yes, sir.

1 THE COURT: And are you guilty of that charge?

2 MR. GLISSON: Yes, sir.

3 THE COURT: You are the one who entered that, entered
4 that dwelling and these were your fingerprints?

5 MR. GLISSON: Yes, sir.

6 THE COURT: Tell me what you stole from the building,
7 please, or from the residence. There were certain items
8 missing. What do you remember taking?

9 MR. GLISSON: I guess, I guess the TV.

10 THE COURT: Sir?

11 MR. GLISSON: I guess the TV, Your Honor. It's been two
12 years ago.

13 THE COURT: You are admitting under oath that you
14 entered the building, it being a residence, without permission
15 and with intent to commit a crime therein ---

16 MR. GLISSON: Yes, sir.

17 THE COURT: --- to wit, stealing certain merchandise
18 or TVs, is that what you're agreeing to?

19 MR. GLISSON: Yes, sir.

20 THE COURT: And you're represented by a fine attorney,
21 Mr. Frederick, that I've known for a number of years. I know
22 that he's explained to you your constitutional rights to a
23 trial by jury. Can we agree with that?

24 MR. GLISSON: Yes, sir.

25 THE COURT: And you understand you're entitled to

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1 confront the witnesses against you?

2 MR. GLISSON: Yes, sir.

3 THE COURT: You are presumed innocent and you don't
4 have to prove a thing. The State's got to prove you guilty
5 beyond a reasonable doubt. You understand that?

6 MR. GLISSON: Yes, sir.

7 THE COURT: If at trial you elected not to testify I
8 would charge the jury that that fact could not, must not be
9 used against you in any way. Do you understand that?

10 MR. GLISSON: Yes, sir.

11 THE COURT: Mr. Glisson, I've got this case was
12 scheduled for trial this morning, got a jury outside waiting
13 to be selected to try you. You understand that?

14 MR. GLISSON: Yes, sir.

15 THE COURT: Even at this moment if you said to me,
16 "Judge, I've changed my mind. I want a jury trial," I will
17 stand you aside at no prejudice, bring that jury in, select
18 them and go to trial. You understand that; don't you?

19 MR. GLISSON: Yes, sir.

20 THE COURT: All right, in fairness to you you would
21 not offend me if you have any questions about what I've said
22 to you.

23 MR. GLISSON: I understand.

24 THE COURT: Do you fully understand that in my
25 acceptance of your plea of guilty, and I appreciate your

1 candor in response to my questions, I am going to sentence you
2 to four years.

3 MR. GLISSON: Yes, sir.

4 THE COURT: And in doing so this - that sentence deals
5 with this case only.

6 MR. GLISSON: Yes, sir.

7 THE COURT: And that these other cases will be tried
8 as appropriate. You understand that?

9 MR. GLISSON: Yes, sir.

10 THE COURT: Mr. Frederick, is there anything else you
11 think we need to say for the record?

12 MR. FREDERICK: No, Your Honor.

13 THE COURT: All right, in accordance with these
14 negotiations and my prior commitment in this case it is the
15 judgment, sentence of the Court that you be confined for four
16 years upon burglary second degree, non-violent, and I thank
17 you, sir.

18 MR. HIXSON: Thank you, Your Honor.

19 THE COURT: All right, thank you.

20 MR. FREDERICK: Thank you, Judge.

21 (Adjourned.)

22

23

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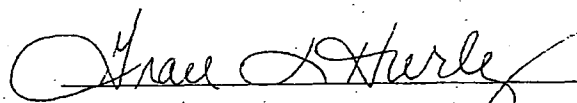
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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Guilty Plea held in the case of The State versus James Robert Glisson, Jr., held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on October 24, 2012.

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



Grace L. Hurley, CVR-CM&M

Official Reporter

April 18, 2013.

FORM 5

STATE OF SOUTH CAROLINA)
County of Georgetown)
James R. Gleson Jr. #285319)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2013-CP-22-00216 **RECEIVED**

FEB 5 2013

v.

APPLICATION FOR **S.C. Supreme Court**

State of South Carolina)

POST-CONVICTION RELIEF

FILED
GEORGETOWN COUNTY S.C.
2013 FEB 25 AM 8:43
ALEXIA Y. WHITE
CLERK OF COURT

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 Manning Correctional Institution
502 Beckman Dr. Columbia S.C. 29203
2. Name and location of Court which imposed sentence Georgetown County
Courthouse, Georgetown South Carolina
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Burglary 1st Dec 20, 2010 (charged)
 - (b) J-520856 original charge of 1st

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Oct 24, 2012 4 years non-violent
 - (b) other charges dropped or ran concurrent with.
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty negotiated sentence of 4 years
 - (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. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) _____
 - (b) I was expecting all of this to be over by

on other side
→

(c) _____

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

- (a) my attorney lied to me about the outcome
- (b) I never talked to my attorney about my case
- (c) I was innocent on these charges, he told me to plea

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

- (a) I did not know about a trial until the day before (over →)
- (b) _____
- (c) _____

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

- (a) any petition in a State Court under South Carolina Law? none
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? none
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? none
- (d) any other petitions, motions or applications in this or any other Court? none

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. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

None

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

(a) which grounds have been presented:

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

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

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

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

- (a) It was just in Oct 2012. I have not had a (over)
- (b) no access to address.
- (c) Incarcerated

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? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? none
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
none

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. Bobby Fredericks - Frederick Law Firm
P.O. Box 5219 Myrtle Beach SC 29578
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. my Boglary 1st plea on Oct 24, 2012.
 - ii. my offers by the state before the original plea deal was made.
 - iii. on all my 16 charges of Boglary

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

I want to go to trial and be acquitted I don't need another burglary on my record. My attorney told me we had it won and made me plea anyway.

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

none

STATE OF SOUTH CAROLINA)
County of Georgetown)

VERIFICATION

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

James R. Glisson Jr.

SWORN to and subscribed before me this 4th day of Feb, 2013.

Elizabeth W... (L.S.)
Notary Public

My Commission Expires: May 03, 2017

FILED
GEORGETOWN COUNTY, SC
2013 FEB 25 AM 8:49
ALMA Y. W...
CLERK OF COURT

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

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

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

James R. Glisson Jr.
Applicant

SWORN or affirmed to and subscribed before me this
4th day of Feb, 2012.

Elizabeth Wood
Notary Public

My Commission Expires: My Commission Expires May 30, 2017

FILED
GEORGETOWN COURT
2012 FEB 25 AM 8:49
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

2013-CP-22-216

James R. Glisson, Jr., # 285319,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 25, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. The Applicant was indicted at the May 2011 term of the Georgetown County Grand Jury for burglary, first degree (2011-GS-22-492). He was represented by Bobby Frederick, Esquire.

On October 24, 2012, the Applicant pled guilty to burglary second degree. He was sentenced by the Honorable Edward Cottingham to imprisonment for a period of four years. Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Georgetown County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South

Carolina Department of Corrections, and if available, the transcript. Any of the above not so attached will be forwarded upon receipt.

II.

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

1. "My attorney lied to me about the outcome I never talked to my attorney about my case I was innocent on these charges, he told me to plea."

III.

The Respondent interprets each of the Applicants allegations to be claims that he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler, Id. 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, Id.

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, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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, 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.

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 cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

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 a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 16, 2013.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)
)
 JAMES R. GLISSON, JR., #285319)
)
 Applicant,)
))
 vs)
))
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

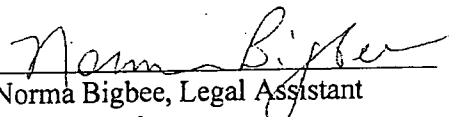
2013-CP-22-216

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:

Tristan M. Shaffer, Esquire
1928 Barnwell St.
Columbia, SC 29201

DATED this 16TH day of April, 2013.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN)	2013-CP-22-216
James R. Glisson, Jr.,)	
Plaintiff,)	Transcript of Record
vs.)	PCR Hearing
State of South Carolina,)	June 20, 2014
Defendant.)	

B E F O R E :

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

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

Tristan M. Shaffer, Esquire
Attorney for Plaintiff

Joshua L. Thomas, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

Glisson v. State

2

1	I N D E X	
2	(June 20, 2014.)	
3	Bobby Frederick	
4	Direct by Mr. Shaffer.	7
5	Cross by Mr. Thomas.	19
6	Redirect by Mr. Shaffer.	20
7	James R. Glisson, Jr.	
8	Direct by Mr. Shaffer.	22
9	Cross by Mr. Thomas.	30
10	Redirect by Mr. Shaffer.	33
11	Bobby Frederick	
12	Direct by Mr. Thomas	38
13	Cross by Mr. Shaffer	40
14	Certificate.	45
15	(There were no exhibits marked during the hearing.)	
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1 (On the record, June 20, 2014.)

2 THE COURT: All right. This is case number 2013-CP-22-
3 216, James R. Glisson versus State of South Carolina. The
4 matter is before the Court on an application for post-
5 conviction relief. Please give the court reporter your names
6 and who you represent.

7 MR. SHAFFER: Tristan Shaffer, I represent the Applicant,
8 James Glisson.

9 MR. THOMAS: Josh Thomas on behalf of Respondent, State
10 of South Carolina.

11 THE COURT: All right. Hold for a second. All right.
12 As I understand, the Applicant, in a review of this package,
13 was indicted on burglary in the first degree. He pled guilty
14 to burglary in the second degree, non-violent, and received a
15 four-year sentence. Is that correct?

16 MR. SHAFFER: That's correct, Your Honor.

17 THE COURT: All right. All right. Sir, if you'd please
18 stand, raise your right hand.

19 (Applicant is sworn by Court.)

20 THE COURT: All right. Sir, your name is James Robert
21 Glisson, Jr.?

22 MR. GLISSON: Yes, sir.

23 THE COURT: All right. Mr. Glisson, you have filed this
24 application seeking post-conviction relief; is that correct?

25 MR. GLISSON: Yes, sir.

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4

1 THE COURT: All right. Before we go forward with your
2 application or your hearing, I need to go over some matters
3 with you so that you understand what's happening today, so
4 that you understand the consequences of this hearing and what
5 might happen in this hearing. Okay?

6 MR. GLISSON: Yes, sir.

7 THE COURT: All right. Are you under the influence of
8 any alcohol, drugs or any other undue influence that would
9 affect your ability to know why you're here?

10 MR. GLISSON: No, sir.

11 THE COURT: Do you understand why you're here today?

12 MR. GLISSON: Yes, sir.

13 THE COURT: Is there anything about this hearing that you
14 want to ask your lawyer or ask me before we proceed?

15 MR. GLISSON: No, sir.

16 THE COURT: Okay. Now, I understand you pled guilty to
17 burglary in the second degree being a non-violent offense and
18 received a four-year sentence; is that correct?

19 MR. GLISSON: Yes, sir.

20 THE COURT: All right. And in this post-conviction
21 relief application that you filed, you're asking me to set
22 aside that guilty plea and that sentence; is that correct?

23 MR. GLISSON: Yes, sir.

24 THE COURT: All right. Now, if I go forward with this
25 post-conviction relief hearing, then two things can happen.

1 Number one, if I deny your relief, deny that you're entitled
2 to any relief, then you will simply be returned to the
3 Department of Corrections to complete your sentence. Do you
4 understand that?

5 MR. GLISSON: Yes, sir.

6 THE COURT: All right. However, if I grant your relief,
7 then I will set aside your guilty plea, I will set aside the
8 sentence and the case would be remanded to the Court for a
9 trial or for processing on the original indictment. Now, the
10 original indictment was burglary in the first degree. So they
11 will bring that burglary in the first degree charge back
12 against you for disposition. You can either go to trial, you
13 can plead guilty or whatever you work out with the State with
14 regard to that charge is fine. However, I do need to let you
15 know that it is a possibility that if they go forward with the
16 burglary in the first degree charge and if you are convicted
17 of that crime, then you could receive a sentence of 15 years
18 to life in prison. So you could go to prison for the rest of
19 your life. Do you understand that?

20 MR. GLISSON: Yes, sir.

21 THE COURT: So even if you prevail at this post-
22 conviction relief hearing, you may wind up getting a longer
23 sentence than you now have. Do you understand that?

24 MR. GLISSON: Yes, sir.

25 THE COURT: Whereas you've got a four-year sentence now,

1 and matter of fact, you got a four-year sentence that was back
2 in 2012?

3 MR. GLISSON: Yes, sir.

4 THE COURT: Have you been with the Department of
5 Corrections since that time?

6 MR. GLISSON: No. I'm finished.

7 THE COURT: You finished that sentence?

8 MR. GLISSON: Yes, sir.

9 THE COURT: Okay.

10 MR. SHAFFER: Your Honor, he has 15 pending burglary
11 charges. Some of them are raised to second, I mean, first
12 based on this.

13 THE COURT: Okay. All right. So you're asking to have
14 this one set aside because it's going to count against you on
15 the ones you've got pending now?

16 MR. GLISSON: It's enhancing my charges.

17 THE COURT: Yeah. All right. Well, you need to -- I, I
18 still need to let you know that even if you prevail at this
19 post-conviction relief hearing, that's going to put another
20 burglary in the first or put a burglary in the first degree
21 indictment against you for which you could receive a sentence
22 of life in prison without parole. Do you understand that?

23 MR. GLISSON: Yes, sir.

24 THE COURT: Okay. Knowing that, do you still want to go
25 forward with this post-conviction relief hearing?

Bobby Frederick - Direct by Mr. Shaffer

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1 MR. GLISSON: Yes, sir.

2 THE COURT: All right. All right. Mr. Shaffer, anything
3 further you want to put on the record?

4 MR. SHAFFER: No, Your Honor.

5 THE COURT: Anything further from the State?

6 MR. THOMAS: No, Your Honor.

7 THE COURT: All right. Anything preliminary before we
8 get started, Mr. Shaffer?

9 MR. SHAFFER: No, Your Honor.

10 THE COURT: All right. You can call your first witness.

11 MR. SHAFFER: The Applicant will call Bobby Frederick to
12 the stand.

13 THE COURT: All right.

14 Whereupon, Bobby Frederick was called to the stand, duly
15 sworn by the clerk and testified as follows:

16 THE CLERK: Please be seated. State and spell your name
17 for the record.

18 MR. FREDERICK: It's Bobby Frederick. B-O-B-B-Y, F-R-E-
19 D-E-R-I-C-K.

20 DIRECT EXAMINATION

21 BY MR. SHAFFER:

22 Q Good morning, Mr. Frederick.

23 A Good morning.

24 Q If you could, you represented Mr. James Glisson, Jr.;
25 correct?

Bobby Frederick - Direct by Mr. Shaffer

8

1 A That's right.

2 Q He goes by Jamie?

3 A Jamie.

4 Q Okay. Were you retained or appointed?

5 A Retained.

6 Q When did you get retained?

7 A October 2011.

8 Q And were you retained for one of his charges or all of
9 his charges or what were you retained for?

10 A All of his charges, everything that was pending at the
11 time.

12 Q Okay.

13 THE COURT: Excuse me. Before we go forward, so were
14 there other charges that were dismissed as a result of this?

15 MR. SHAFFER: No, Your Honor. I don't believe so.

16 A No, sir. He had 16 pending burglaries, and with this
17 guilty plea he only pled guilty to one. It was the one that
18 was on the trial roster, and the morning that he pled guilty
19 we were there for trial.

20 THE COURT: Okay, but what happened to the other charges?

21 A They remain pending.

22 THE COURT: They remain pending?

23 A Yes, sir.

24 THE COURT: Okay. All right. Go ahead.

25 BY MR. SHAFFER:

1 Q And when you got, when you got or when you were retained
2 for all the charges, did he give you any sort of factual
3 description of what had happened or what the allegations were
4 against him?

5 A Well, yes.

6 Q Okay.

7 A I mean, he told me what he was charged with.

8 Q Okay. What, what were the allegations against him?

9 A Well, we had 16 burglary cases, and of course, each one
10 had different facts, but basically, he was accused of breaking
11 into, I guess, vacation homes and stealing property from
12 inside them.

13 Q Okay. And did you request discovery in all of these?

14 A Yes.

15 Q What was the evidence against him for the charges? Do
16 you recall?

17 A Are we going to stick to this charge? We don't want to
18 go through all 16; do we?

19 Q Well, what was the evidence against him in this
20 particular charge? I'll probably ask you about some of the
21 other ones later, but.

22 A Okay. Give me just a minute, okay? Do you have the
23 indictment number?

24 THE COURT: All right. On mine, my packet it says 2011-
25 GS-22-492.

Bobby Frederick - Direct by Mr. Shaffer.

10

1 A Thank you, Judge. This was, he was charged with burglary
2 first degree, and it was based on a burglary that happened at
3 [REDACTED] in Pawleys Island. The owner of the house
4 was a guy named Joe Neeley. They were saying that he went in
5 and stole a television and a black tool box with assorted
6 tools. They took fingerprints from the scene. One of the, at
7 least one of the fingerprints was on a window, a window pane,
8 and that fingerprint matched Jamie's fingerprints when they
9 ran it through AFIS. They took a footprint from the driveway,
10 but as far as I know, they did not match that to anything.

11 Q Okay. And were they ever able to recover the TV or
12 toolbox to your knowledge?

13 A No. I don't, I don't think so. There was additional
14 evidence in the case though. I was just --

15 Q Okay. What was the additional evidence?

16 A -- I was just reading. There was a girl named Angie
17 Poston who talked to the investigators, and she said that or
18 she told the investigators that Jamie and Bryan Poston had
19 told her that they were -- at some point they were -- actually
20 on December 17th, 2010, she said that they told Angie that they
21 were going to get rid of stolen items that were in Jamie's
22 car. Angie Poston told the investigators that Jamie and his
23 girlfriend Paige had stayed with them from September to
24 December 2010 and that she had scene multiple TVs, liquor
25 bottles and trash cans come in and out of the house. She

1 consented to a search of her house, and they also went and got
2 a search warrant, and this was her house at [REDACTED]
3 [REDACTED]. From her house, they took a number of TVs, DVDs and
4 VCRs, coffeemaker, vacuum cleaners, liquor bottles, paper
5 plates, napkins, plastic cups, trashcans, alarm clocks. From
6 the room that Angie identified as Jamie's, they took a TV, a
7 prescription bottle with Jamie's name on it, a handmade quilt
8 with the initials BWD. They talked to Paige in March of 2011,
9 that was Jamie's girlfriend, and she told the investigators --
10 well, she gave them detailed information about any items that
11 she had seen in Jamie's possession and who he had sold them
12 to, and there was a neighbor, an elderly woman that lived next
13 door, who said in the middle of the night she heard something
14 and her dog started barking and that was the sole basis for it
15 being a burglary first charge.

16 Q Okay. The -- were they able to pin down that it occurred
17 on that night or on that, on that date?

18 A Well, if I remember correctly, the neighbor had said she
19 heard something, her dog started barking. The owner of the
20 house came the following morning. I don't remember what time
21 it was, but it was the following day and found that the house
22 had been broken into.

23 Q Okay. And were -- was the owner there the day before or
24 how, how far prior to that was the owner present?

25 A I don't know. I don't know. I'm sorry.

Bobby Frederick - Direct by Mr. Shaffer

12

1 Q Okay. Now, were they ever, ever able to match any of the
2 TVs or the toolboxes that this person said he had and that
3 they recovered from the warrant to that home?

4 A I'm going to have to say sitting here I don't know. They
5 matched some of the items, but I don't know that they were
6 from this particular house.

7 Q Okay.

8 A There were some other items that, I guess, were
9 identified by the owners, but I don't know if they were or
10 were not from this house.

11 Q And was there an offer prior to you getting appointed, I
12 mean, retained?

13 A A plea offer?

14 Q Yeah.

15 A I think so. You know, when I was retained on the case,
16 his plea offer was 16 years on a burglary first, and I believe
17 that was the offer prior to me being retained, although I
18 don't know that for sure.

19 Q Okay. And were you ever able to secure another plea
20 offer for him?

21 A Yes.

22 Q And what was that offer?

23 A There was quite a bit of back and forth with the plea
24 offers. Do you want me to go through that?

25 Q Yes, if you don't mind.

1 A Okay. When I first met with Jamie, his plea offer was 16
2 years on a burglary first. Jamie told me that what he wanted
3 was for me to work out a plea to burglary second, if the
4 recommendation was ten years and if that took care of all the
5 rest of his charges.

6 Q That's non-violent burg second; correct?

7 A That's right. The Solicitor did not agree to that. He
8 came down to 15 years on a burglary second degree or a range
9 -- burglary second degree non-violent or a range of ten to 15
10 years on a burglary second degree violent, and the difference
11 there was classification where he would end up serving his
12 time between violent and non-violent. We rejected that plea
13 offer. I told the Prosecutor to put the case on the trial
14 roster. We met again at the courthouse prior to an
15 arraignment, and the Prosecutor made the same plea offer, and
16 we had an arraignment after that -- on that plea offer of 15
17 years non-violent, which would have been two consecutive
18 sentences of ten and five years. We had the arraignment,
19 rejected the plea offer. I told them put the case on the
20 trial roster.

21 In September of 2012, the Prosecutor came down to 12
22 years on a burg second non-violent. I met with Jamie, and
23 again, we rejected that plea offer, too.

24 On the day of trial, or the day of the plea, the plea
25 offer was still at 12 years, and we met with Judge Cottingham.

1 in chambers --

2 Q And let me interrupt you just before you get into that.
3 Prior to everything, prior to -- or everything that you talked
4 about prior to now, that plea, the plea offers, did those
5 involve wrapping all the burglary charges, all the pending
6 charges together?

7 A That's right.

8 Q Okay. And now go ahead. You said you met with Judge
9 Cottingham the day of the plea?

10 A The morning of trial and the morning of the plea,
11 Attorney Matt Swilley, who is with us in the courtroom, and I
12 and Scott Hixson met with Judge Cottingham in chambers. Scott
13 Hixson's plea offer was still 12 years. He said he was not
14 going to change that. Cottingham told us that if he entered a
15 plea he was going to sentence him to four years, if he pled to
16 burglary second degree. At the same time, Scott Hixson told
17 Judge Cottingham they were not going forward on the burglary
18 first degree, which likely would have been a directed verdict
19 anyway, and Cottingham said that if he pled to a burglary
20 second degree he would sentence him to four years. Scott
21 Hixson says, "That's fine, but we're not dismissing the rest
22 of the charges if he does that."

23 Q Okay. So the -- so Scott Hixson originally said that he
24 would dismiss the first and go forward on the second, burg
25 second?

- 1 A The day of trial?
- 2 Q Yeah.
- 3 A Once we got there, we met in chambers. We were going
4 forward on a second degree. Yes.
- 5 Q Okay. And, and he said that he would not come off of the
6 12-year offer?
- 7 A Right.
- 8 Q So in turn, Judge Cottingham offered him four to, to
9 plead to that? Correct?
- 10 A Judge Cottingham said, "If he comes into court and
11 pleads to a burglary second degree, I will sentence him to
12 four years with credit for time served."
- 13 Q Okay. What did you think about that offer?
- 14 A Well, apart from the pending 15 burglary second degrees,
15 it's a great plea offer --
- 16 Q Okay.
- 17 A -- because it was just about time served.
- 18 Q Okay. Was Judge Cottingham aware of that fact that it
19 was about time served or did you tell him that it was time
20 served?
- 21 A Yeah. We discussed it.
- 22 Q Okay. And, and with the charges, the pending charges,
23 what did you think about that offer?
- 24 A Well, what I told Jamie is if he pleads guilty to that,
25 they can enhance the rest of the charges, all of them, to

1 burglary first degree. Scott originally had thought he had
2 two predicate offenses, but he did not, and this plea would
3 give him the predicate offenses that they needed to enhance
4 the charges to burglary first degree. I also told him that
5 they were not necessarily going to enhance the charges. Scott
6 Hixson said that they were going to, but Scott Hixson was
7 leaving Georgetown, and we had no idea who was going to pick
8 up the case or what they were going to do with it. So, if he
9 did that, it was a gamble.

10 Q Okay. Did you tell him that Scott Hixson said that they
11 were going to?

12 A Yes.

13 Q Okay. Did you ever tell him you thought it was a trap?

14 A No. No. Well, maybe, I mean, because it kind of was,
15 but so I guess the answer is I don't know.

16 Q Okay. And were you prepared to go to trial that morning?

17 A We were.

18 Q What had you done to prepare to go to trial?

19 A Well, our investigator was helping work on his case
20 before the trial date. He had done quite a bit of research,
21 got us background information on the State's witnesses. There
22 were some witnesses that Jamie had told us would help, that we
23 did go out and locate, and our investigator interviewed them,
24 and they told us that Jamie had worked with them doing
25 construction work at some point, and they had done

1 construction work on that very house, and that it was likely
2 that Jamie had handled the windows, which explains where the
3 fingerprints came from, and we interviewed them, got
4 statements from them, subpoenaed those two witnesses. They
5 were there that morning. Jimmy Cooper and Chris Brown were
6 those two witnesses. We had done quite a bit of research
7 regarding the directed verdict on the burglary first degree.
8 We were prepared to argue that, and then just, you know, apart
9 from the motions that were filed before we got to that point,
10 we learned the file, got opening, closing, cross examinations
11 ready.

12 Q Okay. But you had, you had the former co-workers of Mr.
13 Glisson who would have testified that he had worked on that
14 house?

15 A And handled windows.

16 Q Okay.

17 A Yes.

18 Q And did Mr. Glisson, was he aware of the fact that, that,
19 regardless, they were not going forward on a burglary first
20 that day --

21 A Yes.

22 Q -- even if he went to trial? Okay. How many times did
23 you meet with him over the year that you represented him,
24 nearly a year?

25 A I met with his parents and talked with them a number of

1 times. Jamie, we met for the first time on October 17th, 2011.
2 We met again on April 26th, 2012, both times at the Georgetown
3 County Detention Center. We met May 24th, 2012, at the
4 courthouse prior to his arraignment. We met June 20th, 2012,
5 also at the courthouse prior to a second arraignment that we
6 ended up not having. We met September the 20th, 2012, at the
7 courthouse, and then October 24th, 2012, I think was the day of
8 the plea. So including that day, that's six occasions that we
9 met in person.

10 MR. SHAFFER: The Court's indulgence.

11 BY MR. SHAFFER:

12 Q Prior, prior to the morning of trial, do you -- did you
13 have any contact to notify Mr. Glisson that he was going to
14 court?

15 A Well, in September 20th, when we met at the courthouse, I
16 had told him that his case was going on the roster, that it
17 could be called at any time. When we got the actual date,
18 which was a few weeks later, I don't have it here, but we, we
19 always send a letter to them. I'm not saying we did in this
20 case, though, because I don't know, and I don't have it.

21 Q Okay. But generally it's your practice to send a letter?

22 A It is. I can't say that I did.

23 Q Okay.

24 A On that day though, I don't know.

25 Q And are you sure Scott Hixson didn't offer the four

1 years, that Judge Cottingham offered that and said it was
2 Scott Hixson?

3 A Yeah. Scott wasn't happy about it.

4 Q He never moved to recuse Judge Cottingham?

5 A No.

6 MR. SHAFFER: No further questions.

7 THE COURT: All right. Cross examination.

8 MR. THOMAS: May it please the Court?

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. THOMAS:

12 Q I'll be brief with you, Mr. Frederick. How much
13 experience do you have practicing criminal law?

14 A Ten years. Most of that time it's, it's all I've done,
15 although there were a few years where we handled some civil
16 cases.

17 Q And you had an opportunity to review the State's evidence
18 with Mr. Glisson?

19 A Yes.

20 Q And you explained to him the elements of burglary first-
21 degree charge?

22 A Yes.

23 Q And did you explain to him the elements of the burglary
24 second-degree that he eventually pled to?

25 A Yeah. We -- because the aggravating factors was an issue

1 for this trial, we, we discussed it several times.

2 Q Did you talk about, did you discuss with him sort of your
3 trial strategy and what your defense was going to be at trial?

4 A We did.

5 Q And you said you were prepared to go to trial that day?

6 A We were there for a trial.

7 Q When -- ultimately it was his decision to accept that
8 four-year offer?

9 A It was.

10 Q And did you discuss with him before the plea the rights
11 he was giving up by taking a plea offer instead of going to
12 trial?

13 A Yeah. And that, that was placed on the record as well.

14 Q And I just want to make sure, you said he understood --
15 you had a discussion with him, and he understood that by
16 pleading to this charge the Solicitor was planning to enhance
17 all of his other pending charges?

18 A That's correct, and that also was put on the record.
19 It's in the transcript.

20 MR. THOMAS: That's all I have. Thank you.

21 THE COURT: Redirect.

22 REDIRECT EXAMINATION

23 BY MR. SHAFFER:

24 Q Just for clarification, you put on the record that they,
25 they could possibly enhance -- right -- not that they were

1 intending to?

2 A I don't know. I'd have to look at the transcript.

3 Q You wouldn't argue that you said something different than
4 what it said in the transcript though; would you?

5 A No.

6 MR. SHAFFER: No further questions.

7 THE COURT: All right. You may step down.

8 MR. FREDERICK: Thank you.

9 THE COURT: All right. Call your next witness.

10 MR. SHAFFER: Applicant calls Jamie Glisson to the stand.

11 THE COURT: All right.

12 MR. THOMAS: I guess, Your Honor, we'd ask that Mr.
13 Frederick be excused.

14 THE COURT: Any objection?

15 MR. FREDERICK: If you want me to hang around till he's
16 done just in case.

17 MR. THOMAS: Okay.

18 MR. SHAFFER: Yeah. You probably want to hear this.

19 THE COURT: All right. Just stay with us for a second.
20 All right. Mr. Glisson, if you'd come forward, please. Place
21 him under oath again since he's testifying.

22 Whereupon, James R. Glisson, Jr., was called to the
23 stand, duly sworn by the clerk and testified as follows:

24 THE CLERK: Please be seated and state and spell your
25 name for the record.

James R. Glisson, Jr. - Direct by Mr. Shaffer

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1 MR. GLISSON: James R. Glisson, Jr., J-A-M-E-S, R, G-L-I-
2 S-S-O-N, Jr.

3 THE COURT: All right, sir.

4 DIRECT EXAMINATION

5 BY MR. SHAFFER:

6 Q Mr. Glisson, where are you currently located?

7 A Okay.

8 Q Or where are you currently housed at?

9 A Georgetown County Detention Center.

10 Q Okay. And what are you in there on?

11 A On burglary first.

12 Q Okay. And tell us about this. Right after the plea you
13 went to SCDC; is that right?

14 A Yes, sir.

15 Q Okay. What happened after you left SCDC? How long were
16 you at SCDC?

17 A Five months.

18 Q Okay. And what happened after you left?

19 A They brought me back to Georgetown County.

20 Q Okay. And why did they bring you back to Georgetown
21 County?

22 A Because they said I had pending charges. They had a hold
23 on me.

24 Q Okay. And the hold was from what charges?

25 A The charges on my paper, I don't -- there's like 14 I

1 think.

2 Q Okay. Were they prior to you getting arrested?

3 A Yes, sir.

4 Q Prior to pleading?

5 A Yes, sir.

6 Q Okay. So prior to pleading guilty you had pending
7 charges and they brought you back on those and what happened
8 after you -- did you sit for a while in county?

9 A I sit eight more months before I got a, I finally got a
10 bond after. They finally, they finally set a bond after
11 almost three years.

12 Q Okay. And they set a bond and you were able to get out?

13 A Yes, sir.

14 Q And -- but you got locked back up?

15 A Yes, sir.

16 Q Okay. And those charges are still pending; right?

17 A Yes, sir.

18 Q You were supposed to go to trial this week on those
19 charges?

20 A Monday. Yes, sir.

21 Q Okay. But because of the PCR they're holding off on
22 them; right?

23 A I don't know. I haven't heard.

24 Q Okay. Did you know that you were going to get sent back
25 from SCDC to Georgetown County?

James R. Glisson, Jr. - Direct by Mr. Shaffer

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1 A Yes, sir. When I told that -- when I went down there
2 they told me I had a hold.

3 Q Okay. But did you know that whenever you, you had the
4 plea that that was going to happen?

5 A Yes, sir, because I was, I was under the suspicion of it.
6 Yes.

7 Q All right. So you knew you were still facing those
8 additional charges?

9 A I was under the assumption there was two charges, but --

10 Q And you were under the assumption there were two charges?

11 A There was only two charges left. That's what I was --
12 yes, sir.

13 Q Okay. What, what gave you the idea that there were only
14 two charges left?

15 A Because I was told that if I pled, the 14 charges would
16 be taken care of, which I was -- that must be ignorance of the
17 law or something, because that ain't what happened, but I was
18 under the influence that the 14 charges were taken care of and
19 there would only be two left, and then when I got to SCDC,
20 there was -- they enhanced them. Soon as I got to prison, I
21 got a letter stating that two charges was enhanced to burglary
22 first. I didn't see nothing about the other charges, the rest
23 of them. So I was still under the influence that I was just
24 two charges left. I was thinking the whole time that I pled
25 to the 14 for some -- I mean, that's what I thought. I mean,

1 that's the deal I thought I had with my lawyer, but --

2 Q Now, did Mr. Frederick, prior to you pleading guilty,
3 tell you that that charge was going to enhance the other
4 charges?

5 A I didn't hear nothing about that till I -- the Judge said
6 something, and then when I went to bump him and ask him a
7 question, he told me that -- just kept shooing me like, you
8 know, don't, I reckon, you know, don't say nothing. I reckon
9 -- I thought -- I, I put my trust in him and thought he had it
10 handled.

11 Q Okay. And you had hired Mr. Frederick; right?

12 A Yes, sir.

13 Q How much did you pay him?

14 A \$7500.

15 Q Okay. And you, you had put your trust in him for all the
16 charges?

17 A Yes, sir. That was my, that was my, that's what my
18 understanding was.

19 Q And whenever you were, when you were talking to him, when
20 he brought you the four-year offer, what did he tell you about
21 that offer?

22 A He said that -- he told me Scott Hixson was quitting, and
23 my understanding was we going to wipe, you know, the other 14,
24 there wasn't going to be but two left when I got to prison.
25 He said he was going to handle them when I got to prison. He

James R. Glisson, Jr. -- Direct by Mr. Shaffer

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1 said he was going to most likely he'd take care of them while
2 I was down the road doing the turn around.

3 Q Okay. You were under the impression that they were going
4 to get taken care of?

5 A Yes, sir.

6 Q What did he tell you about the risk you were taking by
7 pleading guilty?

8 A I never -- if I -- I'd, I'd went to trial. I mean, I,
9 like I said, I worked on the house. I was just -- I was told
10 Chris Brown was there when Chris Brown wasn't because I -- but
11 I couldn't subpoena Chris Brown because I didn't know we was
12 coming today, but, you know, I was under the impression Chris
13 Brown was coming to say we didn't work on the house, but I
14 talked to Chris Brown since I got out, and Chris Brown said
15 that he, he ain't even been down there.

16 Q Okay.

17 A So I was, I was under the impression that, you know, we
18 was getting it handled. You know, I didn't, I didn't -- I
19 don't know really much about the law. So when I, you know, I
20 really didn't know how to take it right then. You know, I
21 really --

22 Q So Chris Brown said that he -- Chris Brown is one of the
23 witnesses; right?

24 A He, he was the -- our -- my, my boss man contracted from
25 Chris Brown.

1 Q Okay. And he said you worked on the house or said you
2 didn't work on the house?

3 A He -- I was told by Bobby that he was at the Solicitor's
4 Office waiting to testify that we never worked on the house,
5 which in turn, was Chris Brown was never there. My boss man,
6 and I was told he had a -- some kind of paper, which never --
7 the paper was never there. That man was never there.

8 Q Okay. So, but you have witnesses ready to testify that
9 you did work on the house?

10 A Yeah. He, he said that he knowed we worked on the house,
11 but I was told that he, he was going to testify that we never
12 worked on the house, but he -- I work, I work for Chris Brown,
13 and we, we worked on that house. My boss man rode around with
14 the Solicitor's Office two weeks ago and told her that we
15 worked on that house and put windows in that house, with
16 Alicia Richardson.

17 Q Okay. Did you tell -- did he tell you that you were
18 facing up to ten years on that charge? I mean, did he tell
19 you that it had gotten reduced to a burglary second? I'm
20 sorry.

21 A Yes, sir. Yes, sir. But the, the 911 call tape happened
22 on October the 25th, and the house got -- the law was there
23 October the 24th. So I don't -- I think that's what got it
24 changed because I fount that in my motion, and I wrote him and
25 told him about that, and I was wondering how the law was there

1 a day before the burglary got reported.

2 Q Did, did Bobby tell you anything about who made the offer
3 for four years?

4 A No, sir.

5 Q He just said there was an offer for four years for you to
6 plead to that one charge?

7 A He said Cottingham really didn't want to take me to
8 trial.

9 Q Okay. And did, did he say that there was a pending offer
10 for 12 years for everything?

11 A I never heard of no 12-year offer.

12 Q Okay. Did he say there was any offer for everything?

13 A I never heard of nothing else after the week but a month
14 before that at the, at the arraignment or whatever.

15 Q Okay. So at the arraignment there was an offer? You
16 know that; right?

17 A Yes, sir.

18 Q For everything?

19 A Yes, sir.

20 Q And what was that offer?

21 A I think it was the 10 to 15 open or something like, I
22 think he said.

23 Q Okay. But you're unaware of any time he told you there
24 was a 12-year non-violent?

25 A No, sir. I, I didn't notice that till I seen it in some

1 paperwork after I got back.

2 Q Now, you filed a fee dispute against Bobby; right?

3 A Yes, sir.

4 Q And you filed -- you've complained about him as well;
5 right?

6 A Yes, sir.

7 Q Okay. So you and Bobby aren't on good terms right now;
8 are you?

9 A I'm, I'm fine. I mean, I forgive and forget.

10 Q Okay. If you would have known that you were going to get
11 enhanced and those charges were not going to get taken care
12 of, would you have gone to trial?

13 A Yes, sir. I was ready to go, but I didn't know nothing
14 about it till that morning. I mean, I never talked to him,
15 sit down and talked to him about nothing and never, never sit
16 down and talked with him about this trial or I just -- I found
17 out when I got to Court, my daddy had to bring my clothes to
18 the courthouse. I mean, he --

19 Q So even with all the evidence against you, that they had
20 against you on this charge, if you would have known that you
21 -- that the other charges were getting enhanced and not taken
22 care of while you were up the road at SCDC, would you have
23 gone to trial?

24 A Say it one more time.

25 Q With all the evidence against you --

James R. Glisson, Jr. - Cross by Mr. Thomas

30

1 A Yes, sir.

2 Q -- would you have gone to trial on it, if you had known
3 basically that those charges were not going to get taken care
4 of?

5 A Yes, sir. I would have went.

6 Q Okay.

7 MR. SHAFFER: No further questions.

8 THE COURT: All right. Cross examination.

9 MR. THOMAS: May it please the Court?

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION

12 BY MR. THOMAS:

13 Q Mr. Glisson, how many meetings did you have with Mr.
14 Frederick?

15 A He come and -- to the jailhouse one time, and I signed a
16 paper for him to get -- to retain him, and then he come back
17 one more time and brought some kind of papers with all my
18 cases together, and I didn't see him no more till them three
19 -- the other times when we went to -- they tried to get me to
20 -- three months, I think two or three months prior to my trial
21 that's the only time I seen him was at the courthouse because
22 I think it was two or three more times and they kept calling
23 me down there trying to make me -- plea offer -- plea offers,
24 and then I went back straight for the jail. I talked to him
25 for a few, few minutes.

1 Q Did he ever share with you the State's evidence against
2 you?

3 A Some of it. I mean, some of my -- I had my motion, too.
4 I was writing back and forth with him trying to let him --
5 trying to see what I could find out in my case.

6 Q And you gave him your version of events related to this
7 specific burglary, not any of the rest of them?

8 A No, sir. No, sir. I never talked with him about this
9 case.

10 Q So you didn't know that this was the case where you broke
11 into Mr. Neeley's house and stole a TV and some stovetops,
12 stovetops and some stuff?

13 A I knew about it when I got to court.

14 Q You discussed with Mr. Frederick the fact that your
15 defense to this was going to be that you had worked on the
16 house before and that's why your fingerprints were there?

17 A Yes, sir.

18 Q Mr. Frederick explained to you that they were going to
19 use this conviction to enhance all the other convictions?

20 A No, sir.

21 Q But he did call those witnesses for you that you told him
22 to talk to?

23 A He didn't never call no witnesses. They just -- when I
24 got to court, I seen them, them there.

25 Q But they were in court the day of your trial was

1 scheduled?

2 A One of my witnesses was. Yes, sir.

3 Q Do you remember waiving your rights on the record in
4 front of Judge Cottingham?

5 A I remember -- whatever he -- I just stood there, man. I
6 wasn't, I wasn't -- I couldn't say nothing.

7 Q But you told Judge Cottingham you were waiving your right
8 to a jury trial?

9 A Yes, sir.

10 Q And Judge Cottingham -- well, let me, let me tell you
11 this. You said you didn't understand that these were going to
12 be used to enhance your other burglaries?

13 A No, sir.

14 Q Well, do you, do you remember at trial where Mr.
15 Frederick said, "Mr. Glisson understands the remaining charges
16 are going to be -- he's going to have two priors, and they're
17 going to call those cases as first degrees now."

18 MR. THOMAS: May I approach the witness, Your Honor?

19 THE COURT: Yes.

20 BY MR. THOMAS:

21 Q I'm going to hand you the transcript. If you would just
22 read what's highlighted right there.

23 A Yes, sir.

24 MR. THOMAS: And for the record he's on page seven
25 reading lines 14 through 18.

1 A Yes, sir. I mean, I -- yeah. I remember that because
2 that's the ones I thought he told me he was going to get threw
3 out when I was in SCDC.

4 Q Okay. Well, if you didn't understand that these were
5 going to be used to enhance, why didn't you stop the
6 proceedings right there and say, "Judge Cottingham, I hadn't
7 heard anything about enhancing my other charges?"

8 A Well, I tried to talk to him, when I was standing beside
9 him, I tried to ask him a question. He was just like telling
10 me -- what I understand he had it handled. I mean, I was just
11 trusting my lawyer, like I said. I mean, maybe I was ignorant
12 to the law on this case. I don't know much about the law.

13 Q You got out on bond on the other pending charges;
14 correct?

15 A Finally. Yes, sir.

16 Q Why'd you get locked back up?

17 A For a burglary.

18 MR. THOMAS: No further questions. Thank you.

19 THE COURT: All right. Redirect?

20 REDIRECT EXAMINATION

21 BY MR. SHAFFER:

22 Q Mr. Glisson, whenever -- with your relationship with
23 Bobby, you, you were putting a lot of trust in Bobby; right?

24 A Yes, sir.

25 Q Okay. And sometimes, you know, even when stuff is being

1 said, did you think -- well, tell me this. Even though that
2 stuff was being said on the record, did you think Bobby had it
3 handled?

4 A Yes, sir.

5 Q You thought Bobby was going to handle it?

6 A Yes, sir.

7 Q Okay.

8 A I mean, I was, I was being pressured by my parents. Like
9 I said, I didn't have no bond, and I was sitting in jail for
10 over two years without any kind of bond. I mean, Judge John,
11 when I went to court to get a bond, he, he even said on record
12 that, that he'd, he'd forgot to set it back in 2011. I mean,
13 I mean, I was just, I was ready to get, get something done to
14 get out that 20 some hour lockdown at that county. I mean, I
15 was just ready to go. I mean, I was just --

16 Q Okay. So you, you were trusting Bobby that he would --

17 A Yes, sir.

18 Q -- actually get it done; right?

19 A All my trust was in him, and my parents was -- he was
20 talking to my parents and they was pressuring me, too.

21 Q Would you have pled guilty if you would have known that
22 he did not handle -- he was not going to handle the rest of
23 those changes?

24 A No, sir. I wouldn't have never pled.

25 Q Okay. And whenever he said he was going to handle those

1 charges, what did you take that to mean?

2 A I mean, I figured when I went down there and done that
3 few months that when I come -- I'd come home.

4 Q Okay.

5 MR. SHAFFER: No further questions.

6 THE COURT: All right. You may step down. You can call
7 your next witness.

8 MR. SHAFFER: Your Honor, the Applicant doesn't have any
9 further witnesses. I do, would like to put two matters on the
10 record.

11 THE COURT: All right.

12 MR. SHAFFER: The first one is, I believe since we're
13 here for general ineffective assistance of counsel claim,
14 sometimes I, I know I'm confusing, but I think that one of the
15 things that I, I would like to make sure it's clear that we're
16 arguing is that based off of Mr. Frederick's testimony we're
17 going to be arguing that he, he is, that he was ineffective
18 for failing to move to recuse Judge Cottingham.

19 THE COURT: On what grounds?

20 MR. SHAFFER: On the fact that he's, he's basically
21 acting as a -- whenever he, he offers a deal or stands in the
22 shoes of offering something for the State, then essentially
23 he's, he's acting as an agent for the State, Your Honor.
24 There's -- that also is a due process violation. That's the
25 second ground that I would have, and I think it's a structural

1 error, the due process violation, because as soon as the Judge
2 stands there and says, "Well, I'm going to do this regardless
3 of what the Solicitor says. I'm going to do this ahead of
4 time," and I think Bobby even used the term that, you know, he
5 basically thought it was a trap. You know, whenever Judge
6 Cottingham stands in the shoes of saying, "Well, I'm going to
7 make an offer even though the State isn't going to to make
8 this case go away", I think that that, that -- that's stepping
9 on the grounds of being an impartial judge at that point.

10 THE COURT: All right. Anything else?

11 MR. SHAFFER: Nothing, Your Honor.

12 THE COURT: All right. Does the State have any
13 witnesses?

14 MR. THOMAS: Well, Your Honor, I would just object to any
15 amendments of the -- you know, he says he made a general
16 ineffective assistance of counsel claim. I don't, A, I don't
17 think that falls under ineffective assistance of counsel. B,
18 there's no rule prohibiting a Judge from participating in plea
19 negotiations. I don't think this is -- the testimony has been
20 presented. This isn't a case where Judge Cottingham said this
21 is what the plea offer is going to be. Judge Cottingham
22 basically took the judges [sic] in chambers. This happens all
23 the time. You get a feel for what the Judge is going to
24 sentence somebody to if he pleads straight up, and I think
25 that's what happened in this case, and I certainly don't think

1 that this -- that's a ground for relief.

2 THE COURT: All right.

3 MR. SHAFFER: And, Your Honor, related to whether it's
4 properly brought, I think that --

5 THE COURT: Okay. I'm going to deny your motion to amend
6 the application to include that. It's not alleged.

7 MR. SHAFFER: Then, Your Honor, may I, may I make a
8 proffer on the argument for that? The proffer for the
9 argument regards the, the ineffective assistance goes to on
10 the return from the State. I believe that they asked for a
11 hearing to determine ineffective assistance of counsel. Also,
12 on regarding the due process argument, I think that this falls
13 within, you know, Mr. Thomas had a, you know, he, he can
14 object to it, and if it's not objected to, you know, I, I
15 think that there's -- I think it's Rule 15(B), if I remember
16 correctly, it says that I can make the, make an amendment
17 based off to conform with the evidence at trial, and this
18 evidence, you know, going into this I, I didn't realize that,
19 that Judge Cottingham specifically made that offer. I knew
20 that he approved of it, but I didn't think that he was the one
21 making it over the Solicitor's objection. I also didn't hear
22 the term trap until Monday morning. I had spoke with Mr.
23 Frederick Monday morning to be a hundred percent honest, and,
24 you know, the term trap came out, that he thought that the
25 plea offer was a trap, and based off of that, that got me

Bobby Frederick - Direct by Mr. Thomas

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1 thinking, well, that's -- really it was a trap. I mean, he
2 offered him essentially a time-served plea to when the
3 Solicitor was going to enhance the charges and said he was
4 going to enhance the charges.

5 THE COURT: Okay. All right. I'm going to deny your
6 motion.

7 MR. SHAFFER: Thank you, Your Honor.

8 THE COURT: All right. All right. Does the State have
9 any witnesses?

10 MR. THOMAS: Your Honor, I'd call Mr. Frederick to the
11 stand.

12 THE COURT: All right. Mr. Frederick, if you'd come back
13 to the stand. You're still under oath.

14 MR. FREDERICK: Yes, sir.

15 Whereupon, Bobby Frederick was called to the stand and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. THOMAS:

19 Q Mr. Frederick, you said there was a 12-year offer to wrap
20 everything up in this case at some point?

21 A At the end, yes.

22 Q And what was -- did you discuss that with Mr. Glisson?

23 A Yes. In great detail.

24 Q And whose decision was it to reject that?

25 A Jamie rejected the plea offer.

1 Q Did you ever tell him that you would get his other
2 charges dismissed while he was in prison?

3 A No.

4 Q What's -- what was the substance of your conversation in
5 terms of what you were going to do regarding the other charges
6 while he was incarcerated?

7 A Continue to represent him on the other charges, but, you
8 know, at that point, we had to wait and see were they going to
9 get direct indictments for burglary first or were they going
10 to try to work the case out again.

11 Q So did you ever tell him there'd only be two charges left
12 after he pled to this one?

13 A No.

14 Q Why didn't you continue to represent him on the other
15 charges?

16 A Jamie sent a letter to the Supreme Court Clerk of Court
17 that, I don't remember all the details in it, but he made
18 quite a few claims that were not true. He said that I had
19 said things I had not said, that I had done things that I had
20 not done, and the Clerk of Court for the Supreme Court then
21 forwarded that letter to the Georgetown County Clerk of Court
22 who sent me a copy and the Prosecutor's office a copy. When I
23 -- and in that letter that he sent to the Supreme Court, it
24 said that he was going to file a PCR. It may have said he was
25 going to file a grievance. I don't remember specifically, and

Bobby Frederick - Cross by Mr. Shaffer

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1 after I got a copy of that, I talked to Jamie's parents. They
2 were very apologetic, but I told them I felt like I had to
3 move to be relieved as counsel from his case, and I filed a
4 motion to be relieved.

5 Q And which Judge granted that motion, or let me just
6 rephrase. A Judge granted your motion for relief?

7 A Yeah. I'm not sure who the Judge was.

8 Q Thank you very much, Mr. Frederick.

9 THE COURT: Cross examination?

10 MR. SHAFFER: The Court's indulgence, Your Honor.

11 CROSS EXAMINATION

12 BY MR. SHAFFER:

13 Q Did you ever tell Mr. Glisson, essentially, that you
14 would, you would work on getting him -- getting the charges
15 taken care of while he was in prison?

16 A Maybe. I mean, maybe, that, that might have been how I
17 phrased it. I don't know. The point, the point was that we
18 were going to continue working on the other cases and really
19 we just had to wait and see what the Solicitor's Office did,
20 whether they indicted him as a burg first or not.

21 MR. SHAFFER: No further questions.

22 THE COURT: Redirect?

23 MR. THOMAS: None, Your Honor.

24 THE COURT: All right. You may step down.

25 MR. FREDERICK: Thank you.

1 THE COURT: Any other witnesses?

2 MR. THOMAS: The State would rest on the record, Your
3 Honor.

4 THE COURT: All right. Anything in reply?

5 MR. SHAFFER: Nothing, Your Honor, just a brief argument.

6 MR. THOMAS: And I -- before we start that, I just ask
7 that Mr. Frederick be excused at this time.

8 THE COURT: Any objection?

9 MR. SHAFFER: No objection, Your Honor.

10 MR. FREDERICK: Thank you.

11 THE COURT: You're free to go. Thank you.

12 MR. FREDERICK: Thank you, Judge. Thank you, Judge.

13 THE COURT: All right, Mr. Shaffer.

14 MR. SHAFFER: Your Honor, this was somewhat of a sticky
15 situation or sticky agreement to begin with to get him to plea
16 to one charge when there's a whole bunch of other charges out
17 there, and I understand that while you may say, you know, they
18 could enhance, but saying we'll work on it while you're in
19 SCDC might have given him the impression that, you know, that
20 these charges were somehow going to get taken care of with the
21 other charges. I, I certainly don't think anyone, if he had
22 been fully aware, maybe, maybe informed, but maybe there's a
23 gap between that informing him and actually making him aware,
24 I don't think anyone would say, "Okay. Well, I'm okay with
25 pleading to this, but go ahead and give me 15 more burg first

1 charges." I, I, I just couldn't imagine anyone actually doing
2 that. I don't think that he had that expectation, which is
3 evidence to show that he probably did not have the expectation
4 or did not go into this plea with his eyes wide open about
5 what would actually happen. You can warn someone to death,
6 but many times you can also say things that sort of negate
7 that warning, and they don't actually think that it's going to
8 happen, and there's not a real appreciation of what could
9 possibly happen. I've, I've said to people in the past, you
10 know, "Yeah, you know, we're, we're going up for a recommended
11 plea." I'll say, "You know, yeah, the Judge could give you 30
12 years, the max, but then again, you could also get struck by
13 lightning walking outside, you know." They're going to follow
14 the recommendation more times than not, and, you know, did I
15 inform him that he could get 30 years? Yeah. I did. Did I
16 -- did he understand he could get 30 years? Probably not or
17 not a real understanding of that, and I think that's what
18 happened here. Whenever he said, "We'll, we'll get it taken
19 care of," whenever Mr. Frederick told him, you know, "We'll
20 work on these when you're in SCDC," he said he thought he was
21 going to get them taken care of whenever he went to SCDC, and
22 I think that that's -- while he might have been informed, I
23 don't think he was necessarily aware, and I don't think he
24 walked into that plea with his eyes wide open about what would
25 happen when that plea occurred.

1 THE COURT: All right.

2 MR. SHAFFER: Thank you.

3 THE COURT: Anything from the State?

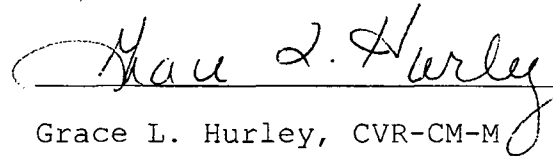
4 MR. THOMAS: Just briefly, Your Honor. The record shows
5 he had a full understanding of the rights he was giving up by
6 pleading to this charge and that he understood that there were
7 still charges pending that he would deal with, and as you
8 heard Mr. Frederick said, he did continue to represent him
9 until Mr. Glisson did not appear to want him to represent him
10 anymore, at which point he was relieved. So I don't think
11 that's inconsistent with any of the testimony.

12 THE COURT: Okay. All right. Mr. Thomas, if you'd
13 prepare an order that denies the Applicant's request for post-
14 conviction relief. I don't see where there's any ineffective
15 assistance of counsel, and even though I denied your motion, I
16 don't see where Judge Cottingham entered into a conflict of
17 interest or should have recused himself either in that regard.
18 The record's pretty clear. He came before the Court. It was
19 explained to him that he was dealing with that one charge,
20 that one charge only, that the other charges would remain
21 pending against him, and that this could be used to enhance
22 those charges. That's all in the record in the transcript and
23 it verifies the return filed by the State in this case. So
24 I'm going to deny the application for post-conviction relief.
25 All right?

C E R T I F I C A T E

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3 I, the undersigned, Grace L. Hurley, Official Court
4 Reporter for the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate and complete Transcript
6 of Record of the PCR Hearing held in the case of James R.
7 Glisson, Jr. versus the State, held in the Court of Common
8 Pleas for Georgetown County, Georgetown County Courthouse,
9 Georgetown, South Carolina, on June 20, 2014.

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

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15 

16 Grace L. Hurley, CVR-CM-M

17 Official Reporter

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21 December 10, 2014.

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STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

James Glisson, #285319,)

Case No. 2013-CP-22-216

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED
GEORGETOWN COUNTY, S.C.
2014 SEP -4 PM 4:24
ALMA Y. WHITE
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 25, 2013. Respondent made a timely Return on or about April 16, 2013. The Court convened an evidentiary hearing into the matter on June 20, 2014, at the Georgetown County Courthouse. Applicant was present at the hearing and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Bobby G. Frederick, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Georgetown County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

In May 2011, the Georgetown County Grand Jury indicted Applicant for first degree burglary (2011-GS-22-492). Bobby G. Frederick, Esquire ("plea counsel"), represented Applicant. On October 24, 2012, Applicant entered a plea of guilty to second degree burglary.

RECEIVED

AUG 07 2014

Referred to Thomas/dm
Answered _____

The Honorable Edward B. Cottingham sentenced Applicant to four (4) years imprisonment. Applicant did not appeal his plea or sentence.

II. ALLEGATIONS

In his application, Applicant alleged the following grounds for relief:

1. "My attorney lied to me about the outcome"
2. "I never talked to my attorney about my case"
3. "I was innocent on these charges, he told me to plea"

At the evidentiary hearing, Applicant proceeded on the allegations of ineffective assistance of plea counsel for failure to properly advise him of the consequences of his plea.

Applicant also moved, pursuant to Rule 15(b), SCRPC, to amend his application to include an allegation of improper judicial interference with the plea process. Respondent objected to the amendment on the grounds Applicant did not provide notice of this allegation, and that the allegation was not a proper ground for relief. The Court denied Applicant's motion, finding the amendment improper because it was not timely and was not necessary to the presentation of the merits of the action. See Harden v. State, 276 S.C. 249, 257, 277 S.E.2d 692, 695 (1981).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Plea counsel testified Applicant retained him in October 2011. He recalled meeting with Applicant at least six (6) times. Plea counsel further recalled Applicant had sixteen (16) pending burglary charges alleging he broke into various vacation homes in Georgetown County. Applicant retained plea counsel for all sixteen (16) charges. Plea counsel filed for discovery and received a complete response from the State. He testified he reviewed the discovery response with Applicant. He further testified he discussed with Applicant any potential defenses and what trial strategy they would employ.

Plea counsel also recalled the State initially offered to allow Applicant to enter a plea to all of his pending charges in exchange for a sixteen (16) year sentence. He further testified Applicant rejected the offer and wanted to go to trial. Plea counsel testified he attempted to negotiate a plea offer of ten (10) years to dispose of all charges, but the State refused. Instead, the State offered pleas of fifteen (15) and twelve (12) years to dispose of all charges. Applicant rejected these offers. Plea counsel testified he was prepared for a trial, having hired an investigator, interviewed witnesses, drafted arguments and questions, researched the law, and subpoenaed witnesses

Plea counsel recalled meeting with the presiding judge the morning of the plea. At that time, the State elected to go forward on the charge as a second degree burglary. The presiding judge informed plea counsel he would give Applicant four (4) years if he pled to the second degree burglary without negotiations or recommendations. Plea counsel testified the State still refused to dismiss the remaining charges if Applicant wanted to plea to the second degree burglary without negotiations or recommendations. Plea counsel recalled advising Applicant the

other charges would not be dismissed, and would likely be upgraded to first degree burglaries because the plea would result in his second burglary conviction. He also recalled advising Applicant of the constitutional rights he would waive by entering the plea. Plea counsel testified Applicant made the ultimate decision to enter the plea.

Applicant testified he believed the plea he entered would dispose of all but two (2) of his pending charges. Applicant alleged plea counsel claimed he would take care of the other two (2) cases while Applicant was incarcerated. He testified plea counsel also stated the assistant solicitor prosecuting the cases was leaving and the remaining charges would not be enhanced to first degree burglaries. Applicant claimed he would have gone to trial if he had known the other charges would not have been dismissed. Applicant also testified he never heard of a twelve (12) year offer to dispose of all his pending charges. He testified he only met with plea counsel twice and never discussed the case.

Respondent recalled plea counsel to the stand after Applicant rested his case. Plea counsel testified the discussed the twelve (12) year offer with Applicant and Applicant rejected the offer. He denied he ever told Applicant any other charges would be dismissed in exchange for the four (4) year plea. Instead, he told Applicant he would continue to represent him on the remaining charges. However, plea counsel testified his representation ended after Applicant sent an untruthful disparaging letter to the Supreme Court. At that time, he filed a motion to be relieved, which a circuit judge granted. Plea counsel did recall telling Applicant the assistant solicitor was leaving. However, he further recalled advising Applicant the next solicitor would also likely enhance the remaining charges based on Applicant's plea.

B. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty plea

counsel, the applicant must show 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, 59 (1985).

The Court finds Applicant failed to meet his burden of proving plea counsel ineffective for failing to properly advise him of the consequences of his plea. The Court finds plea counsel's testimony credible and Applicant's testimony wholly not credible. The Court further finds plea counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Court is not persuaded Applicant did not have a full understanding of the consequences of his plea. Plea counsel explained to Applicant the remaining charges would not be dismissed by the plea and would likely be enhanced. The presiding judge informed Applicant the remaining charges would be subject to being called for trial. (Plea Tr. 7:4-6). The record likewise reflects Applicant was informed at the plea the remaining charges could be enhanced to first degree burglaries. (Plea Tr. 7:14-18). Accordingly, Applicant's allegation he believed the remaining charges would be dismissed is without merit. See, e.g. Wolfe v. State, 326 S.C. 158, 164, 485 S.E.2d 367, 370 (1997) (any possible misconceptions about terms of plea cured by colloquy at guilty plea hearing).

Furthermore, the Court is not persuaded Applicant did not have a full understanding of the rights he waived when entering the plea. Plea counsel properly advised Applicant of the nature of the charges against him. They discussed any possible defense to the charges. In fact, plea counsel was prepared to call witnesses in Applicant's defense if Applicant had proceeded with the trial. Instead, Applicant chose to plead guilty. The record reflects Applicant voluntarily

entered his plea with a full understanding of the nature of his plea. See Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) ("A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements." (citations omitted)). Accordingly, the Court finds Applicant has not shown plea counsel was deficient in any way nor that he was prejudiced by plea counsel's performance.

C. All Other Allegations

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

IV. CONCLUSION

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

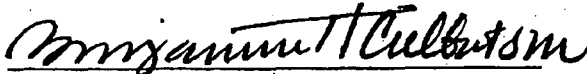
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial

of post-conviction relief. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 1st day of August, 2014.


THE HONORABLE BENJAMIN H. CULBERTSON
Resident Judge
Fifteenth Judicial Circuit

Georgetown, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

INDICTMENT

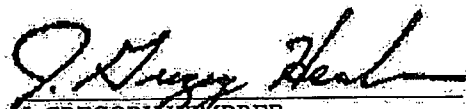
At a Court of General Sessions, convened on May 18, 2011, the Grand Jurors of Georgetown County present upon their oath:

BURGLARY, FIRST DEGREE

CDR: 0079 16-11-0311

That James Robert Glisson Jr did in Georgetown County on or about November 24, 2010, enter the dwelling of Joe Neely located at [REDACTED] in Pawleys Island, South Carolina, without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, in violation of Section 16-11-0311(A), S. C. Code of Law, 1976, as amended.

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


 J. GREGORY PEMBREE
 FIFTEENTH CIRCUIT SOLICITOR