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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

KEVIN LEE KEITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001952

APPENDIX

LAURA R. BAER
Appellate Defender

ALAN WILSON
Attorney General

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

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ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

GUILTY PLEA TRANSCRIPT1

APPLICATION FOR POST-CONVICTION RELIEF15

RETURN25

POST-CONVICTION RELIEF HEARING TRANSCRIPT30

PETITIONER’S EXHIBIT (Arrest Warrants).....57

ORDER OF DISMISSAL60

INDICTMENTS67

SENTENCING SHEETS77

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF GREENVILLE)	Case No(s) : 2011GS2309368,
)	2012GS2302029,
State of South Carolina,)	2012GS2302034,
)	2012GS2302038,
Plaintiff,)	2012GS2302040
)	
-VS-)	TRANSCRIPT OF RECORD
)	
Kevin Lee Keith,)	
)	
Defendant.)	

ORIGINAL

January 07, 2013
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

L. MARK MOYER, Esquire
Assistant Solicitor

SYMME CULBERTSON, Esquire
Attorney for the Defendant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
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I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Guilty Plea	4			
Sentencing of the Court	12			
Certificate of Reporter	14			

EXHIBITS PAGE

NO.

DESCRIPTION

ID EV

STATE EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 7th day of January, 2013 at approximately 2:39 p.m.)

THE CLERK: Your Honor, this is case number 2011-GS-23-9368, Kevin Keith -- Lee Keith, indictment for Burglary First degree. Pleading to the same -- I'm sorry -- to Burglary First degree. It is a true bill. 2012-GS-23-2029, indictment for Financial Transaction Card Theft. Pleading to the same. It is a true bill. 2012-GS-23-2034, Indictment for Burglary First Degree pleading to the same. It is a true bill. 2012-GS-23-2038, indictment for Burglary First Degree. It is a true bill. 2012-GS-23-24 -- I'm sorry -- 2040, Indictment for Strong Armed Robbery. Pleading to Common law Robbery. It is a true bill.

Would you raise your right hand please?

(WHEREUPON, the defendant is first duly sworn.)

THE COURT: Mr. Keith, you are here today to plead to Burglary First degree, that carries 15 years up to life. Financial Transaction Card Theft, that carries up to five years. Is that right?

MR. MOYER: That's correct.

THE COURT: Another Burglary First degree

1 that carries 15 to life and a third Burglary first
2 degree that carries the same and Common Law robbery
3 which carries up to 15 years. Is that your
4 understanding?

5 MR. KEITH: Yes, ma'am.

6 THE COURT: Have you discussed with your
7 attorney that the burglary first degrees are
8 violent and most serious. Do you understand that?

9 MR. KEITH: Yes, ma'am.

10 THE COURT: In other words, if you receive
11 active jail time on these charges, uh, your parole
12 eligibility, if any, will be calculated differently
13 or the time you actually spend in jail will be
14 calculated differently than if it were a non-
15 violent offense. You know that?

16 MR. KEITH: Yes, ma'am.

17 THE COURT: Furthermore, being a most
18 serious offense means that if you were convicted of
19 one other most serious offense, the State, on that
20 one, can seek life without the possibility of
21 parole against you. You know that as well?

22 MR. KEITH: Yes, ma'am.

23 THE COURT: Have you discussed these charges
24 fully with your attorney?

25 MR. KEITH: Yes, ma'am.

1 **THE COURT:** Are you happy with what your
2 attorney's done for you?

3 **MR. KEITH:** Yes, ma'am.

4 **THE COURT:** Do you have any complaint to
5 make against law enforcement, the Solicitor's
6 office or your lawyer as a result of these charges
7 whatsoever?

8 **MR. KEITH:** No, ma'am.

9 **THE COURT:** Has anybody forced you to plead
10 guilty?

11 **MR. KEITH:** No, ma'am.

12 **THE COURT:** Has anybody promised you
13 anything to get you to plead guilty?

14 **MR. KEITH:** No, ma'am.

15 **THE COURT:** Are you under the influence of
16 drugs or alcohol?

17 **MR. KEITH:** No, ma'am.

18 **THE COURT:** How old are you?

19 **MR. KEITH:** I'm 41.

20 **THE COURT:** How far did you go in school?

21 **MR. KEITH:** I finished.

22 **THE COURT:** Okay. Uh, when you plead
23 guilty, you give up certain constitutional rights.
24 One is your right to remain silent about these
25 charges. Do you know that?

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MR. KEITH: Yes, ma'am.

THE COURT: You also give up your right to a jury trial. At that trial, your attorney could call witnesses for you, cross-examine witnesses against you. You would not be compelled to testify against yourself. And the State would have to prove your guilt beyond a reasonable doubt. When you plead guilty, you give up your right to a jury trial. You know that?

MR. KEITH: Yes, ma'am.

THE COURT: Okay. How do you plead on each of these charges? Guilty or not guilty?

MR. KEITH: Yes, ma'am. Guilty.

THE COURT: All right. You have 10 days from today's date to appeal this plea if you so choose but you must do so in writing to this Court. Yes, sir.

MR. MOYER: Thank you, Your Honor. May it please the Court. The first case I will mention is Indictment number 2012-2038. That's the case that was on the trial docket for tomorrow. It happened on January the 17th of 2012. The victim was a person this defendant knew. He used to do some odd jobs around his house and some other work.

On January the 17th, while the victim was away

1 at work, the defendant kicked in the back door of
2 the home and he stole a television and a bracelet.
3 His fingerprints were found inside the home. He --
4 excuse me. He also confessed to that incident as
5 well. The TV was recovered.

6 Another -- indictment number 2011-9368, that
7 burglary took place on September the 17th of 2011.
8 The defendant broke into the victim's residence on
9 South Washington Street while the victim wasn't
10 present. A witness saw the defendant in the
11 residence and called the police. Officers caught
12 the defendant inside the building and had
13 collectible coins owned by the victim in his
14 pocket.

15 On December the 10th of 2012, the defendant
16 and a co-defendant broke into a residence on
17 (inaudible) Road in Greenville. This residence was
18 owned by the co-defendant's parents. They stole a
19 TV, leaf blower and chainsaw.

20 The financial transaction card theft case
21 happened on December the 2nd of 2011. The
22 defendant stole the victim's ATM card at her
23 residence on Blake Street in Greenville. The
24 defendant was in the home because the co-defendant
25 was the victim's roommate. The defendant used the

1 card to make several withdrawals and purchases.

2 The final incident happened on January the
3 17th of 2011. The defendant and co-defendant went
4 to the victim's residence on Duke Street in
5 Greenville. Knocked on the door. The victim was
6 mentally handicapped. He knew the defendants but
7 did not want to talk to them. He went in his
8 bedroom and got in his bed. The defendant kicked
9 in the back door. Went to the victim's bedroom and
10 took the victim's wallet from his back pocket.

11 **THE COURT:** All right. And does he have a
12 prior record?

13 **MR. MOYER:** He does, Your Honor. 1990,
14 Forgery and Prostitution; 1991, Distribution of
15 Cocaine; 1992, Shoplifting, two counts of Grand
16 Larceny, Common Law Robbery; 1994, Possession of
17 Contraband, Simple Possession of Marijuana; 1994,
18 Breach of Peace, Receiving Stolen Goods, Failure to
19 Stop, two counts of Burglary second degree, two
20 counts of Petty Larceny; 2004, parole revocation;
21 2006, two counts of Resisting Arrest with Assault,
22 Public Disorderly Conduct; 2009, Possession of
23 Hypodermic Needles, False Information; 2010, uh,
24 Stealing Dogs and Petty Larceny; 2011, Malicious
25 Injury to Personal Property, Petty Larceny and

1 Hindering an Officer.

2 **THE COURT:** All right. Yes, sir.

3 **MR. CULBERTSON:** Your Honor, I'm not sure
4 exactly what's going to sway you from your decision
5 about giving this man as much time as the Solicitor
6 is asking for.

7 **THE COURT:** Are you seeking a particular --

8 **MR. CULBERTSON:** No, no.

9 **THE COURT:** Okay.

10 **MR. CULBERTSON:** It's a straight up plea.

11 **THE COURT:** I assumed it was a straight up
12 plea.

13 **MR. CULBERTSON:** It is, Your Honor. What I
14 was referring to is that Mr. Moyer and I have been
15 around and around about potential sentences and how
16 we were going to structure this, what we could do
17 and whatnot. Uh, Kevin has always maintained, to
18 me anyway, that he has a very serious drug
19 addiction problem.

20 **THE COURT:** Yeah.

21 **MR. CULBERTSON:** I never believed anything
22 different than that. I believe he has it. He
23 knows he has it. Mr. Moyer and I, the Solicitor
24 and I, talked about potential drug court situation.
25 He is anxious to get some help. He realizes that

1 it's just as easy to get drugs in jail as it is out
2 on the street. He doesn't necessarily see his
3 incarceration in and of itself helping him
4 alleviate any of his drug addiction issues. Drug
5 court was not a possibility due to these charges and
6 the nature of his previous record. He's desperate
7 to try to get some help.

8 He admits to what he's done here. He gave a
9 statement to the police very soon after it all
10 happened. He named co-defendants that were
11 involved with him. It's our understanding that the
12 co-defendants and the victims, or eyewitnesses were
13 prepared to come in here tomorrow and testify. We
14 had some questions of the co-defendant. That's not
15 the issue.

16 He knows what he did was wrong. He admits
17 what he did was wrong. We're asking the court to
18 be as gracious and lenient as possible towards him
19 while at the same time trying to structure
20 something that would be of benefit to him with his
21 drug addiction issues.

22 Anything else you need to tell her?

23 **MR. KEITH:** I'm just sorry for what I did.
24 I got strung out there on crack for 26 years.

25 **THE COURT:** All right.

1 **MR. KEITH:** I just ask you to please be as
2 lenient as possible.

3 **MR. MOYER:** Judge, my only response is the
4 defendant did ask about drug court. It was never a
5 serious consideration because of these charges and
6 his record. While he did want it, it was never
7 something we could offer. He did confess to one of
8 these incidents, which is the one that was on the
9 trial docket for tomorrow. He named the co-
10 defendant in that case.

11 **THE COURT:** How long has he served in jail?

12 **MR. MOYER:** 352 days.

13 **THE COURT:** Mr. Keith, we are in a situation
14 now. Just to explain my sentence to you, I'm going
15 to give you some opportunity to at some point get
16 out and have something of a productive life ahead
17 of you. But we're in a situation now with your
18 record combined with the serious nature of these
19 charges, you've kind of put us all in a box.
20 There's not a lot else we can do.

21 I'll run all these concurrent. The sentence
22 of the Court is 18 years on the burglaries. I'll
23 give you credit for 353 days and then 15 concurrent
24 on the common law robbery and five on the financial
25 transaction card theft. Best of luck to you.

1

MR. MOYER: Thank you.

2

MR. CULBERTSON: Thank you.

3

(WHEREUPON, the proceedings conclude at

4

approximately 2:50 p.m.)

5

6

7

8

FORM 5

STATE OF SOUTH CAROLINA)
County of Greenville)
Kevin Lee Smith #174394)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2013-CP-23-02303

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2013-09-14 AM 8:42

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 KIRKLAND CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence GREENVILLE COUNTY COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) SCOTT MILTON HIGGINS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-03-23-2052
 - (b) 2012-03-23-2052

1st Degree Burglary

Financial Transaction Code

(c) FINANCIAL TRANSACTION CARD FRAUD

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

(a) 11/8/13, 18 YRS 85% (violent)

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Filed Attorney to file appeal and I haven't heard anything else from the court.

(b) _____

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

- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) COUNCIL WAS TOO BUSY WITH OTHER CASE LOADS TO PROVIDE COUNSEL
 - (b) COUNCIL DID NOT AFFORD ME A MEANINGFUL OPPORTUNITY TO COUNSEL
 - (c) COUNCIL FAILED TO KEEP ME REASONABLY INFORMED COUNSEL

- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? NO
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 - (d) any other petitions, motions or applications in this or any other Court? NO

- 13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 - (a) the specific nature thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

11) ¹⁸ A) THE NECESSARY TIME TO PREPARE AND RESEARCH MY CASE PROPERLY. ONLY VISITED ME 2 TIMES IN 11 MONTHS. HE SAW ME IN FEB. 2012 AND ONCE IN JUNE 2012. BOTH VISITS WERE APPROXIMATELY 15 MINUTES EACH.

B) TO PRESENT A COMPLETE DEFENSE. BECAUSE OF THIS I COULD NOT MAKE AN INTELLIGENT INFORMED DECISION ON A PLEA AGREEMENT OR WHETHER TO TAKE MY CASE TO TRIAL.

C) ABOUT THE STATUS OF MY CASE. HE IGNORED MY REQUESTS FOR INFORMATION INVOLVING MY CASE.

- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

- (d) the date of each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. N/A
 - ii. _____
 - iii. _____

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

- (a) I Have Just gotten The opportunity to file P.S.C.
- (b) _____
- (c) _____

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

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

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. MR. SYMMES CULBERTSON (Public Defender)
305 E. NORTH ST. GREENVILLE, S.C. 29601
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. TRIAL and Plea
 - ii. _____
 - iii. _____

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

I would like to have my case overruled on the basis of Mr. Culbertson not giving me proper representation. Had he kept me and the court informed. (over

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

NO

STATE OF SOUTH CAROLINA)
)
County of Greenville)

VERIFICATION

I, Kevin Lee Keith SC# 174394, 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.

Kevin Lee Keith

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

Albert W. Carter (L.S.)
Notary Public

My Commission Expires: Sept 11, 2017

177 ON INFORMATION THAT WAS VITAL TO MY DEFENSE IT IS
MY BELIEF THAT MY CASE WOULD HAVE HAD A DIFFERENT
RESULT FROM THE WAY THAT IT TURNED OUT

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

I, Kevin Lee Keith SCOR# 174394, 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.

Kevin Lee Keith
Applicant

SWORN or affirmed to and subscribed before me this

4th day of APRIL, 2013.

Albert W. Carter
Notary Public

My Commission Expires: Sept 11, 2011

Mallroom

Kirkland Correctional Institution
4344 Broad River Road
Columbia, S.C. 29210

Kevin Keith #179384
Kirkland R.E. Center
C-2.4418
4344 Broad River Road
Columbia S.C. 29210

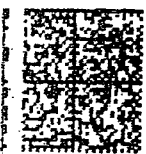
2013-CP-23-02303

KCI MAILROOM

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Greenville SC 29601



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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2013-CP-23-2303
COUNTY OF GREENVILLE)	
)	
Kevin Lee Keith,)	
S.C.D.C. No. 174394,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed April 24, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Applicant was indicted at the November 2012 term of the Greenville County Grand Jury for three counts of first-degree burglary (2011-GS-23-9368 and 2012-GS-23-2034, -2038), financial transaction card (FTC) theft (2012-GS-23-2029), and strong arm robbery (2012-GS-23-2040). Symmes Culbertson, Esquire represented the Applicant.

On January 7, 2013, the Applicant pled guilty.¹ The Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of eighteen years for each count of first-degree burglary, fifteen (15) years for strong arm robbery, and five years for FTC theft. The Applicant

¹ The State not prossed indictments for FTC fraud (2012-GS-23-2030, -2031, -5058), criminal conspiracy (2012-GS-23-2032, -2037), petit larceny (2012-GS-23-2033), first-degree burglary (2012-GS-23-2035, -2039), petit larceny, third offense or greater (2012-GS-23-5056), FTC theft (2012-GS-23-5057).

did not appeal.

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

II.

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

1. Ineffective assistance of counsel.
 - a. Counsel did not meet with Applicant enough.
 - b. Counsel did not afford Applicant the chance to present a complete defense.
 - c. Counsel did not keep Applicant reasonably informed.

III.

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

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

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

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

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

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

IV.

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

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.


Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

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

By: 
Attorneys for Respondent

Oct. 18, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
 KEVIN LEE KEITH, 174394)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS

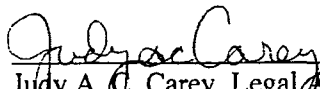
2013-CP-23-2303

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:

Kevin Lee Keith, 174394
Lieber Correctional Institution
Post Office Box 205
Ridgeville SC 29472

DATED this 18th day of October, 2013.


 Judy A. Carey, Legal Assistant
 For Respondent

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

	<u>Page No.</u>
<u>(PW) KEVIN LEE KEITH:</u>	
Direct Examination by Ms. Horlbeck.....	4
Cross-Examination by Ms. Ratigan.....	11
<u>(DW) SYMMES CULBERTSON:</u>	
Direct Examination by Ms. Ratigan.....	14
Cross-Examination by Ms. Horlbeck.....	21

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Plaintiff's Exhibits)		
1	Arrest Warrants.....:.....	23	25

P R O C E E D I N G S

1
2 MS. RATIGAN: This is the case of Kevin Keith vs. State
3 of South Carolina. Docket number is 2013-CP-23-2303. Mr.
4 Keith was indicted for three counts of first degree burglary
5 and one count each of financial transaction card theft and
6 strong armed robbery. He was represented by Mr. Symmes
7 Culbertson. On January 7th, 2013, he pled guilty before
8 Judge Verdin. He received concurrent sentences of 18 years
9 for each count of first degree burglary, 15 years for strong
10 armed and five years for financial transaction card theft.
11 I would also note that the return on the footnote that list
12 numerous indictments that were nol prossed also as a result
13 of that plea. Mr. Keith did not file an appeal and the
14 State's ready to proceed.

15 THE COURT: Ms. Horlbeck.

16 MS. HORLBECK: Judge, we would call Mr. Keith to the
17 stand.

18 THE COURT: Mr. Keith, if you would come on up, please,
19 sir. Place your left hand on the Bible and raise your right
20 hand.

21 Thereupon;

KEVIN KEITH,

22 After having been duly sworn, testified as follows:

23 THE CLERK: Thank you. Please state your full name for
24 the record.
25

1 THE WITNESS: Kevin Lee Keith.

2 THE CLERK: Thank you. You may be seated.

3 DIRECT EXAMINATION

4 BY MS. HORLBECK:

5 Q Mr. Keith, did you plead guilty to three burglary
6 first charges, a financial transaction card theft charge
7 and a strong armed robbery?

8 A Yes, ma'am.

9 Q Who represented you at that guilty plea?

10 A Mr. Symmes Culbertson.

11 Q As a result of his representation, did you file this
12 petition for post-conviction relief today?

13 A Yes, ma'am.

14 Q All right. Was your case scheduled for trial on
15 January the 8th, 2013?

16 A Yes, ma'am.

17 Q And did Mr. Culbertson talk to you about the fact
18 that your case was scheduled for trial?

19 A He advised me that it was going to be going to trial
20 the eighth. He came to see me the day before the actual
21 hearing because I received a letter stating I would be
22 going to trial. So he came up and we discussed the
23 situation about a plea. I asked him was the plea still on
24 the table, the 15-year plea, and he said yes. That's the
25 only reason why I went ahead and went along with the plea

1 at the time because, you know, I felt I could have
2 probably got more time. I went ahead and told him I
3 wanted to go ahead with it if I was going to receive the
4 plea for 15 years.

5 Q Okay. Did you meet with Mr. Culbertson on January
6 the 7th, the day before the trial?

7 A Yes, ma'am.

8 Q Did you meet with Mr. Culbertson any other days
9 before your trial?

10 A No, ma'am.

11 Q When did you find out your case was scheduled for
12 trial?

13 A The day before.

14 Q And at that conference that you had with Mr.
15 Culbertson on the 7th, did you and he discuss the
16 possibility of any plea offers from the State?

17 A The 15, that's it.

18 Q So you did discuss that, is that correct?

19 A Yes, ma'am.

20 Q And did Mr. Culbertson tell you that the State would
21 offer you a 15-year recommendation if you pled guilty?

22 A Yes, ma'am.

23 Q Did Mr. Culbertson explain to you why the State was
24 making a recommendation since your case was on the trial
25 docket?

1 A I believe it was the serious nature of the crime. I
2 mean, that's the only thing I can think of.

3 Q What, specifically, did Mr. Culbertson tell you about
4 the 15-year offer?

5 A If I didn't plead guilty, we was going to go to
6 trial. Just take the plea or nothing.

7 Q What was your understanding of exactly what the State
8 was going to say as to sentence if you pled guilty?

9 A That I receive the 15 years.

10 Q Did Mr. Culbertson tell you that was the State's
11 recommendation?

12 A Yes, ma'am.

13 Q Mr. Culbertson didn't make any promises about this
14 being a 15-year offer, did he?

15 A No, ma'am.

16 Q But he did say that the State would recommend 15
17 years?

18 A Yes, ma'am.

19 Q And your decision to plead guilty, what was that
20 decision based on?

21 A I mean, the way it seemed was I couldn't get no
22 lesser time. It was either 15 or it was going to be more.
23 So I told him, I mean, what about drug court. I mean,
24 I've had a bad drug problem, that's my whole problem. And
25 I would like to have tried, at least, to got drug court.

1 But I guess it was the only option, that's why I went
2 ahead and told him I would be willing to go ahead and take
3 the 15 years.

4 Q Did Mr. Culbertson discuss with you that the Court
5 didn't have to go along with that 15-year recommendation?

6 A No.

7 Q In your mind, was this 15 years a done deal?

8 A Yes, ma'am.

9 Q If you had known that this 15 years was not a done
10 deal, and if you had known there was no recommendation for
11 15 years, would you still have pled guilty?

12 A I would have took a trial.

13 Q But you did plead guilty, correct?

14 A Yes, ma'am.

15 Q Was that because of the advice that your attorney
16 gave to you about the 15-year offer?

17 A Yes, ma'am.

18 Q You had mentioned drug court. Now, do you recall the
19 State, actually, advising the Court that your attorney had
20 requested that you be screened for drug court?

21 A No.

22 Q You don't recall that?

23 A I mean, I remember that he brought it up at the end
24 of it after I brought it up in the court about the drug
25 court situation, but it never was ahead of time. I mean,

1 I wrote to the judge myself and the lady over it and I
2 never heard anything back.

3 Q And did you file a motion to have Mr. Culbertson
4 relieved as your attorney?

5 A Yes, ma'am, on 12/27 of '12, I sent a copy to ask him
6 to be removed as my appointed attorney to him and Mr. Mark
7 Moyer and the public defender's office.

8 Q Was a hearing ever scheduled to address your motion
9 to have Mr. Culbertson relieved as your attorney?

10 A No, ma'am.

11 Q Do you know why a hearing was not scheduled?

12 A No, ma'am.

13 Q Did you discuss with Judge Verdin that you didn't
14 really want Mr. Culbertson to be your attorney?

15 A Not at the time.

16 Q Why was that?

17 A Because we went ahead and went forward with the
18 process at the time. I mean, it was really like I was
19 pushed into it because it was really if I didn't do it
20 then, then it was going to be a trial scheduled.

21 Q And you also wanted to present an issue that you
22 claimed that you were never indicted for burglary first?

23 A No, ma'am, on the one that I was recharged for -- I
24 have it in my paperwork over there. It was in 2011, I
25 think, I was charged with burglary second degree,

1 nonviolent. And when I went to court on these other
2 charges, it was first degree. I never received a warrant
3 or anything stating it was first degree. I mean, I made
4 bond on that charge and it was a second degree burglary.

5 Q Did you and Mr. Culbertson discuss that the grand
6 jury had indicted that burglary second warrant as a
7 burglary first?

8 A No, ma'am.

9 Q When did you first learn that that burglary second
10 had evolved into a burglary first?

11 A Not until I received a copy of my sentencing sheet.

12 Q When did you receive a copy of your sentencing sheet,
13 after the plea or before?

14 A It was after the plea.

15 Q Did you review your sentencing sheets with your
16 attorney before you signed them?

17 A I mean, I signed -- he said if we get the offer, his
18 initials would be on it.

19 Q I'm sorry, say that again.

20 A His initials would be on it. His initials was on the
21 sentencing sheet.

22 Q Whose initials?

23 A Mr. Culbertson.

24 Q Well, when you found out that burglary second was,
25 actually, a burglary first and you were pleading to it,

1 did you mention that to the judge?

2 A No, ma'am.

3 Q Why not?

4 A I have to go back. It was after I was sentenced when
5 I noticed the indictment had been enhanced.

6 Q Are you saying that you didn't realize that that
7 burglary second had -- that you were pleading to a
8 burglary first rather than a burglary second?

9 A Right.

10 Q And you didn't notice it on your sentencing sheets
11 before you signed them?

12 A No, ma'am.

13 Q And when Judge Verdin announced it in court, did you
14 realize it then?

15 A No, ma'am, because I didn't know all the warrant
16 numbers.

17 Q But you didn't realize you were pleading guilty to
18 the other two burglary first charges, correct?

19 A Yes, ma'am.

20 Q And your position is that on that burglary second,
21 you don't believe that the indictment handed down by the
22 grand jury on that particular charge is valid?

23 A No, ma'am.

24 Q Is there any other reason you don't believe that
25 indictment is valid?

1 A I mean, I asked for copies and never received copies
2 from the clerk of court.

3 Q What other grounds did you want to present against
4 Mr. Culbertson?

5 A That's about it.

6 MS. HORLBECK: Okay. Please answer any questions
7 that Ms. Ratigan has for you.

8 CROSS-EXAMINATION

9 BY MS. RATIGAN:

10 Q When did Mr. Culbertson tell you about the 15-year
11 offer, do you remember?

12 A I don't really know the dates, ma'am, but he did.

13 Q And when he talked to you about this 15-year offer,
14 did you tell him at that time, I want to take the offer or
15 did you tell him you needed time to think about it?

16 A Think about it.

17 Q So when did you finally tell him okay, I think I want
18 to take that 15-year offer?

19 A Well, when it came to the day before the jury trial.

20 Q So on January 7th, 2013, that's when you told him I
21 want to go ahead and take that offer?

22 A He told me it would be best if I did. I mean, at the
23 time when he come to visit me, he said it would probably
24 be best if I did take the 15 years instead of a jury
25 trial. I mean, it's like really -- it's not really

1 trying, I mean, because if you're trying to help someone,
2 you would, at least, try to get the charges to a lesser
3 charge.

4 Q Now, I know you don't remember when he gave you the
5 offer, but how long do you think you had to think about
6 it? Was it a couple days, was it some weeks, do you
7 remember?

8 A I think the next time they come back, it was a month.

9 Q So you definitely had some time to think about it?

10 A Yeah.

11 Q And when you talked to Mr. Culbertson that day,
12 January 7th, the day you pled guilty, did he tell you that
13 day that you were going to get that 15-year offer?

14 A Yes, ma'am.

15 Q Now, did he say you were absolutely going to get it,
16 or that he was going to ask for it, or that it was
17 recommendation, what did he tell you?

18 A It's a recommendation, he said he was more than sure
19 I'd get it.

20 Q Now, Mr. Culbertson told Judge Verdin that day that
21 you were pleading straight up without a recommendation, do
22 you remember him telling her that?

23 A No, ma'am.

24 Q And when you signed the sentencing sheets before you
25 pled guilty, did you notice that the box without

1 recommendation was checked, did you notice that at the
2 time?

3 A No, ma'am.

4 Q And your testimony today is that if you had known you
5 weren't going to get that 15-year offer, you would have
6 rather gone to trial?

7 A Yes, ma'am.

8 Q But didn't you give a statement and name
9 codefendants? Wasn't there a lot of evidence against you?

10 A No, ma'am, they wanted me to testify against my
11 codefendants, which, actually, received nothing.

12 Q But did you give a statement to the officers, did you
13 give a confession?

14 A To one crime, yes, ma'am, to the burglary. I give
15 the ticket back, yes, ma'am.

16 Q And did any witnesses identify you in any of these
17 other charges?

18 A No.

19 Q So even though you'd given a statement in one of the
20 charges, you were still wanting to go to trial?

21 A Yes, ma'am.

22 Q Now, when Mr. Culbertson said there was no
23 recommendation and the State did not make any kind of
24 recommendation, why didn't you tell the judge, you know,
25 wait, I thought I was here today for a 15-year

1 recommendation?

2 A Because once I pled guilty, it was too late. I mean,
3 she had done asked me about the charges and how did I
4 plead and I told her I pled guilty to the charges, so the
5 sentence was handed down after that.

6 Q Okay. But at no point prior to sentencing you
7 thought it was a good idea to ask when you were going to
8 talk about the 15-year recommendation?

9 A No, ma'am.

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

11 THE COURT: Any further questions?

12 MS. HORLBECK: No, Your Honor.

13 THE COURT: Appreciate you being here, you may step
14 down.

15 Anything further from the applicant?

16 MS. HORLBECK: No, sir.

17 THE COURT: Anything from the State?

18 MS. RATIGAN: Yes, sir, we call Mr. Culbertson.

19 Thereupon;

20 SYMMES CULBERTSON,

21 after being duly sworn, testified as follows:

22 THE CLERK: Thank you. Please state your full name for
23 the record.

24 THE WITNESS: Symmes Culbertson.

25 THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION

1

2 BY MS. RATIGAN:

2

3 Q Mr. Culbertson, do you recall representing Mr. Keith
4 on these charges?

4

5 A Yes, I do.

5

6 Q And were you appointed or were you retained?

6

7 A I was appointed.

7

8 Q And did Mr. Keith authorize you to engage in plea
9 negotiations with the State?

9

10 A Yes.

10

11 Q I'm going to cut right to chase. Mr. Keith states
12 that at one point there was an offer from the State for 15
13 years, is that correct?

11

14 A That is correct. Actually, if I could back up just a
15 second. There were several offers extended to Mr. Keith
16 during the pendency of this case. I think it's also
17 important to point out that I was not the first attorney
18 through the public defender's office that represented Mr.
19 Keith. Mr. Vaster, I think, was initially appointed to
20 represent Mr. Keith. During that time, and also during
21 the time that I represented Mr. Keith, there were various
22 offers made from the solicitor's office as to the
23 resolution of these charges.

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24 Q And do your notes reflect that -- we're going to put
25 the 15-year offer aside for a second. Do your notes

24

25

1 reflect that those prior offers had been conveyed to Mr.
2 Keith?

3 A Yes, they did.

4 Q And do your notes reflect that Mr. Keith rejected
5 those prior offers?

6 A Yes.

7 Q Now, this 15-year offer in question, when did the
8 State convey that offer?

9 A The first note that I have in the file right now that
10 shows the 15-year offer was from November 30th, 2012 --
11 actually, yes, I'm sorry, actually, the first was June the
12 18th, 2012, a plea offer from the solicitor's office that
13 indicates the solicitor's office had the desire for Mr.
14 Keith to enter a plea to a number of charges, that they
15 were going to dismiss some other charges and that they
16 would recommend a 15-year sentence. Again, that was on
17 06/18/2012.

18 I have another letter from the solicitor's office
19 from November 30th of 2012, specifically from Mark Moyer,
20 the assistant solicitor handling Mr. Keith's case, that
21 indicates -- and I'll read it, if you don't mind, it says,
22 Dear Symmes, Tracy Burkett from the public defender's
23 office told me yesterday that your above referenced client
24 will not accept my plea offer of 15-year recommendation
25 and wants a trial. If he has a change of mind and wishes

1 to plead guilty, he must do so during the December 10th,
2 2012 term of court. This case is subject to being placed
3 on the trial docket at any time starting January 7th, 2013
4 term of court. That was passed along, obviously, to Mr.
5 Keith and the previous letter was also passed along to Mr.
6 Keith. He knew that there was a 15-year offer for a
7 while.

8 Q Do you recall that that 15-year offer had an
9 expiration date?

10 A Well, based on the letter of November 30th, 2012, I
11 assumed the expiration date was when it might have got
12 placed on the trial docket. The trial docket in this
13 letter was indicated January the 7th, 2013, so I was
14 operating under the assumption that the expiration of that
15 offer would have been prior to being placed on the trial
16 docket.

17 Q Now, Mr. Keith has testified that you met with him on
18 January 7th, 2013, that would have been a plea date. Do
19 you recall meeting with him that day, the day of the plea?

20 A Oh, I'm sure I did.

21 Q And is that the time when you would have told him the
22 case was on the trial docket or would he have been
23 notified of that prior to?

24 A I don't specifically recall when I told him his case
25 would have been placed on the trial docket. I know that I

1 would have communicated that to him once I got that
2 information. I don't remember the specific date I may
3 have told him.

4 Q When Mr. Keith was brought up to the courthouse on
5 January 7th, do you recall was it to plead guilty or was
6 it for trial or do you have any recollection?

7 A I don't have a clear recollection, although based on
8 what I see in the file, based on my memory, I believe he
9 was brought up for a guilty plea.

10 Q Would you have told him on January 7th of 2013 that
11 that 15-year offer was still available?

12 A Yes.

13 Q You would have told him that 15-year offer was still
14 available in January?

15 A I believe I would have because that was the only
16 offer I knew that was out there.

17 Q But even though he had rejected it and it was placed
18 on the trial docket, you would have told him the day of
19 the plea that offer was still valid?

20 A I don't remember.

21 Q Do you recall telling Judge Verdin that the plea was
22 straight up?

23 A No, I don't remember that specifically.

24 Q So even though Mr. Keith had rejected the 15-year
25 offer and it was on the trial docket, you would have told

1 him that day that he could still get that 15 years?

2 A No, I don't think I would have told him that. And I
3 apologize for being confusing. I'm trying to think back
4 to that conversation. Generally, it's not my practice to
5 tell a client that an offer is still available, especially
6 once it's been placed on the trial docket. The standard
7 policy is once it's been placed on the trial docket, any
8 previous offers fall by the wayside.

9 Q Did you tell Mr. Keith that day you were sure he
10 would get 15 years?

11 A No. I never tell a client that I'm positive what
12 they're going to get. I tell them it's always up to the
13 judge what the sentence will be.

14 Q Would you have explained to Mr. Keith before he pled
15 guilty the sentence ranges of these various charges?

16 A I'm sure I did.

17 Q Did Mr. Keith at any point during the plea ask you to
18 stop the proceedings, withdraw the plea, not proceed
19 forward with this hearing, do you recall?

20 A Not that I recall.

21 Q The last issue is it appears from the documentation
22 that the 2011 burglary charge was originally arrested as a
23 burglary second, but indicted for a burglary first. Do
24 you recall any issue with that?

25 A No, I don't. And I just point out that in 2011, I

1 did not represent Mr. Keith, Mr. Vaster, the attorney that
2 had been appointed to represent Mr. Keith. I believe my
3 appointment in terms of representing Mr. Keith began in
4 February of 2012.

5 Q Would there be any reason to challenge an indictment
6 if the individual is arrested for burglary second and
7 indicted for burglary first, would there be any legal
8 basis to challenge that indictment?

9 A If a person was arrested for burglary second and
10 indicted for burglary first?

11 Q Yes.

12 A You're asking if there's legal argument --

13 Q Would there have been a legal objection to that you
14 could have made?

15 A Sure.

16 Q And that would have been?

17 A Efficiency of the indictment.

18 Q But even though the charge could have been directly
19 presented?

20 A Well, it could always be directly presented. I
21 assume you're asking me a hypothetical, if there's a
22 possibility to do that?

23 Q Yes.

24 A Yes, it's possible to do that.

25 MS. RATIGAN: I don't have anything further.

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MS. HORLBECK:

4 Q Mr. Culbertson, you testified that there was a letter
5 from the State dated November 30th, 2012?

6 A Yes.

7 Q And in that letter, the State reviewed that Ms.
8 Burkett had informed the State that Mr. Keith did not want
9 to plea, is that correct?

10 A I'll read it again if you need me to.

11 Q Sure, that's fine.

12 A What it says is that -- it's addressed to me. It
13 says, Dear Symmes, Tracy Burkett of the public defender's
14 office told me yesterday that your above referenced client
15 will not accept my plea offer of the 15-year
16 recommendation and he wants a trial. If he has a change
17 of mind and wishes to plead guilty, he must do so during
18 the December 10th, 2012 term of court. This case is
19 subject to being placed on the trial docket at any time
20 starting with the January 7th, 2013 terms of court. It
21 goes on to say my records indicate that you have been
22 provided all discovery. If this is not the case or if you
23 have any questions about, give me a call and we will
24 compare files to make sure you have everything. Also, let
25 me know if you would like to view any evidence or

1 photographs, if applicable, prior to trial.

2 Q Did you review that with Mr. Keith?

3 A I believe I did.

4 Q Do your notes reflect when and by what means you
5 reviewed it with him?

6 A Well, as I look back through the file, I see that
7 there are several notes that I made in Mr. Keith's file.
8 It goes back to February the 8th, 2012, handwritten note
9 in here says, Met with defendant in jail. Defendant wants
10 drug/M&M. He, Mr. Keith, gave me a copy of his statement.
11 Then, again, February 22nd, 2012, met with defendant again
12 at the jail. On August 22nd, 2012, at the jail, signed a
13 plea sheet at that time and wanted to discuss the offer
14 with me further. He would like to have a recommendation
15 for drug court. Again, then, September 19th, 2012, I have
16 a note here that says, Mr. Keith signed the plea sheet and
17 wants the zero to 15 nonviolent sentence. That's the last
18 of my handwritten notes I have in Mr. Keith's file.

19 Q When Mr. Keith came to court on January 7th, you
20 don't recall specifically whether or not you told him that
21 that 15-year offer was still on the table?

22 A No, I don't recall if I specifically told him that or
23 not.

24 Q And the grounds for enhancing the charges to burglary
25 first, do you recall those?

1 A No, I do not.

2 Q Okay.

3 A I don't recall specifically why they did that. I can
4 assume that they did that based on the length of Mr.
5 Keith's prior record.

6 Q Okay. His prior record, do you recall that it did
7 include two burglary charges form 1994?

8 A Yes.

9 Q Did you investigate the dates that those two prior
10 burglaries happened?

11 A I don't believe I did.

12 Q Okay.

13 MS. HORLBECK: I'd like to mark this as Petitioner's
14 1.

15 (WHEREUPON, Plaintiff's Exhibit No. 1 was marked for
16 identification.)

17 BY MS. HORLBECK:

18 Q Mr. Culbertson, I'm handing you a copy of
19 Petitioner's 1 and just ask that you take a look at that,
20 then I'll ask you some questions.

21 A Yes, ma'am.

22 Q What are the two documents that comprise Petitioner's
23 1?

24 A The first one is an arrest warrant charging burglary
25 second degree and grand larceny. It's dated October 14th,

1 1994.

2 Q Does it say who the warrant is for, is it for Mr.
3 Keith?

4 A It's for Kevin Lee Keith.

5 Q And what is the alleged date of that incident?

6 A It says October 14th, 1994.

7 Q And could you flip to page two of Petitioner's 1?

8 A Yes, ma'am.

9 Q Is that a second warrant against Mr. Keith?

10 A It is a second warrant against Mr. Keith. This one
11 charges burglary first degree and petit larceny. It's
12 dated October the 2nd, 1994.

13 Q Is that the arrest date?

14 A That's correct.

15 Q And both of those arrest dates for both of those
16 warrant are from an October 1994 date?

17 A That's correct.

18 Q And are both of those documents in Petitioner's 1
19 have the clerk's stamp on it or are those stamped?

20 A Yes.

21 Q For two of these burglary first, would it surprise
22 you if the basis for two of the burglary first that Mr.
23 Keith pled to were his prior record?

24 A Are you asking me about these two that you just
25 handed me?

1 Q Yes.

2 A Just to be clear, one of these is a warrant for
3 burglary second, the other one is for burglary first.

4 Q Right. But those two were the basis for two of these
5 burglary first that Mr. Keith pled to, the enhanced --

6 A Correct.

7 Q Did you make an argument to Mr. Moyer that the
8 incident dates on those two priors were so close together
9 that they could have been considered one transaction
10 instead of two for purposes of enhancement?

11 A Are you asking if I made that argument?

12 Q Yes, in mitigation?

13 A I do not recall.

14 Q Okay. And to be fair, I do think that -- would it
15 surprise you if the third burglary first that Mr. Keith
16 pled to that the basis for that was a nighttime event?

17 A No, ma'am.

18 MS. HORLBECK: I would like to move those into
19 evidence, Judge.

20 THE COURT: Any objection?

21 MS. RATIGAN: No objection.

22 THE COURT: Without objection, the same is moved into
23 evidence.

24 (WHEREUPON, Plaintiff's Exhibit No. 1 was admitted
25 into evidence.)

1 MS. HORLBECK: That's all I have. Thank you.

2 THE COURT: Any redirect?

3 MS. RATIGAN: No redirect and the State would rest
4 now.

5 THE COURT: You may step down, sir.

6 Anything further from the applicant?

7 MS. HORLBECK: Judge, just that since the basis for
8 one of the burglary first is the prior record and the
9 nighttime occurrence of the burglary, we would not ask
10 that this argument apply to that one. And I'm
11 specifically talking about -- it's the [REDACTED]
12 burglary that happened on 12/10/11.

13 THE COURT: You and your client both understand that
14 if I were to grant post-conviction relief that he would go
15 back to the trial court and would face the possibility of
16 life without the possibility of parole? That's a big
17 gamble.

18 Mr. Keith, that's a big gamble. Matter of fact, if
19 the minimum is 15 and the maximum was life and he got 18,
20 that's not such a bad deal. But, of course, it's your
21 decision if you want to proceed on it. But I'll take it
22 all under advisement. I'll consider all the testimony and
23 all of the evidence that's been presented in context with
24 the transcript of record that's in the file. Good luck to
25 you.

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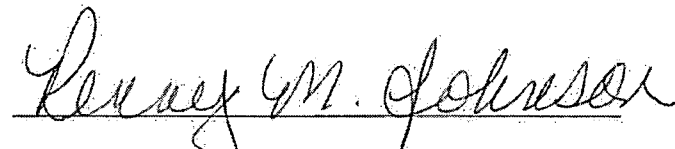
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the trial of the captioned case,
relative to appeal, in Court of Common Pleas for Greenville
County, South Carolina, on the 17th day of June, 2014.

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

December 10, 2014



Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

STATE OF SOUTH CAROLINA
 COUNTY OF Dillon

CASE # 13-2303

PLAINTIFF	<u>Kevin Keith</u>	PLAINTIFF'S ATTORNEY	<u>C. Haulbeck</u>
DEFENDANT	<u>State</u>	DEFENDANT'S ATTORNEY	<u>K. Redigan</u>
JUDGE	<u>Stilwell</u>	DATE	<u>6.17.14</u>

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 <u>Arrest Warrants</u>	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

COURT REPORTER: April Herron

CLERK OF COURT Jan White

DATE RECEIVED 6-20-14

Form Approved by SC Attorney General July 23, 1990 SCSA 518

ARREST WARRANT 763
D-939984 Thompson 11-1-94 E

STATE OF SOUTH CAROLINA
 County/ Municipality of GREENVILLE

THE STATE
against
94-171216

Address: KEVIN LEE KEITH LT. 6
GREENVILLE, SC 29611

Sex: M Race: W Height: 5-10 Weight: 130
DL State: DL #
DOB: Agency ORI #SC0230000

Prosecuting Agency: GCSO
Prosecuting Officer: W. A. SMITH
Offense: BURGLARY SECOND DEGREE AND GRAND LARCENY
Offense Code:

Code/Ordinance Sec 16-11-312/16-13-30
This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant on 10-25-94

Signature of Constable/Law Enforcement Officer 103 E

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
 County/ Municipality of GREENVILLE

AFFIDAVIT

6.17.14

Personally appeared before me the affiant INV. WESLEY A. SMITH, GCSO who being duly sworn deposes and says that defendant KEVIN LEE KEITH did within this county and state on 10/14/94 violate the criminal laws of the State of South Carolina (or ordinance of County/Municipality of) in the following particulars:

DESCRIPTION OF OFFENSE:

BURGLARY SECOND DEGREE AND GRAND LARCENY

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: ON THE INCIDENT DATE, THE GARAGE AT AT RESIDENCE LOCATED AT IN GREENVILLE COUNTY AND BELONGING TO RICKY DUNCAN WAS UNLAWFULLY ENTERED BY FORCING THE DOOR. AFTER ENTRY WAS GAINED, PROPERTY BELONGING TO THE VICTIM AND VALUED AT OVER \$2,000.00 WAS STOLEN. THIS DEFENDANT HAS GIVEN THE AFFIANT A SWORN STATEMENT IN WHICH HE ADMITTED THAT HE AND A CO-DEFENDANT DID UNLAWFULLY COMMIT THIS OFFENSE.

Sworn to and subscribed before me on 10-25-94

Signature of Issuing Judge (L.S.)

Signature of Affiant
Affiant's Address 305 E. NORTH ST. GREENVILLE, SC 29604
Affiant's Telephone 467-5385

STATE OF SOUTH CAROLINA
 County/ Municipality of GREENVILLE

ARREST WARRANT

Dated 6-17-14
Clerk of Court C.P. & G.S. Greenville County, SC

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY: I, appearing from the above affidavit that there are reasonable grounds to believe that on 10/14/94 defendant KEVIN LEE KEITH did violate the criminal laws of the State of South Carolina (or ordinance of) as set forth below:
DESCRIPTION OF OFFENSE:

BURGLARY SECOND DEGREE AND GRAND LARCENY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)
Judge's Address 4 MOORE ST., RM 116B GREENVILLE, SC 29601
Judge's Telephone 467-5312
Issuing Court: Magistrate Municipal Circuit

Side B : *CFD* 738 Leopus
ARREST WARRANT 11-8-94

E-055648 94-163654

STATE OF SOUTH CAROLINA
 County/ Municipality of
Greenville

THE STATE
against

Kevin Lee Keith "Goat"
Address: [redacted] Road lot #6
Greenville, S.C.
Phone: [redacted] SSN: 2 [redacted]
Sex: M Race: W Height: 5'10 Weight: 150
DL State: [redacted] DL #: [redacted] ORI #: [redacted]
Prosecuting Agency: Greenville County
Prosecuting Officer: Inv. Doug Kelly 424
Offense: Burglary 1st degree and Petit
Larceny Offense Code: [redacted]
Code/Ordinance Sec: [redacted]

This warrant is CERTIFIED FOR SERVICE in the
 County/ Municipality of

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant Kevin Lee Keith on 10-17-94 at 25 SE 1st in Greenville.
Signature of Constable/Law Enforcement Officer AR Kelly 523

RETURN WARRANT TO:
Magistrate Ed. Taylor

STATE OF SOUTH CAROLINA
 County/ Municipality of
Greenville

AFFIDAVIT

Form Approved by
S.C. Attorney General
May 26, 1990
SCAG 518

Personally appeared before me the affiant Inv. Doug Kelly who being duly sworn deposes and says that defendant Kevin Lee Keith did within this county and state on 10-2-94 violate the criminal laws of the State of South Carolina (or ordinance of County/ Municipality of Greenville) in the following particulars:
DESCRIPTION OF OFFENSE: Burglary 1st degree and petit larceny

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On the above date the defendant did enter the residence of Anita Hutchins, [redacted] which is in Greenville County, unlawfully. The defendant entered through an unlocked door during the night time hours and with the victim being at home. The defendant did steal, take and carry away with the intent of depriving the owner of, one unknown brand of Microwave Oven valued at \$250.00. The defendant was identified by the victim from a photographic line up as the individual she observed at her home on the night of the incident. The property has not been recovered.

Sworn to and subscribed before me on 10-11-94

Signature of Affiant Doug Kelly
Affiant's Address 301 University Ridge Greenville, SC 29620
Signature of Issuing Judge AR Kelly (L.S.)
Affiant's Telephone 467-7620
B. W. Williams
Clerk of Court C.P. & G.S.
Greenville County, SC

STATE OF SOUTH CAROLINA
 County/ Municipality of
Greenville

ARREST WARRANT Dated 10-17-94

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

I, AR Kelly appearing from the above affidavit that there are reasonable grounds to believe that Kevin Lee Keith did violate the criminal laws of the State of South Carolina (or ordinance of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Burglary 1st and Petit Larceny

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as practicable.

Signature of Issuing Judge AR Kelly (L.S.)
Judge's Address 4 McGee Street Greenville, S.C.
Judge's Telephone 467-5312
Issuing Court: Magistrate Municipal Circuit

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Kevin Lee Keith,)
 S.C.D.C. No. 174394,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-23-2303

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL E. WICKENSIMMER
 2014 MAR 11 PM 4 18

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed April 24, 2013. The Respondent made its return on October 18, 2013. An evidentiary hearing into the matter was convened on June 17, 2014, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Symmes W. Culbertson, Sr., Esquire. The Court had before it the guilty plea transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the November 2012 term of the Greenville County Grand Jury for three counts of first-degree

1

burglary (2011-GS-23-9368, 2012-GS-23-2034, and 2012-GS-23-2038), financial transaction card (FTC) theft (2012-GS-23-2029), and strong arm robbery (2012-GS-23-2040). He was represented by Symmes W. Culbertson, Sr., Esquire.

On January 7, 2013, the Applicant pled guilty.¹ The Honorable Letitia H. Verdin sentenced the Applicant to concurrent terms of eighteen years for each count of first-degree burglary, fifteen years for strong arm robbery, and five years for FTC theft. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel did not meet with Applicant enough.
 - b. Counsel did not afford Applicant the chance to present a complete defense.
 - c. Counsel did not keep Applicant reasonably informed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

¹ The State not prossed indictments for FTC fraud (2012-GS-23-2030, -2031, -5058), criminal conspiracy (2012-GS-23-2032, -2037), petit larceny (2012-GS-23-2033), first-degree burglary (2012-GS-23-2035, -2039), petit larceny, third offense or greater (2012-GS-23-5056), and FTC theft (2012-GS-23-5057).

AS 7

Ineffective Assistance of Counsel

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

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

The Applicant stated he was indicted for second-degree burglary (non-violent) in 2011, but that the charge was first-degree burglary when he went to court. The Applicant stated that he did not realize the charge in which he plead guilty plea to was different than the charge he was indicted for until after the fact. He further alleges that counsel failed to explain why the charge he was pleading guilty to was different from the charge he was originally indicted for. The Applicant stated he had approximately one month to consider a fifteen-year plea offer and that he decided to accept it on the day of the plea hearing. The Applicant stated plea counsel told him the case was set for trial and that the fifteen-year offer was still available. The Applicant stated plea counsel did not promise he would receive fifteen years, but that the State would make this recommendation. The Applicant stated he would have gone to trial if he had not thought a

fifteen-year sentence was "a done deal."

Plea counsel testified he was appointed in this case and not the Applicant's first attorney. Plea counsel testified the Applicant wanted to plead guilty and that several plea offers were extended to the Applicant both prior to and during his representation. Plea counsel testified the Applicant rejected these offers. Plea counsel testified the Assistant Solicitor made a plea offer on June 18, 2012 to no pros several charges and recommend a fifteen-year sentence. Plea counsel testified the Applicant was informed of this offer. Plea counsel testified the assistant solicitor sent a letter on November 30, 2012 indicating he was informed the Applicant did not want this offer so the case would likely be put on the January 2013 trial docket. Plea counsel testified he did not tell the Applicant on the day of the plea hearing that he was sure he would receive a fifteen year sentence. Plea counsel testified he did not recall why the burglary charge was enhanced to first-degree but that it was likely because of the Applicant's prior record.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not advise him that he was pleading guilty to first-degree burglary. While the Applicant stated he did not realize he was pleading guilty to first-degree burglary until he received the sentencing sheets after the plea hearing, this Court does not find this testimony to be credible. At the beginning of the guilty plea hearing, the clerk stated the Applicant is pleading guilty to three counts of first-degree burglary and the Applicant did not object. (Plea transcript, p.4). The plea

judge stated the sentence ranges on the three counts of first-degree burglary are between fifteen years and life imprisonment and the Applicant stated he understood. (Plea transcript, pp.4-5). This Court finds the Applicant's assertions are refuted by the plea transcript. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him).

This Court finds the Applicant failed to meet his burden of proving plea counsel misadvised him about the sentence he would receive if he pled guilty. The Applicant stated he believed he was pleading guilty in exchange for a fifteen-year plea recommendation. This Court does not find the Applicant's testimony is credible. The Applicant signed the sentencing sheets prior to the guilty plea hearing and the box for "without negotiations or recommendation" was checked. In addition, plea counsel had a letter from the prosecutor in his file dated November 30, 2012 reflecting the prosecutor's understanding that the Applicant rejected the fifteen-year plea offer. As the case was on the trial docket, this Court finds the Applicant knew he was pleading guilty without a recommendation. Regardless, this Court finds that, even assuming arguendo that plea counsel misadvised the Applicant about the recommendation, any error was cured by the plea colloquy. See Holden v. State, 393 S.C. 565, 575, 713 S.E.2d 611, 616 (2011); Burnett v. State, 352 S.C. 589, 593-94, 576 S.E.2d 144, 246 (2003). Plea counsel noted this was a "straight up plea" and the Applicant did not object. (Plea transcript, p.10). Nor did the Applicant object after imposition of the eighteen-year sentence. (Plea transcript, pp.12-13). Additionally, as the Applicant gave a statement for one burglary charge and was caught in the residence for another burglary charge, this Court does not find credible the Applicant's assertion

that he would have pled guilty if he had known he would not receive a fifteen-year sentence.

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

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

All Other Allegations

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

CONCLUSION

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

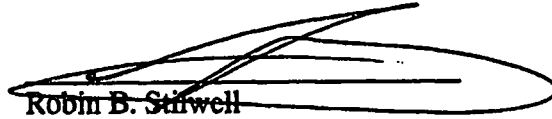
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules

for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 11 day of April, 2014.


Robin B. Stirwell
Presiding Judge
Thirteenth Judicial Circuit

COVILLE, South Carolina.

WITNESSES

C Horrell

Greenville County Sheriffs Office

9/17/2011

ARREST WARRANT NUMBER

J993824

ACTION OF GRAND JURY
~~TRIPPLE BILL~~
John H. P. Jones
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

DOCKET NO. 2011-GS-23-
JMG

009269

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2011

THE STATE

vs.

KEVIN LEE KEITH

0079

Indictment for

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

Foreperson of Petit Jury

Date:

RECEIVED

DEC 09 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE


At a Court of General Sessions, convened on
County present upon their oath:

NOV 20 2012

the Grand Jurors of Greenville

That KEVIN LEE KEITH did in Greenville County, on or about the 17th day of September 2011, willfully and unlawfully enter the residence of Gamal Ibrahim located at [REDACTED], Greenville, South Carolina without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: the defendant has two or more prior convictions of Burglary. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

J T Martin

Greenville County Sheriffs Office

MP

2/13/2012

DOCKET NO. 2012-GS-23-
LMM

The State of South Carolina

County of Greenville

002029

COURT OF GENERAL SESSIONS

November TERM 2012

THE STATE

vs.

KEVIN LEE KEITH

ARREST WARRANT NUMBER

M992721

ACTION OF GRAND JURY
TRUE BILL
John L. Davis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0348

Indictment for

FINANCIAL TRANSACTION CARD THEFT

VIOLATION § 16-14-0020

Foreperson of Petit Jury
Date:

RECEIVED

MAR 21 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FINANCIAL TRANSACTION CARD THEFT

At a Court of General Sessions, convened on
County present upon their oath:

NOV 20 2012

the Grand Jurors of Greenville

That KEVIN LEE KEITH did in Greenville County, between the 2nd day of December, 2011, and the 31st day of December, 2011, willfully and maliciously take, obtain, withhold or otherwise receive a Woodforest National Bank ATM Mastercard, with the account number ending in [REDACTED], belonging to JO ANNA STRONG, with intent to use, sell or otherwise transfer the card. This is in violation of §16-14-0020 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

R Morgan
Greenville County Sheriffs Office

MS

1/19/2012

DOCKET NO. 2012-GS-23-

LMM

The State of South Carolina

County of Greenville

002034

COURT OF GENERAL SESSIONS

November

TERM 2012

THE STATE

VS.

KEVIN LEE KEITH

ARREST WARRANT NUMBER

1509475

ACTION OF GRAND JURY
TRUE BILL

John H. P. Davis
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

Foreperson of Petit Jury

Date:

RECEIVED

FEB 21 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 BURGLARY FIRST DEGREE

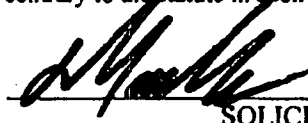
At a Court of General Sessions, convened on
 County present upon their oath:

NOV 20 2012

the Grand Jurors of Greenville

That KEVIN LEE KEITH did in Greenville County, between the 10th day of December 2011, and the 11th day of December 2011, willfully and unlawfully enter the dwelling of THOMAS HUGHES located at [REDACTED] Greenville, South Carolina, without consent and with the intent to commit a crime therein, and the burglary was accompanied by circumstances of aggravation, to wit: The entering and/or remaining did occur during nighttime hours and/or the defendant has two or more prior convictions for burglary. This is in violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

T Pell

Greenville County Sheriffs Office

1/20/2012

DOCKET NO. 2012-GS-23-

LMM

The State of South Carolina

County of Greenville

002030

COURT OF GENERAL SESSIONS

November TERM 2012

THE STATE

VS.

KEVIN LEE KEITH

ARREST WARRANT NUMBER

1374096

ACTION OF GRAND JURY
TRUE BILL

Donald P. Jones
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0079

Indictment for

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

Foreperson of Petit Jury

Date:

RECEIVED

MAR 21 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on **NOV 20 2012** the Grand Jurors of Greenville
County present upon their oath:

That KEVIN LEE KEITH did in Greenville County, on or about the 17th day of January 2012, willfully and
unlawfully enter the dwelling of EDDIE GALLOWAY, located at [REDACTED], Greenville, South
Carolina, without consent and with the intent to commit a crime therein, and the burglary was accompanied by
circumstances of aggravation, to wit: The defendant has two or more prior convictions for burglary. This is in
violation of §16-11-0311 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Alvin King
Greenville County Sheriff's Office

2/8/2012

DOCKET NO. 2012-GS-23.

002040

LMM
The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS

November TERM 2012

THE STATE

VS.

KEVIN LEE KEITH

ARREST WARRANT NUMBER

M992714

ACTION OF GRAND JURY

PRIE BILL

Frank P. Prie
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0137

Indictment for

STRONG ARM ROBBERY

VIOLATION § 16-11-0325

Foreperson of Petit Jury

Date:

RECORDED

MAR 21 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
STRONG ARM ROBBERY

At a Court of General Sessions, convened on **NOV 20 2012** the Grand Jurors of Greenville
County present upon their oath:

That KEVIN LEE KEITH did in Greenville County, on or about the 17th day of January 2012, feloniously take from the person or presence of JOHN HERNDON, by means of force, threats or intimidation, goods or monies being described as follows: a wallet and/or money with the intent to permanently deprive the owner thereof. This is in violation of § 16-11-0325 the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS. Kevin Lee Keith

AKA:
Race: WHITE Sex: M Age: 41
DOB: SS#:
Address:
City, State, Zip: Woodruff, SC 29388
DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Burglary, First Degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS2309368
A/W#: J993824
Date of Offense: 9/17/2011
S.C. Code §: 16-11-0312
CDR Code #: 0080

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Moyer, Mark (SC Bar# 64155) Defendant Keith (Attorney for Defendant) (SC Bar# 10278)

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 353 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other: ATU

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$

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

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

Presiding Judge [Signature]
Judge Code: 2162
Sentence Date: 1-7-2013

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS. Kevin Lee Keith
AKA:
Race: WHITE Sex: M Age: 41
DOB: SS#:
Address:
City, State, Zip: Woodruff, SC 29388-8724
DL#: SID#:

INDICTMENT/CASE#: 2012GS2302029
A/W#: M992721
Date of Offense: 12/2/2011
S.C. Code §: 16-14-0020, 0100(
CDR Code #: 0348

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Financial Transaction Card Theft

CONVICTED OF or PLEADS

in violation of § 16-14-0020, 0100(of the S.C. Code of Laws, bearing CDR Code # 0348
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Moyer, Mark SC Bar# 64155 Defendant Kwei Keith Attorney for Defendant 10298 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 353 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments), TOTAL

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

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

Presiding Judge JHL
Judge Code: 2162
Sentence Date: 1-7-2013

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

Kevin Lee Keith

INDICTMENT/CASE#: 2012GS2302034

A/W#: 1509475

Date of Offense: 12/10/2011

S.C. Code §: 16-11-0311

CDR Code #: 0079

AKA:

Race: WHITE Sex: M Age: 41

DOB: SS#: Address:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Burglary, first degree

CONVICTED OF or PLEADS

SENTENCE SHEET

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Moyer, Mark (Moyr, Mark) 64155 SC Bar# Defendant Keith, Kevin (Keith, Kevin) Attorney for Defendant 10278 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 353 days

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$ Obtain GED Attend Voc. Rehab. or Job Corp.

Set by SCDPPPS May serve W/E beginning Substance Abuse Counseling

Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund

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

*Fine: § 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$25.00 § 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$5.00 3% to County (if paid in installments) \$ TOTAL \$

Clerk of Court/ Deputy Clerk Paul Dickinson Court Reporter: Johnson SCCA/217 (03/2011)

Presiding Judge Judge Code: 2462 Sentence Date: 1-7-2013

STATE OF SOUTH CAROLINA)
 COUNTY OF Greenville)
 STATE VS.)
Kevin Lee Keith)
 AKA: _____)
 Race: WHITE Sex: M Age: 41)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: Greenville, SC 29611)
 DL#: [REDACTED] SID#: _____)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS2302038
 A/W#: I374096
 Date of Offense: 1/17/2012
 S.C. Code § : 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Burglary, first degree

CONVICTED OF or PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 64155 * Kevin Keith [Signature] 10298
 Moyer, Mark / SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 18 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 353 days
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: _____ \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
 _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$

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

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

Presiding Judge [Signature]
 Judge Code: 2162
 Sentence Date: 1-2-2013

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2012GS2302040

Kevin Lee Keith

A/W#: M992714

Race: WHITE Sex: M

Date of Offense: 1/17/2012

DOB: [REDACTED]

S.C. Code §: 16-11-0325

Address: [REDACTED]
City, State, Zip: GREENVILLE, SC

CDR Code #: 0137

DL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was TO: Common law robbery

[] CONVICTED OF or [X] PLEADS

in violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137
[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser included Offense, [] Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: Moyer, Mark SC Bar# 64155 Defendant; [Signature] Attorney for Defendant; [Signature] SC Bar# 10290

WHEREFORE, the Defendant is committed to the State Department of Corrections, [] County Detention Center, for a determinate term of 18 days/months/years or [] under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

[] CONCURRENT or [] CONSECUTIVE to sentence on:
[X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 353 days
[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
[] Set by SCDPPPS

PTUP days/hours Public Service Employment

Recipient:

Obtain GED []
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling []

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$.

Random Drug/Alcohol testing []
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund
Other:

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

Clerk of Court/ Deputy Clerk Paul P. Wickens
Court Reporter Johnson
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code:
Sentence Date: 1-7-2013